Case Number: 3303947/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mr D Young**

Respondent: **Fresh Cut Video Limited**

JUDGMENT

The claimant's application dated **20 October 2025** for reconsideration of the judgment delivered orally on 15 October 2025 and sent to the parties in writing on 31 October 2025 is refused.

REASONS

1. The claimant has applied for a reconsideration of the delivered orally on 15 October 2025 and sent to the parties in writing on 31 October 2025 is refused. Having considered the application under r.70(2), the employment judge considers that there is no reasonable prospect of the judgment being varied or revoked on the grounds that it is in the interests of justice to do so. The application for a reconsideration is rejected.

2. The procedure for an application for a reconsideration is set out in r.70 Procedure Rules 2024. It is a two stage process. If the employment judge who chaired the tribunal panel which made the judgement considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused under rule 70(2) and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response and seeking the views of the parties on whether the application can be determined without a hearing. That notice may set out the Judge's provisional views on the application. Unless the judge considers that a hearing is not necessary in the interests of justice, if the application is not rejected under rule 70(2), then the original decision shall be reconsidered by the full tribunal who made the original decision.

3. Where a litigant applies for a reconsideration on the grounds that new evidence is available they must persuade the employment tribunal that the evidence could not have been obtained with reasonable diligence for use at the hearing, that the evidence would probably have had an important influence on the outcome of the case and that it is credible (Ladd v Marshall [1954] 1 WLR 1489 CA). As was said in Wileman v Minilec Engineering Ltd [1988] I.R.L.R. 144 EAT, the evidence must not only be relevant but it must be probable that it would have had an important influence on the case for tribunal hearings are designed to be speedy, informal and decisive. However, it is not necessary that the new evidence should be shown to be likely to be decisive. The question for the tribunal on reconsideration is

> "in the light of what we know about this case, has it been shown to us that the evidence is relevant and probative, and likely to have an important influence on the result of the case?" (paragraph 15 of Wileman v Minilec)

4. The power to reconsider a judgement under rule 70 can only be used if it is necessary to do so in the interests of justice. That is apparent from the wording of the rule itself and, as it was held, by HH Judge Shanks in Ebury Partners UK Limited v Acton Davies [2023] IRLR 486 EAT a central aspect of the interests of justice is that there should be finality in litigation.

> "It is therefore unusual for a litigant to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party has been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct to suppose that error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error and it is one of law which is more appropriately corrected by the EAT." (Para 24 of the judgement of HHJ Shanks).

5. The communication of 20 October 2025 is treated as an application for reconsideration although the claimant subsequently said that he intended to apply for a reconsideration on receipt of the written reasons. This judgement makes a decision on the arguments advanced in "Claimant's factual correction note" sent to the tribunal on 20 October 2025. It is within the rules to make a second reconsideration application so this determination is not inconsistent with the direction I made that time for reconsideration is extended to 14 days after the written reasons for the disability judgement are sent to the parties.

6. In that PDF (the file name is "claimant correction of dates") the claimant makes the point that the argument on whether or not he was disabled at the material time by reason of depression and anxiety proceeded on the basis that the last alleged unlawful act was that of dismissal on 24 April 2024. He argues that pleaded complaints of disability discrimination are said to have taken place after 24 April 2024, the date of his dismissal. Since the basis on which I decided that he was not disabled at the material time was that he had not shown the substantial adverse impact of the impairment to have been long-term he argued that it was important for my decision if I erred about the dates relevant for the claim.

7. I have reference to but do not repeat the details in the Case Summary sent to the parties with this reconsideration judgement. It is clear from the List of Issues appended to that Case Summary, which is very little changed from that appended to

the Case Summary of Employment Judge Codd that the basis of this reconsideration application is misconceived:

7.1. The direct disability discrimination complaint is set out in List of Issues section 15. The last date of any alleged unlawful act is that of dismissal with effect on 24 April 2024. The List of Issues incorporates the amended claim proposed amendment application at RB page 120 and additions to the direct disability discrimination complaint are faithfully recorded in LOI 15. In particular the written application to amend at RB page 120 does not seek to introduce a complaint that conduct of the disciplinary appeal was discriminatory.

