



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Armstrong

**Respondent:** 2 Sisters Food Group Limited

## JUDGMENT

The claimant's email dated **16 May 2022** being treated as an application for reconsideration of the reserved judgment which was sent to the parties on **5 May 2022**, the judgment of the Tribunal is that the application for reconsideration is refused.

## REASONS

1. The claimant brought a complaint of unfair dismissal, and claims for holiday pay and travel expenses (**the Complaints**). The Complaints were considered by the Tribunal at a hearing which took place on 26 January, 27 January and 17 March 2022. On 5 May 2022 the Tribunal promulgated a reserved judgment with reasons in respect of the Complaints (**the Judgment**).
2. On 16 May 2022, the Tribunal received an application from the claimant for reconsideration of the Judgment.
3. Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides an Employment Tribunal with a general power to reconsider any judgment where it is necessary in the interests of justice to do so. This power can be exercised either on the Tribunal's own initiative or on the application of a party. Rules 71 to 73 set out the procedure by which the power is to be exercised.
4. Rule 70 provides a single ground for reconsideration. That ground is where it is necessary to do so in the interests of justice. This does not mean that in every case where a litigant is unsuccessful, they are automatically entitled to reconsideration. Instead, a Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly, and the Tribunal should be guided by the common law principles of natural justice and fairness.

5. Rule 70 provides the Tribunal with a general power to reconsider any judgment where necessary in the interests of justice to do so. A judgment is defined in Rule 1(3)(b) as a decision made at any stage of the proceedings which (amongst other things) finally determines the claim. It is not open to a party to seek reconsideration of the reasons for the judgment as opposed to the judgment itself.
6. Tribunals have a broad discretion but that must be exercised judicially, which means having regard not only to the interests of the party seeking the reconsideration, but also the interests of the other party to the litigation and the public interest in the finality of litigation (**Outsight VB Ltd v Brown 2015 ICR D11 EAT**).
7. An application for reconsideration must be presented in writing and copied to all other parties within 14 days of the date upon which the written record of the decision which is the subject of the reconsideration application was sent to the parties, or if a request for written reasons was made, within 14 days of the date the written reasons were sent out, if later. In this case, the Judgment was promulgated on 5 May 2022. It follows that the claimant made the reconsideration application in time. Although the claimant failed to comply with the procedural requirement to send a copy of his application to the respondent's solicitor under rule 71 of the 2013 rules, the Tribunal can waive that requirement, and has exercised its discretion to waive that requirement in this case. The Tribunal therefore has jurisdiction to consider the reconsideration application.
8. Rule 72 of the 2013 rules sets out the procedure that an Employment Tribunal must follow upon receipt of an application for reconsideration. Firstly, the application is, where possible, put before the Employment Judge who decided the case. If the Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application will be refused and the Tribunal will inform the parties accordingly.
9. If the application is not refused, the Tribunal will send a notice to the parties setting a time limit for any response to the application by the other parties, and seeking the parties' views on whether the application can be determined without a hearing. The matter will then proceed to a hearing unless the Employment Judge considers – having regard to any response to the application – that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing, the parties shall be given a reasonable opportunity to make further written representations.
10. The procedure does not allow for the Employment Judge to decide that a hearing is necessary before they take the decision under Rule 72(1) as to whether there is no reasonable prospect of the original decision being varied or revoked. This aspect of the procedure provides an important protection for the party opposing the application, in that the other party should not be put to the time and expense involved in responding to the application if the Employment Judge considers that there are no reasonable prospects of the judgment being varied or revoked.
11. The claimant says that the Judgment should be reconsidered because the respondent should be held accountable for its actions, and because he never

wanted money and would be satisfied with zero compensation. The claimant also says that the Judgment should be reconsidered because he wouldn't have resigned for no reason after 10 years' service.

12. Employment Judge Tegerdine is satisfied that she fully considered the documents which were put before her by the parties at the hearing on 26 January, 27 January and 17 March 2022, and that she gave proper consideration to the evidence and representations which were put before her at that hearing. Employment Judge Tegerdine gave the claimant the opportunity to explain the basis of his complaints at the hearing, and is satisfied that she understood the basis of his complaints. The claimant has not suggested that Employment Judge Tegerdine did not understand the grounds of his case, or that she did not consider the evidence and representations which were put before her at the hearing.
13. The Tribunal reached its conclusions based on the documents which were presented to the Tribunal by the parties for the purpose of the hearing, the oral and written evidence, and the submissions which were made at the hearing.
14. As part of the claimant's reconsideration application, the claimant has produced two holiday forms which the claimant now asks the Tribunal to consider. However, the claimant could have presented these documents to the Tribunal for consideration at the hearing on 26 January, 27 January and 17 March 2022, which he did not do. The Tribunal is satisfied that the claimant had the opportunity to present these documents to the Tribunal at the hearing.
15. It is not in the interests of justice that the claimant should be given a second bite of the cherry simply because he failed to adduce all the information in support of his application at the original hearing. A reconsideration application is not an opportunity for the parties to re-argue their case, and a party's failure to raise a particular point or put certain documents before the Tribunal as evidence does not normally constitute grounds for review.
16. Having regard not only to the interests of the claimant, but also to the respondent's interests and the public interest requirement that there should, so far as possible, be finality of litigation, nothing the claimant says in the reconsideration application persuades the Tribunal that there is any reasonable prospect of the claimant prevailing upon the Tribunal at a reconsideration hearing that the Tribunal's Judgment was incorrect.
17. The Tribunal is therefore satisfied that there is no reasonable prospect of the Judgment or any part of it being varied or revoked. The reconsideration application is therefore refused.

Employment Judge Tegerdine

Date 26 August 2022