



EMPLOYMENT TRIBUNALS

Claimant: Mr P Wendolowski

Respondents: DHL E-Commerce UK Limited (R1)
Katie Thomas (R2)
Kelin Jenkins (R3)

UPON APPLICATION made by letter dated 9 and 13 June 2026 to reconsider the judgment sent to the parties on 15 April 2026 with written reasons sent on 4 June 2026 under rule 69 of the Employment Tribunal Procedure Rules 2024, and without a hearing,

JUDGMENT

The application is refused under Rule 70 (2) of the Employment Tribunal Rules of Procedure 2024 as there is no reasonable prospect of the judgment being varied or revoked.

REASONS

1. The claimant relied upon the following grounds and provided additional documentary evidence that I have considered:

New Medical Evidence

2. The claimant submitted a letter from his GP dated 9 June 2026 and a copy of a hospital letter dated 2 April 2026 confirming he is being treated for hypertension. The GP letter is not of any assistance as although it lists a number of conditions it does not provide medical history and when the claimant's symptoms began or were diagnosed, what treatment he received or receives.
3. The claimant submitted the reason he had not provided medical evidence at the hearing was he was concerned about reporting stress might affect his work as an HGV Driver and could result in a loss of employment and difficulties arranging medical appointments.

Cumulative effect of the proceedings

4. The claimant submitted his circumstances as a whole should be considered listing English not being his first language, he had no legal training, he was attempting to understand complex employment status issues, he was under significant financial pressure supporting his family and caring for two children, working full time nights, experiencing stress anxiety and health difficulties and frequently only sleeping 4-5 hours per day.

Clarification of actions since January 2025

5. The claimant submitted he was not inactive following the period he became aware of time limits and continued to undertake legal research and gather documents. He says he developed a gradual understanding of the Tribunal process and although aware time limits existed he did not immediately understand which legal claims applied and the distinction between obtaining advice, commencing early conciliation and bringing a claim. He required time to understand his claims and review substantial documents. He also believed in contacting CAB and ACAS he had begun the process of pursuing his rights.

Efforts to obtain assistance

6. This appears to also be about the period after January 2025 when I determined the claimant had become aware of the time limits (see paragraph 19 of the written reasons). The claimant submits he was actively seeking advice and was not inactive or ignoring the matter.

Interest of Justice

7. The claimant submits the new medical evidence means the judgment should be reconsidered along with the full contextual background outlined above.

The Law

8. The Tribunal's power to reconsider judgments are contained within Rules 68 to 71 of the Employment Tribunal Rules of Procedure 2024. Rule 68 provides it may confirm, vary or revoke the judgment where it is necessary in the interest of justice. The process is contained with Rule 70.
9. The Tribunal must follow Rule 70 in the order provided for within that rule (**TW White & Sons Ltd v White UKEAT 0022/21**). In exercising the power the Tribunal must do so in accordance with the overriding objective. The EAT recently discussed the thirteen steps that must be taken when considering an application in **Tesco Stores Limited v Element & others [2026] EAT 33**.
10. In **Ministry of Justice v Burton and another [2016] ICR 1128**, Elias LJ approved the comments of Underhill J in **Newcastle upon Tyne City Council v Marsden [2010] ICR 743**, that the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. Further, the courts have emphasised the importance of finality (**Flint v Eastern Electricity Board [1975] ICR 395**) which militates against the discretion being exercised too readily.

11. In **Liddington v 2Gether NHS Foundation Trust UKEAT/0002/16** Simler P held:

“..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 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. Tribunals have a wide discretion whether or not to order reconsideration, and the opportunity for appellate intervention in relation to a refusal to order reconsideration is accordingly limited.

[35] Where, as here, a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application. It seems to me that the Judge was entitled to conclude that reconsideration would not result in a variation or revocation of the decision in this case and that the Judge did not make any error of law in refusing.”

12. **Newcastle Upon Tyne City Council v Marsden UKEAT/393/09** was a case where claimant had been advised not to attend a pre hearing review to determine whether he was a disabled person. The judge dismissed the claim on the basis the claimant had failed to provide evidence. On a later application for reconsideration, the decision was revoked on basis that counsel for the claimant had misled the tribunal. This decision was upheld by Underhill, J who discussed the importance of finality of litigation at paragraphs 17:

“The principles that underlie such decisions as Flint and Lindsay remain valid, and although those cases should not be regarded as establishing propositions of law giving a conclusive answer in every apparently similar case, they are valuable as drawing attention to those underlying principles. In particular, the weight attached in many of the previous cases to the importance of finality in litigation or, as Phillips J put it in Flint (at a time when the phrase was fresher than it is now), the view that it is unjust to give the losing party a second bite of the cherry seems to me entirely appropriate: justice requires an equal regard to the interests and legitimate expectations of both parties, and a successful party should in general be entitled to regard a tribunals decision on a substantive issue as final (subject, of course, to appeal)”

13. In **Ladd v Marshall 1954 3 All ER 745, CA** the Court of Appeal established that, in order to justify the reception of fresh evidence, it is necessary to show:

- that the evidence could not have been obtained with reasonable diligence for use at the trial:

- the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive:
- the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible.

14. **Outasight VB Limited v Brown UKEAT/0253/14** is a case about reconsiderations where a party wishes to adduce fresh evidence. In this case the EAT held that the approach in **Ladd v Marshall** would in most cases encapsulate what is meant by “the interests of justice”. There might be cases where the interest of justice would permit fresh evidence to be adduced notwithstanding that the principles laid down in **Ladd v Marshall** were not strictly met.

Conclusions

15. Firstly I do not accept the reasons for failing to provide medical evidence at the final hearing are valid or have any merit. No evidence has been provided as to when the claimant tried to make GP or other appointments or supporting his said difficulties in obtaining appointments. I also consider it unlikely that the claimant would have been unable to obtain an appointment at all in the months leading up to the final hearing
16. Further, even if the claimant had adduced the medical evidence he now adduces at the hearing this would not have changed my decision. The GP letter does not assist for reasons explained above. It does not say the claimant was impeded to the extent it would have affected his ability to bring a claim in time. The letter from the hospital says the claimant is able to swim, box and home exercise. This does not present or support a picture of someone who was medically unable to submit a claim in time.
17. I do not consider it credible that seeking medical help for stress would have jeopardised the claimant’s HGV licence.

Cumulative effect of the proceedings

18. All of the matters referenced were already considered in the judgment. There are no new grounds justifying the judgment being revoked or varied.

Clarification of actions since January 2025

Efforts to obtain assistance

19. I found the reasons for the delay to be not credible. Nothing the claimant says in the application changes this position.

Interest of Justice

20. Nothing in the application leads me to conclude that the interests of justice are served by refusing to extend time to present the claims. In particular, the prejudice to the respondent was carefully considered and explained in

paragraph 36 of the judgment.

Date: 3 July 2026

Approved by: Employment Judge S Moore

Employment Judge S Moore

JUDGMENT SENT TO THE PARTIES ON
13 July 2026

Kacey O'Brien
FOR THE TRIBUNAL OFFICE