



EMPLOYMENT TRIBUNALS

Claimant: Maaly Nassar

Respondent: Elsevier Limited

JUDGMENT

The Claimant's application dated 04 July 2026 and 19 July 2026 for reconsideration of the judgment delivered orally on 22 June 2026 and sent to the parties in writing on 17 July 2026 is refused.

REASONS

1. I apologize for the delay in the provision of this decision. The applications for reconsideration were not referred to me in a timely manner and were received by me on 24 August 2026, immediately before a period of leave.
2. Rule 69 of the Employment Tribunal Procedure Rules 2024 provides that an application for reconsideration must be received by the Tribunal within 14-days for the later of:
 - (a) the date on which the written judgment sought to be reconsidered was sent to the parties,
 - (b) the date that any written summary reasons were sent, if these were sent separately from the judgment, or
 - (c) the date that any written full reasons were sent, if these were sent separately from the judgment.
3. The 33-page application for reconsideration was received on 04 July 2026 which was before the written reasons were sent to the Parties following an oral Judgment on 22 June 2026. Written reasons were sent on 17 July 2026 and a supplemental application (10-pages) was received on 19 July 2026. Both applications are therefore in time.

4. The Claimant did not appear to be taking notes during the in person hearing and the length of the applications, particularly the application of 04 July 2026, was surprising. These documents have been reviewed as have the written reasons and other relevant documents.
5. The relevant rule is Rule 70 of the Employment Tribunal Procedure Rules 2024, which states:

70. Process for reconsideration

- (1) The Tribunal must consider any application made under rule 69 (application for reconsideration).*
 - (2) If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application must be refused and the Tribunal must inform the parties of the refusal.*
 - (3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.*
6. The Claimant has applied for a reconsideration of the judgment sent to the parties in writing on 17 July 2026.
 7. The procedure for reconsideration is a two-stage process. If the employment judge who chaired the tribunal panel which made the judgement considers that there is no reasonable prospect of the original decision being varied or revoked the application shall be refused under rule 70(2) and the Tribunal shall inform the parties of the refusal. Otherwise, the Tribunal shall send a notice to the parties setting a time limit for any response and seeking the views of the parties on whether the application can be determined without a hearing. That notice may set out the Judge's provisional views on the application. Unless the judge considers that a hearing is not necessary in the interests of justice, if the application is not rejected under rule 70(2), then the original decision shall be reconsidered by the full tribunal who made the original decision.
 8. Where a litigant applies for a reconsideration on the grounds that new evidence is available, they must persuade the employment tribunal that the evidence could not have been obtained with reasonable diligence for use at the hearing, that the evidence would probably have had an important influence on the outcome of the case and that it is credible (Ladd v Marshall [1954] 1 WLR 1489 CA). As was said in Wileman v Minilec Engineering Ltd [1988] I.R.L.R. 144 EAT, the evidence must not only be relevant, but it must be probable that it would have had an important influence on the case

for tribunal hearings are designed to be speedy, informal and decisive. However, it is not necessary that the new evidence should be shown to be likely to be decisive. The question for the tribunal on reconsideration is

*“in the light of what we know about this case, has it been shown to us that the evidence is relevant and probative, and likely to have an important influence on the result of the case?” (paragraph 15 of **Wileman v Minilec**)*

9. The power to reconsider a judgement under rule 70 can only be used if it is necessary to do so in the interests of justice. That is apparent from the wording of the rule itself and, as it was held, by HH Judge Shanks in **Ebury Partners UK Limited v Acton Davies** [2023] IRLR 486 EAT 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 has been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct to suppose that 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 and it is one of law which is more appropriately corrected by the EAT.” (Para 24 of the judgement of HHJ Shanks).