7.2. Similarly the last alleged act of disability-related harassment referred to is monitoring via CCTV from November 2023 onwards. This must have been prior to the claimant's sickness absence and certainly cannot have taken place after his April 2024 dismissal.

7.3. The complaint under section 15 Equality Act 2021 includes a complaint about deductions from the claimant's last payslip and of failure to engage with the 2024 investigation process. However if one looks at RB Page 121 the factual scope of the amendment application was the same as that for the direct disability discrimination complaint. That too did not complain that any act post-dating dismissal was discrimination for a reason arising in consequence of disability.

7.4. As pointed out in the claimant's Factual Correction Note, the January 2025 amendment application does set out (RB page 91) a narrative about the appeal which concluded in July 2024. However this is merely states that Ms Neil's actions "may" be discriminatory and reference to the appeal was not carried forward to the written application to amend perfected following the direction of Judge Codd. The respondent and the Tribunal are entitled to rely upon that later amendment application as focusing on the matters the claimant intends to seek to prove were discriminatory at final hearing. Furthermore the claimant's proposed List of Issues did not complain about the appeal as direct discrimination (see CB page 180 LOI 15) or discrimination for a reason arising in consequence of disability (see CB page 183 to 184 LOI 18). Neither of those places contain reference to the conduct of Ms Neil's decision on the appeal.

7.5. The claimant's submissions at paragraph 1.2 page 2 of his Note appear to presume that LOI 15.2, 15.4, 15.7, 18.3, 18.7 and 18.10 encompass an allegation of discrimination by the decision-maker at appeal stage. They do not as it would be an allegation against a different individual who is said to have acted for discriminatory reasons. That would have to be listed separately as a separate allegation from the decision to dismiss or conduct of the investigator.

7.6. The wording contrasts with the victimisation complaint in the claimant's draft List of Issues at CB 186 which specifically complains about the appeal.

7.7. The reasonable adjustments complaint in LOI 6 only refers to adjustments which it is argued should have been implemented dismissal.

8. I therefore reject the argument that the disability issue was decided on the basis of an incorrect time period. The victimisation claim does include alleged acts which are said to have taken place after 24 April 2024. However it is not a necessary element of the victimisation claim that claimant should be disabled. It is admitted by the respondent that the claimant was disabled by reason of ADHD. The claimant has to show that he did protected acts and that they were the grounds of the alleged

treatment not that he was disabled and that his protected status was.

9. Another reason why the reconsideration application does not set out any reason to vary the judgment that the claimant was disabled by reason of depression and anxiety is that, on the basis of my finding that substantial adverse effects impairment did not begin until October 2023 at earliest, they were still not long term as at the appeal outcome July 2024.

10. Contrary to section 3 on page 3 claimant's note, LOI 18.18 does not include an allegation of continuous conduct after conclusion of the disciplinary process. A natural reading of that allegation is that the respondent took steps within the disciplinary process to conceal the nature of the 30 January 2024 meeting. The allegation does not include a complaint about the handling of the Data Subject Access Request.

11. The reference in para.3.3 of the Note (page 3) to RB page 124 – 125 is nothing to the point. That location is a reference to the DSAR as an explanation for delay by the claimant in making his application to amend. It is not a previous statement that he wished to complaint that the handling of the DSAR was discriminatory.

12. The Tribunal will not presume that everything the claimant states was wrong or badly handled was an unlawful discriminatory act for which he wishes to bring a claim. Hence the focus on the written application to amend made on the direction of Judge Codd which has now been considered in full.

Approved by

Employment Judge George

Date: 10 January 2026

JUDGMENT SENT TO THE PARTIES ON
12 January 2026

FOR THE TRIBUNAL OFFICE