



EMPLOYMENT TRIBUNALS

Claimants

1.Mr J Opoku
2.Mr E Asare

v

Respondents

1.FAB Maintenance Ltd
2.EPOS Direct Ltd

JUDGMENT

Under Rule 70 of the Employment Tribunal Rules of Procedure 2024

The claimant's application dated 15 April 2026 for reconsideration of the reserved Judgment dated 2 April 2026 and sent to the parties on 7 April 2026 is refused.

REASONS

1. The first claimant (on behalf of himself and the second claimant) has applied for reconsideration of my reserved Judgment and Reasons dated 2 April 2026 (sent to the parties on 7 April 2026 following a one day Preliminary Hearing on 30 January 2026).
2. By rules 68-71 of the Employment Tribunals Rules of Procedure 2024 (the claimants' application refers to the 2013 rules but there is no significant difference for these purposes), parties may apply for reconsideration of judgments made by a tribunal. The sole ground upon which a judgment may be reconsidered is that it is necessary in the interests of justice to reconsider it.
3. Rule 69 provides that an application must be sent to the tribunal within 14 days of the date on which the decision was sent to the parties. The application must be in writing and must set out why reconsideration of the original decision is necessary.
4. Under rule 70(1), the tribunal must consider any application for reconsideration. The application must be refused if the tribunal considers that there is no reasonable prospect of the decision being varied or revoked.
5. The claimants' application consists of 13 pages and has the appearance of being prepared with the assistance of AI. The claimants seek a reconsideration of the tribunal's decision on the asserted grounds set out in 14 numbered sections (which include sections headed "Introduction", "Conclusion" and "Relief Sought") with some divided into various

subheadings. The asserted grounds can be more generally categorized as: a) perversity; b) making incorrect findings of fact; and c) finding against the claimants generally.

6. Much of the claimants' application is seeking to challenge factual conclusions that I reached after careful consideration of the evidence before me. Indeed, the present application is, in substance, a disagreement with the findings of fact and evaluative conclusions properly open to me on both the oral and documentary evidence (and, conversely at times, the notable lack of evidence).
7. The claimants' further suggestion that there has been a failure to engage with admissions made by the respondent is flawed and unsustainable. The matters relied upon amount at best to characterisations of evidence or submissions. They were not unequivocal concessions determining the legal issues I had to decide on the basis of all the evidence under regulation 3 of the TUPE Regulations 2006.
8. As for the suggestion that there has been a disregard of the finding made by EJ Codd at the previous PH, having regard to paragraph 27 of my reasons in particular, there is no inconsistency with that earlier decision. That decision addressed the first claimant's employment status with his company, John Luthers Ltd, only. Need it be said, it is axiomatic that it did not determine whether or not a relevant transfer had occurred because that was the very purpose for EJ Codd listing the public PH that took place before me. Likewise, the reference to a 'relevant transfer' in his Judgment cannot sensibly be read as a binding determination of the central issue that he had set down to be determined at the later PH.
9. The arguments and assertions about the conclusions reached in relation to the key issues in dispute, namely a) the activities pre and post transfer; b) the organised grouping; and c) whether the claimants were assigned to any such grouping, amount to no more than a disagreement with my evaluation of the evidence (both oral and written). The claimants' various assertions that the evidence should have been weighed differently do not disclose any error of law or basis for reconsideration that meets the interests of justice test. Likewise I am satisfied that, read in proper context, there is no internal inconsistency of reasoning as asserted by the claimants.
10. The assertion the claimants now seek to make about the specific documents they included at pages 167 and 168 in the file of evidence they put before me was not something that they appropriately identified or stated in evidence or submissions at the time. Notwithstanding this, the claimants' assertion that there has been a misunderstanding over the two differing attendance sheets for 14 July 2024 is of no consequence because this was not material to the decision reached. Whether or not the list containing 21 names should have included four additional individuals does not detract from my finding that at least six of the individuals out of the 21 recorded as attended on 14 July 2024 appeared to be different individuals to those who were present on 5 May 2024. Furthermore, my assessment that those who attended from week to week were not employees of the first claimant's company and were instead various casual workers (such that there was not

an organised group of employees in existence) was based on the totality of the evidence, particularly oral evidence of the first claimant – as recorded in particular at paragraph 25 of my reasons. The observation about the apparent incorrect spelling of names was incidental rather than a decisive factor in reaching that conclusion. The outcome in this regard did not turn on any single document but depended instead on the evidence as a whole.

11. In substance, the application amounts to no more than a disagreement with factual findings, including my assessment of witnesses and the weight to be given to evidence. Taking all matters together, the application discloses no arguable material error, no new evidence that was not reasonably available at the time of the PH, and no sustainable procedural irregularity.
12. The findings of fact and Judgment were reached on the basis, and in the light, of all the evidence presented at the PH. Having carefully considered the claimants' application for reconsideration I am satisfied that it is no more than an attempt by the claimants to re-litigate, without proper cause, an entirely reliable decision that unsurprisingly was not to their liking.
13. The fact that the decision went against the claimants and that they were unsuccessful in persuading the tribunal that there was (in accordance with reg 3 of the TUPE Regulations 2006) an organised grouping of employees who transferred to the second respondent of which they were part, is no basis for the tribunal reconsidering its decision.
14. For the reasons given above, the application for reconsideration is refused because there is no reasonable prospect of the Judgment being varied or revoked.

Approved by:
Employment Judge Wyeth

Date: 18 June 2026

Sent to the parties on
24 June 2026

For the Tribunal office