EMPLOYMENT TRIBUNALS

Claimant **AMS**

Respondent **SCOT GROUP LIMITED**

Heard at: **Exeter** **On:** **2nd – 6th March 2026**

Before: **Employment Judge David Hughes**
Mrs V Blake
Ms R Clarke

JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. **The judgment of the tribunal is that the Respondent's application for reconsideration is allowed.**

2. **Paragraphs 2 and 3 of the Tribunal's judgment dated 08.03.2026 are varied, to read "The Claimant's claim in respect of holiday pay is not well-founded and is dismissed".**

REASONS

The Application

1. The Tribunal heard evidence in the above case on 2nd to 4th March 2026. Having deliberated on 5th March, we gave our decision on 6th March. In the course of our decision, we upheld the Claimant's claim insofar as it concerned a claim in respect of pay for accrued but untaken holiday on 27.05.2024.

2. Having given our decision, counsel for the Respondent made an oral application that we reconsider that element of our decision. He made oral

submissions as to why there was a reasonable prospect of our decision being varied or revoked.

3. The Employment Tribunal Procedure Rules 2024 ("the Rules") provide for a procedure to be followed if a party wishes to ask the Tribunal to reconsider a decision. The Rules expressly allow for a party to ask for reconsideration in the course of a hearing (Rule 69), which is what the Respondent did.

4. The process for reconsideration provided for in Rule 70 requires that the Tribunal first consider whether there is any reasonable prospect of the judgment being varied or revoked (see Rule 70(2)). Having considered the Respondent's representations, it appeared to us that there was a reasonable prospect of our decision being varied.

5. Rule 70(3) provides that, if the Rule 70(2) consideration is that there is a reasonable prospect of the judgment being varied or revoked, the Tribunal must send a notice to the parties identifying the date by which written representations must be received, and inviting views on whether the application can be determined without a hearing.

6. This procedure appeared to us to be designed for reconsideration applications made other than in the course of a hearing. However, there is nothing in the wording of Rule 70(3) limiting its application.

7. Counsel invited us to consider Rule 6, in conjunction with Rule 3, to avoid the need for the Tribunal to send a notice out. To send out a notice would require adjourning the substance of the application, and would – at the very least – require the Tribunal to reconvene to consider written representations.

8. The common-sense case for doing so was overwhelming. The parties were present before the Tribunal. The Claimant had heard what counsel had had to say about reconsideration. His submissions on the Rule 70(2) exercise were exactly the same as they would be on the substance of the application.

9. Counsel for the Respondent was not able to take us to any authority dealing with the application of Rule 70(3) in the case of an application for reconsideration made during the course of a hearing.

10. Considering the overriding objective, to which it is the Tribunal's obligation to seek to give effect when exercising its powers and interpreting the Rules,

(a) To send a notice would do nothing to favour equality between the parties;

(b) To send out a notice would be disproportionate. The parties were present. There was no reason to incur the cost of having the Tribunal reconvene to deliberate on an argument it had heard in the course of the application;

(c) To send out a notice would be the very definition of unnecessary formality, would create delay and would incur unnecessary expense.

11. We therefore decided that, although to proceed without sending out a notice would be an irregularity resulting from a failure to comply with a provision of the Rules, we could waive that requirement and proceed to hold a Rule 70(4) hearing.

12. We did that. The Respondent had nothing to add to its submissions – the substance of which are considered below – and the Claimant made no submissions on the substance of the application.

Law

The Rules

13. Rule 3 provides as follows:

3.— Overriding objective
(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
(2) Dealing with a case fairly and justly includes, so far as practicable—
(a) ensuring that the parties are on an equal footing,
(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,
(c) avoiding unnecessary formality and seeking flexibility in the proceedings,
(d) avoiding delay, so far as compatible with proper consideration of the issues, and
(e) saving expense.
(3) The Tribunal must seek to give effect to the overriding objective when it—
(a) exercises any power under these Rules, or
(b) interprets any rule or practice direction.
(4) The parties and their representatives must—
(a) assist the Tribunal to further the overriding objective, and
(b) co-operate generally with each other and with the Tribunal.

