



EMPLOYMENT TRIBUNALS

Claimant: Gerard Donnelly

Respondent: Wirral Borough Council

JUDGMENT

- 1) Time for the Claimant to make an application for reconsideration is extended retrospectively to 3rd March 2026.
- 2) The Claimant's application dated 3rd March 2026 for reconsideration of the judgment sent to the parties on 19th November 2025 (written reasons having been sent to the parties on 23rd January 2026) is refused.

REASONS

- 1) I have undertaken preliminary consideration of the Claimant's application for reconsideration of the judgment dismissing his claims. That application is effectively contained in the Claimant's notice of appeal to the Employment Appeal Tribunal (EAT) dated 3rd March 2026. It is unclear whether the Claimant did indeed send an application to the Tribunal for reconsideration (as he indicated in his message on 6th February that he would do "this evening when [he] arrive[s] home from work"); given this uncertainty, and given that his appeal has been stayed pending the outcome of any application for reconsideration, I decided that, rather than investigate whether or not it was sent, it would be in the interests of justice (and is certainly more proportionate) to exercise my discretion to extend time for the application to be made and to then consider its merits.
- 2) References to rule numbers are to the Employment Tribunal Procedure Rules 2024.

The Law

- 3) 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).

- 4) Rule 70(2) empowers the Tribunal to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked. In common with all powers under the 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.
- 5) The importance of finality was confirmed by the Court of Appeal in Ministry of Justice v Burton and anor [2016] EWCA Civ 714.
- 6) In Liddington v 2Gether NHS Foundation Trust EAT/0002/16, the EAT chaired by Simler P said at paragraph 34 that:

“a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered.”

- 7) It follows that achieving finality in litigation is part of a fair and just adjudication. Where a party has raised arguments, or had a reasonable opportunity to raise them, it will not generally be in the interests of justice to grant them a second opportunity to raise them after the case has been heard.

The Application

- 8) The vast majority of the points raised by the Claimant are, in my view, attempts to re-open issues on which the Tribunal heard evidence from both sides and made a determination. In that sense, they represent a “second bite at the cherry” which undermines the principle of finality. Such attempts have a reasonable prospect of resulting in the decision being varied or revoked only if the Tribunal has missed something important, or if there is new evidence available which could not reasonably have been put forward at the hearing. Alternatively, a matter may be reconsidered if it appears that an error of law may have been made. A Tribunal will not reconsider a decision just because the claimant wishes it had gone in his favour.
- 9) In his argument for reconsideration, the Claimant says that “[the grounds upon which] the employment tribunal erred in law are that I was acting as a whistleblower to the malicious deeds enacted by Wirral. The grounds also cover the Health and Safety act 1974. Where all employers are required to flag dangers to the environment which include from other staff”. Having considered the ensuing detail, which runs to approximately 5 pages, I found that the Claimant is simply repeating the general principle that he was, in his view, justified in conducting himself in the way that he did because he was motivated to bring to his employer’s attention issues which he considered to be important and to constitute, in most, if not all, instances, illegal acts. I made clear to the Claimant several times during the hearing that his claims

relate solely to unfair dismissal and holiday pay and that I would (and could) only take into account these matters to the extent that they related to the unfair dismissal claim. I alluded to some of the factual basis of these issues in my written reasons and noted, at paragraph 25, that:

“Much of what the Claimant was raising related more to his own grievance than to the allegations against him and, whilst Ms Greenhalgh did decide both elements together (with the Claimant’s agreement), I found her to have been acting entirely appropriately when she took the view that her primary role had been to focus on the allegations of misconduct against the Claimant, albeit that the substance of his grievance could be seen as relevant background context.”

10)At paragraph 33, I also noted the following:

“In reality, the only issue in any substantial dispute was the extent to which mitigation was considered and, as noted above, I was satisfied that the Respondent took into account that mitigation to the extent that was required. Even if I may have had considerable sympathy for the obvious distress experienced by the Claimant during his employment, that does not in itself mean that the decision to dismiss must have been unfair as it relates to his own misconduct and not to the conduct of others (save for the role of any possible mitigation).”

11)My intention when making these observations was to indicate, as I had noted at the hearing, that, in my view, the matters raised by the Claimant in his reconsideration application were not relevant to his claim save for the extent to which it may have touched on matters of mitigation. Put another way, I told the Claimant during the hearing that, in my view, these points were, as a matter of law, not issues for me to consider as part of his claim and I alluded to that principle in my written reasons. The Claimant has not put forward any argument as to why this may be incorrect as a matter of law and, as such, I see no basis upon which to find that it may be mistaken.

Conclusion

12)Having considered all the points made by the Claimant, I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The points of significance were considered and addressed at the hearing. The application for reconsideration is therefore refused.

Employment Judge Cline

Date: 22nd July 2026

JUDGMENT AND REASONS SENT
TO THE PARTIES ON

4 August 2026

FOR THE TRIBUNAL OFFICE