EMPLOYMENT TRIBUNALS

Claimant: **Adam Kovalchuk**

Respondent: **Magdal Ltd**

JUDGMENT ON RECONSIDERATION

The Respondent's application made under Rule 69 of the Employment Tribunal Procedure Rules 2024 ("the 2024 Rules") for reconsideration of the remedy awarded is refused. The Tribunal's judgment as to remedy is confirmed.

REASONS

Background

1. In a judgment dated 9 January 2026 and sent to the parties on 30 January 2026 ("the Judgment"), the Tribunal upheld the Claimant's complaint of unlawful deduction from wages.

2. The Tribunal ordered that the Respondent must pay the Claimant a total amount of **£3,415.13** made up of two elements:

   a. Unpaid wages (with 25% uplift for non-compliance with the ACAS Code) **£2,499.93**;

   b. Failure to provide written statement of particulars (at two weeks' wages) **£915.20**.

3. On 11 February 2026, the Respondent applied for reconsideration of the remedy awarded by the Judgment under Rule 69 of the 2024 Rules.

4. The grounds upon which the Respondent applies for consideration are:

   a. That the award of £915.20, which the Respondent refers to as relating to overtime hours, was not sufficiently evidenced and did not reflect actual working arrangements.

   b. That the 25% uplift to the award for non-compliance with the ACAS Code should be set aside, as the Respondent engaged with the ACAS early conciliation process.

5. The Respondent also asks the Tribunal to take into account the current financial position of the Respondent, which is experiencing financial difficulty, and requests that the Tribunal considers the possibility of approving a payment plan.

Process

6. Rule 70 of the 2024 Rules sets out the 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."

7. There are a number of established principles in respect of reconsideration:

   a. The Tribunal must seek to give effect to the overriding objective of dealing with cases fairly and justly, which includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, avoiding delay, so far as compatible with proper consideration of the issues, and saving expense (**Rule 3 of the 2024 Rules**);

b. The interests of justice allow for a broad discretion in respect of whether reconsideration is appropriate, albeit one that must be exercised judicially (**Outasight VB Ltd v Brown [2015] ICR D11 EAT**);

c. The interests of both parties should be taken into account when deciding whether it is in the interests of justice to reconsider the judgment **Outasight VB Ltd v Brown [2015] ICR D11 EAT**.

d. A central aspect of the interests of justice is that there should be finality in litigation, and the jurisdiction to reconsider should be exercised with caution (**Ebury Partners Ltd v Acton Davis 2023 EAT 40**);

Award of overtime pay

8. The Respondent's application on this point is misconceived. As noted above, the award of £915.20 was not made in respect of overtime pay. This was rather an award of two weeks' wages to reflect that the Claimant had not been provided with a written statement of his particulars of employment pursuant to **section 1 of the Employment Rights Act 1996**.

9. It was not disputed before the Tribunal that the Claimant was not provided with written particulars of his employment.

10. **Section 38 of the Employment Act 2002** provides that where a successful claim is made in respect of specified matters (including unlawful deduction of wages), and the Tribunal finds that the Respondent breached its duty to provide written particulars of employment, the Tribunal must award compensation in respect of such failure to provide written particulars.

11. Section 38 provides that the Tribunal must award a minimum amount of two weeks' pay, and may, if it considers it just and equitable in the circumstances, award the higher amount of four weeks' pay.

12. In deciding whether to award the minimum amount of two weeks' pay or the higher amount of four weeks' pay, the Tribunal took into account the circumstances of the employment. In particular, the Tribunal noted that the employment was very short in duration and that the Respondent is a small business without expertise in HR matters. The Tribunal therefore decided to award the minimum amount of two weeks' pay.

Compliance with ACAS Code

13. The Respondent's application is also misconceived on this point. **Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992** provides that an award made by an Employment Tribunal in respect of a specified category of claims (which includes unlawful deduction of wages) may be increased by up to 25% if the Tribunal finds that a party has failed to comply with a relevant Code of Practice.

Section 207A(2) provides:

(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that –

(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b) the employer has failed to comply with that Code in relation to that matter, and

(c) that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

14. The Tribunal found that the claim concerned a matter to which the **ACAS Code of Practice on Disciplinary and Grievance Procedures** ("the ACAS Code") applies. This is because the Claimant had submitted a grievance which the Respondent should have dealt with in accordance with that Code.

15. The Tribunal found as a matter of fact that the Respondent had not responded substantively to the Claimant's grievance letter, and therefore the Respondent had failed to comply with the ACAS Code. The Tribunal also found that that failure was unreasonable. The Tribunal took into account that the Respondent is a small business without HR expertise. However, it found that the Respondent had not made any efforts to respond to the grievance letter in a constructive manner and found that this was unreasonable.

16. The Tribunal therefore found that it was just and equitable to increase the award of unpaid wages in the amount of £1,999.24 by 25%, giving an amount for that element of the award of **£2,499.93**.

17. The Tribunal notes the Respondent's assertions that it complied with the ACAS early conciliation process initiated by the Claimant. This is an entirely different matter and is not relevant to the Respondent's compliance with the ACAS Code in respect of the grievance brought. Therefore, the Tribunal does not consider this relevant to the issue as to whether it was appropriate to make an uplift of 25%.

Respondent's financial circumstances

18. The Tribunal notes that the Respondent's current financial circumstances are not a relevant consideration in determining whether to reconsider the remedy awarded. To the extent relevant, the Respondent's status as a small business was taken into account when determining the award, as set out above.

19. The Tribunal does not have any jurisdiction to prescribe a payment plan for payment of the award.

Conclusion

20. The Tribunal considers that there is no reasonable prospect of the Judgment being varied or revoked, for the reasons set out above.

21. The reconsideration application is therefore refused under Rule 70(2) of the 2024 Rules.

Approved by:
Employment Judge M Carpenter
Dated: 19 March 2026

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