14. Rule 6 provides:

> ***6.— Irregularities and non-compliance***
> *(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction, or any order of the Tribunal does not of itself render void the proceedings or any step taken in the proceedings.*
> *(2) In the case of non-compliance with these Rules, any practice direction or any order of the Tribunal, the Tribunal may take such action as it considers just, which may include any of the following—*
> *(a) waiving or varying the requirement;*
> *(b) striking out the claim or the response, in whole or in part, in accordance with rule 38 (striking out);*
> *(c) barring or restricting a party's participation in the proceedings;*
> *(d) awarding costs in accordance with Part 13 (costs orders, preparation time orders and wasted costs orders).*
> *(3) This rule does not apply to rules 10, 17(1), 24(1) or 26(1), or an order made under rule 28(1)(b), 29(1)(b), 39 or 40.*

15. Rule 69 provides as follows:

> ***69. Application for reconsideration***
> *Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal within 14 days of the later of—*
> *(a) the date on which the written record of the judgment sought to be reconsidered was sent to the parties, or*
> *(b) the date that the written reasons were sent, if these were sent separately*.

16. Rule 70 deals with the process for reconsideration, and reads as follows:

> ***70.— Process for reconsideration***
> *(1) The Tribunal must consider any application made under rule 69 (application for reconsideration).*
> *(2) If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application must be refused and the Tribunal must inform the parties of the refusal.*
> *(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the*

application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.
(4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.
(5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application.

17. We were not referred to T W White & Sons Ltd -v- White[1], which provides that the above process is mandatory. However, for the reasons set out above, upon considering the overriding objective, we concluded that it was open to us to dispense with the requirement that notice be sent out. White was not a case concerning an application for reconsideration made orally during the course of a hearing.

18. We were not taken to any legislation concerning entitlement to statutory sick pay, or holiday pay or entitlement.

Substance

19. The parties did not dispute that the Claimant had not worked 27.05.2026. Our initial reasoning, as read out to the parties, was as follows:

The Claimant's position is that, as she was sick on 27.05.2024, she was unable to benefit from her day's holiday on that day. On that, we find that the Claimant is right. Had the Claimant continued in employment, she would have been entitled to a day off in lieu of that Bank Holiday, and is entitled to be paid for that day and, in the circumstances of her employment ending, this would be as accrued but untaken holiday.

However, the Respondent did pay the Claimant full pay for 27.05.2024, which was, in fact, a day of sickness absence. The Claimant therefore was only entitled to receive statutory sick pay for that day, not full pay. It seems to us – and at this point, we are not determining remedy so will hear argument if any party wants to contend that this calculation is wrong – that the Claimant was due 7.5 hours at a statutory sick pay rate at £3.11 per hour, which comes to £23.33. The Claimant was paid 7.5 hours at her hourly rate of £11.44, which is £85.80. The Respondent has therefore overpaid her by £62.47.

However, the Claimant should have had 7.5 hours in the accrued but untaken entitlement, and so would be owed £85.80. Given the over-payment of £62.47, the amount owed to her appears to be £23.33. But

[1] UKEAT/0022/21/VP @ para 49

here we are deciding only liability, and will hear argument if any party wants to contend that this figure is wrong.

20. In applying for reconsideration, counsel took us to documents that, he contended, showed that the Claimant had, in fact, been paid twice for 27.05.2024.

21. He took us to a letter by Ms Tansley, the Respondent's Payroll Manager, dated 18.09.2024, and a shorter letter of 27.06.2024, simply from the Respondent's HR team.

22. Our understanding of this issue was not been helped by the rather opaque way it was put before us.

23. As noted above, Rule 70(2) required that we consider whether there is any reasonable prospect of our judgment being varied or revoked. To do so, we reflected on whether our calculations may be in error.

24. It seemed to us that there was an error in our calculations.

25. The Claimant was off work from 20.05.2024. She was off work for 2 working weeks, considering that she worked Monday to Wednesday. Therefore, it may appear that she should have been paid 2 weeks statutory sick pay, which was a flat rate of £116.75. per week. But the first 3 days were waiting days, which means that she would not be entitled to sick pay for the first week.

26. We understand from the documents to which counsel took us, that the Claimant had received 1 full week of statutory sick pay, for the week commencing 27.05.2024. She had also received full payment for the Bank Holiday of 27.05.2024, within that week. On that basis, the Claimant had benefitted from a payment in full in lieu of the Bank Holiday on 27.05.2024. There is therefore no requirement to include that day in a calculation of untaken but accrued holiday.

27. Application for reconsideration is allowed.

Employment Judge David Hughes
Dated 20.03.2026

JUDGMENT SENT TO THE PARTIES ON
23 March 2026