New evidence

9. The new evidence referred to by the Claimant (Barberan evidence) is in relation to conduct of the Respondent after the hearing. This is not evidence that could have been found following a reasonably diligent search, as it did not exist.
10. I have considered the **Ladd v Marshall** test and whether in light of what I know about the case, has it been shown that the evidence is relevant and probative and likely to have an important influence on the case?
10. The evidence presented by the Claimant is new evidence that did not exist at the date of the interim relief hearing. The conduct alleged didn't happen before the hearing date and so this evidence is not evidence that, with reasonable diligence, could have been obtained for use at the hearing. This evidence could not therefore have influenced the case before the Tribunal on 22 June 2026 because this evidence did not exist at this time.
11. Where the Claimant has identified new evidence that was in existence before the hearing on the 22 June 2026, it is for the Claimant to persuade the Tribunal that the evidence could not have been obtained with reasonable diligence for use at the hearing. Within the lengthy reconsideration applications, I have been unable to identify a reason why this evidence was not obtained for use at the hearing or any details of searches conducted to obtain the evidence.
12. An application for interim relief is an emergency measure and requires a

hearing to be listed urgently, which often results in other hearings being delayed or postponed. The hearing is a summary assessment based on the material that was provided to the Tribunal at short notice.

13. I have considered the application to include new evidence and I am satisfied that either the evidence did not exist at the time of the hearing and could therefore not influence the case, or where the evidence did exist, that there has been no evidence as to why the evidence was not before the original hearing. I am therefore satisfied that it is not in the interest of justice or in keeping with the overriding objective to permit the inclusion of new evidence for reconsideration.

Procedure

10. At the outset of this 1-day hearing, the procedure for the hearing was explained to both parties. It was also explained that I would not be hearing witness evidence, nor would I be conducting a mini trial. There would also be no findings of fact in my decision.

11. I explained that the decision for this interim relief hearing would be formed on my impressionistic view of whether the Claimant's claim of unfair dismissal because of her raising a protected disclosure is likely to succeed. I explained that "likely" is a higher burden of proof than balance of probabilities.

12. It was also explained that s.105 of the Employment Rights Act 1996 falls outside the protection afforded by interim relief, except where the Claimant can prove that it is likely that a Tribunal at the final hearing will find that the redundancy process was a sham, i.e. fabricated. This was the first stage of the evaluation for this application for interim relief. Had there been a finding that the Claimant did prove that it was likely that a Tribunal at the final hearing would find that the redundancy was a sham, then the alleged protected disclosures would need to be evaluated at this second stage.

13. The Tribunal was provided with a bundle of 628 pages. The Claimant had provided a separate bundle of 457 pages. The bundle was discussed and the Claimant confirmed that the respondent's bundle contained all of the documents. The respondent's page numbering was used during the hearing, if time was required for either party to locate a document, this was permitted.

14. The Tribunal also had the following statements:

14.1. Claimant's statement of 30-pages.

14.2. A statement for the respondent of 12-pages

14.3. Written submissions from both parties.

15. The Tribunal had read into the file on the morning of the hearing and took a further 1 hour of reading time for the statements, to provide both parties with time for their submissions and deliberation before giving an oral decision.

16. Both parties were expressly told to direct me to any page within the bundle that they wanted to be taken into account. Following each party's submissions, I invited both to provide me with further page references, which the Claimant provided. I reviewed all of the pages to which I was referred,

from both Parties, in so far as I was able to do so in the time available.

17. I have considered the procedure that was followed and I am satisfied that both parties had a fair and proper opportunity to present their cases. With regards to the Claimant, she was expressly invited to provide details of her documents. Her statement was also very detailed and included written submissions, which were taken into consideration.
18. The application for reconsideration and the supplemental application have been reviewed and I am satisfied, taking all of the above into account, that there is no reasonable prospect of the judgment being varied or revoked. Therefore, the application for reconsideration is refused.

Approved by

**Employment Judge Illing
08 September 2026**

SENT TO THE PARTIES ON

30 September 2026

FOR THE TRIBUNAL OFFICE