



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Brightey

**Respondent:** Driven Personnel Ltd

## JUDGMENT

The claimant's application for reconsideration of the Tribunal's judgment in this claim, dated 31<sup>st</sup> October 2025 and sent to the parties on 19<sup>th</sup> November 2025, is refused.

## REASONS

### Application

1. The deadline for making an application for reconsideration is 14 days from the date the judgment was sent to the parties. The claimant first intimated that he wished to make an application on 8<sup>th</sup> April 2026.
2. The claimant has explained that the respondent entered insolvency shortly after the deadline for making payment under the judgment, the claimant had applied to the insolvency fund for payment and has been rejected on the basis that he was not an employee of the respondent.
3. The claimant seeks reconsideration of the judgment issued in his claim. He would like the judgment to be amended to include a finding that he was an employee of the respondent.
4. The Tribunal has considered whether, if the deadline for making an application for reconsideration was extended, there would be a reasonable prospect of the judgment being varied or revoked.

### Original Claim/ Issues to be Determined

5. On 18 March 2025, the claimant submitted his claim form and stated that his complaint was one of unpaid holiday pay. The claimant referred to himself as a “part year worker” and stated “I say part year worker as I am aware that this issue is mirrored across other part year employees (namely other drivers) within the employ of” the respondent.
6. The respondent’s response form describes the respondent’s business as a recruitment agency. The respondent refers to their staff as “workers”. The respondent conceded that the claimant was owed some unpaid holiday pay, the point of dispute was limited to the calculation of holiday pay.
7. On 2 June 2025, the parties attended a preliminary hearing by CVP at which the claimant’s complaint was discussed and a list of issues identified. The record of the preliminary hearing was sent to the parties on 16 June 2026. The case summary stated that the claimant worked for the respondent. The issues to be determined referred only to holiday pay and unauthorised deductions from wages.
8. The claimant submitted a document in response headed “Update to Case Summary” to clarify his complaint of unpaid holiday pay.
9. Accordingly, as set out above, the claimant’s original claim did not include a complaint that he was an employee of the respondent and nor did the claimant request that his employment status be addressed as one of the issues to be determined.
10. The parties agreed that the claimant was (at the least) a worker engaged by the respondent and therefore entitled to holiday pay. The parties agreed that the claimant was owed some unpaid holiday pay. The issues to be determined by the Tribunal related only to the calculation of that holiday pay.
11. The Tribunal was not required to make a determination of the claimant’s employment status and did not do so. This did not form part of the judgment. The Tribunal cannot vary or revoke a decision that has not been made.

### **Final Hearing/ Evidence**

12. Employment Judge Booth has reviewed the evidence provided for the final hearing, including a bundle of documents totalling 677 pages and notes of witness evidence.
13. The only evidence put before the Tribunal that refers to the claimant’s employment status was:
  - a) A registration form completed by or for the claimant, which refers to him as an “agency worker”.
  - b) A document headed “Terms of Engagement (PAYE), which includes the following wording:
    - o ““Agency Worker” means person (you) supplied by the Employment Business to provide services to the Hirer”.

- ““Assignment” means assignment services to be performed by the Agency Worker for the Hirer for a period of time during which the Agency Worker is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Hirer”.
  - ““Employment Business” Driven Personnel Limited...”
  - “During an Assignment the Agency Worker will be engaged on a contract for services by the Employment Business on these Terms. For the avoidance of doubt, the Agency Worker is not an employee of the Employment Business... these Terms shall not give rise to a contract of employment between the Employment Business and the Agency Worker...”
- c) A key information for PAYE document, which refers to the claimant as a “work-seeker” engaged under a “contract of services”.

14. It is not possible for the Tribunal to make a determination of the claimant’s employment status from the claimant’s original claim or the evidence provided to the Tribunal in the final hearing.

## **Conclusion**

15. The claimant’s application is made significantly out of time and, even if time were extended, there would be no reasonable prospect of the judgment being varied to include a decision that the claimant was an employee of the respondent.

Employment Judge Booth  
28<sup>th</sup> May 2026

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