EMPLOYMENT TRIBUNALS

Claimant: Mr C Rodrigues

Respondent: The London Borough of Lambeth

RECONSIDERATION JUDGMENT

The claimant's application dated 8 April 2026 for reconsideration of the judgment sent to the parties on 26 March 2026 is refused.

REASONS

The Law

1. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (Rule 68 of The Employment Tribunal Procedure Rules 2024).

2. Rule 70(2) of the 2024 Rules requires the refusal of an application for reconsideration based on a preliminary consideration if there is no reasonable prospect of the original judgment being varied or revoked.

3. In Ebury Partners UK Limited v Acton Davis [2023] EAT 40, having set out what is now Rule 68, HHJ Shanks summed up the Tribunal's power to reconsider a judgment as follows:

> *The employment tribunal can therefore only reconsider a decision if it is necessary to do so 'in the interests of justice.' 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 had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed 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 alleged is one of law which is more appropriately corrected by the EAT.

4. The interests of justice must be considered not only from the point of view of the party seeking the reconsideration, but also from the point of view of the party resisting it. The Court of Appeal put matters as follows in Phipps v Priory Education Services Ltd [2023] EWCA Civ 652 at [36]:

   An application for reconsideration under [Rule 68] must include a weighing of the injustice to the Applicant if reconsideration is refused against the injustice to the Respondent if it is granted, also giving weight to the public interest in the finality of litigation.

5. In Ministry of Justice v Burton [2016] ICR 1128 Elias LJ, stated that the discretion to act in the interests of justice is not open-ended and emphasised the importance of finality, which he said militated against the discretion being exercised too readily (its [21]).

6. In common with all powers under the 2024 Rules, preliminary consideration under Rule 70(2) must be conducted in accordance with the overriding objective which appears in Rule 3, namely, to deal with cases fairly and justly. Achieving finality in litigation is part of a fair and just adjudication.

7. As noted above, there is only one ground on which a judgment can be reconsidered: the interests of justice. However, the factual bases for a successful application for a re-consideration may include (but are not limited to): the decision being wrongly made as a result of an administrative error; a party not receiving notice of the proceedings leading to the judgment; the decision being made in the absence of a party; or new evidence being available since the conclusion of the hearing which the claimant could not reasonably have known about or foreseen at the time of the hearing. That is to say the typical factual basis for a successful application for a reconsideration tends to be that for some reason the claimant has not had a fair opportunity to present their case.

The Grounds in the application

8. The claimant's reconsideration application is contained in his email sent to the Tribunal on 8 April 2026.

9. The claimant's reconsideration application may reasonably be summarised as follows. He contends that the Tribunal erred:

   9.1. By concluding that he had exhausted his sick pay entitlement by April 2023, because it misconstrued clause 10.4 of the National Conditions of Service. His sick pay entitlement therefore "reset" every 12 months with the result that he was entitled to sick pay of £13,891.60 in respect of the period 1 April 2024 to 31 March 2025;

   9.2. By failing to award him holiday pay in respect of the period 1 April 2025 to 31 March 2026;

9.3. In concluding that the respondent's conduct was characterised by "extraordinary delay" and "administrative incompetence" and yet leaving the claimant to bear the financial consequences of his prolonged absence.

Conclusions

10. In reality the claimant is seeking to pursue a quasi appeal to the effect that:

    10.1. The Tribunal misconstrued the National Conditions of Service in relation to sick pay;

    10.2. The Tribunal failed to recognise an ongoing entitlement to holiday pay for the holiday year 2025/2026.

11. The point pursued in relation to the matter summarised at 9.3 above is unclear, given the issues in the claim as agreed between the parties.

12. Reconsideration on all these ground is refused. This is because there is no reasonable prospect, taking into account all that the claimant says in his application, of the claimant persuading the Tribunal that the interests of justice require that its judgment be varied or revoked on this ground. The claimant is seeking what HHJ Shanks described in Ebury Partners UK Limited as 'a second bite of the cherry' without any legally sound reason for doing so.

13. Further and separately:

    13.1. The claimant's argument in relation to the National Conditions of Service is plainly wrong. So far as the period covered by his claim was concerned, he had a single period of absence from 12 July 2021 (or, at the latest, from a date in August 2022). He did not return to work after that during the period covered by his claim. His sick pay entitlement was plainly exhausted prior to 1 April 2024. Clause 10.4 does not re-set the entitlement annually in respect of a single period of absence lasting more than 12 months.

    13.2. The question of the claimant's entitlement to holiday pay in the period beginning on 1 April 2025 was quite simply not before the Tribunal. This is reflected both in the fact that the claim was presented on 19 November 2024 and in the List of Issues agreed between the parties (which is set out in the written reasons previously sent to the parties). Further, the claimant withdrew the claim he did have for holiday pay during the Hearing.

14. For the reasons set out above, the claimant's application for reconsideration is therefore refused in its entirety.

Employment Judge Evans
Approved on 13 April 2026