Harvey on Industrial Relations and Employment Law

This Bulletin covers material available to **1 June**.

Bulletin Editor
Ian Smith MA, LLB; Barrister
Emeritus Professor of Employment Law at the Norwich Law School, University of East Anglia.

LEGISLATION

Tips to go to employees in full

The Employment (Allocation of Tips) Act 2023 received Royal Assent on 2 May. It operates almost completely by way of amendments to the ERA 1996 and on one view represents the results of a simple idea having the dogs of the Parliamentary drafters set upon it. The Act as it stands will be incorporated into Div Q in Issue 309. It appears at the moment that it is not likely to come into force until 2024, at which point the necessary amendments will be made.

Three Private Members' Bills get Royal assent

The government have adopted three Private Members' Bills which obtained Royal Assent on 24 May. They are:

— The Neonatal Care (Leave and Pay) Act 2023, which gives an extra 12 weeks' paid leave if a newborn baby is admitted to neonatal care.

— The Protection from Redundancy (Pregnancy and Family Leave) Act 2023, which extends redundancy protection beyond its current ambit to cover pregnancy itself and a period of time after return to work.

— The Carer's Leave Act 2023, which provides a statutory right to unpaid leave for employees caring for a dependant with long-term care needs.

As above, these are of some complexity and operate primarily by amendments to the ERA 1996. They will require filling out by secondary legislation, and the accompanying government publicity said that these and the necessary commencement provisions will be issued 'in due course'. Again, in the meantime the Acts as they stand will be incorporated into Div Q in Issue 309, pending commencement.

DIVISION CI WORKING TIME

Holiday pay; payment in lieu when leaving employment; relevant agreement

CI [154]

***Connor v Chief Constable of the South Yorkshire Police [2023] EAT 42* (*26 May 2023, unreported*)**

One piece of policy behind the Working Time Regulations 1998 SI 1998/1833 was to prefer if possible an agreement between the parties, rather than simple application of the regulations themselves – hence the concept of a 'relevant agreement'. In the special case of holiday pay where the employment ceases part-way through the holiday year, reg 14 **R [1085]** requires the payment of an amount pro rata, but states in para (3)(a) that the amount due is to be 'such sum as may be provided for the purposes of this regulation in a relevant agreement' and only failing that is to be calculated under a statutory formula in para (3)(b). However, that does not completely define what is the *relationship* between these alternatives. Are they simple alternatives, or is there more to it than that? The key potential problem is whether a relevant agreement can fix an amount *lower* that the statutory formula would give.

There has hitherto been no authority directly on this point, but at **CI [154]** the text states:

> '… whilst the point is technically open, the obligation of courts and tribunals to construe UK legislation purporting to give domestic effect to a Directive in such a way as to do so, if possible, points strongly to the conclusion that reg 14(3)(a) is to be interpreted as only permitting payment under a relevant agreement of an amount equivalent to the pay the worker would have received had he or she taken as leave the period in respect of which the payment in lieu is made.'

Fortunately, we now have such authority in this case before Judge Beard in the EAT, which cites this passage and goes on to apply it. The claimant had in his contract of employment a term setting out entitlement to untaken holiday and pay on leaving, which was accepted as constituting a relevant agreement. It operated on a different basis from the reg 14(3)(b) formula and as a result gave a lesser amount. The claimant brought ET proceedings which failed because the EJ applied reg 14(3) literally, so that it was *only* the relevant agreement that applied. However, upholding his appeal the EAT held that this interpretation was *too* literal. Instead, reg 14(3) is to be construed as meaning that a relevant agreement is to be applied *provided* it produces as much payment in lieu as the statutory formula would. This is a welcome clarification. At the end of the judgment there is a comparison of the two approaches, leading to a conclusion that the claimant was still owed £53.90, which was ordered to be paid within 21 days. It may be thought that this was a rather trifling amount, but the principle behind it is important and we must always remember that the whole of our Law of Negligence is based on a decomposed snail.

DIVISION DI UNFAIR DISMISSAL

Redundancy, alternative employment; effect of Coronavirus

DI [1666.01]

***Lovingangels Care Home Ltd v Mhindurwa [2023] EAT 65* (*12 May 2023, unreported*)**

> 'This appeal raises the question of whether the Coronavirus pandemic required an alteration to the legal analysis to be applied when deciding a claim of unfair dismissal. Put another way, was there a special approach that the employment tribunal should have adopted to dismissals occurring in the context of the Coronavirus pandemic, in respect of which the EAT should provide guidance. Our simple answer to these questions is no.'

Thus starts the judgment of Judge Tayler in this interesting case, the essence of which is that the normal rules of unfair dismissal law are robust enough to deal with any eventuality. The simple facts were that the claimant was a live-in carer whose client went into a home. The employer had no other client at that point. It made her redundant. The complication here was that this coincided with the outbreak of the Coronavirus pandemic and the introduction by the government of the furloughing scheme to protect jobs. There was some mention of this by the employer but it was not pursued and an appeal against the redundancy dismissal was rejected in a rather perfunctory way. On her claim for unfair dismissal, the ET found for her on the bases that dismissal was outside the range of reasonable responses because of the failure to consider furloughing as an alternative and that the appeal was procedurally unfair.

The employer appealed and the question arose as to whether the normal rules (especially on looking for alternatives to dismissal) should be amended to take into account the extreme new facts, so that a failure to furlough should not make a dismissal unfair. As seen above, the answer was negative. Here, the ET had applied the normal rules and came to a permissible result. It had not decided that the employer *had* to furlough, but instead had held that it had acted unreasonably in not *considering the possibility of* furlough as a way of waiting to see how things would develop. It had therefore not been guilty of substituting its own opinion.

The case that this reminds your humble author of (being the employment law nerd that he is) is that of *Game Retail Ltd v Laws* UKEAT/0188/14 (3 November 2014, unreported), a misconduct case in which Judge Eady (as she then was) was informed by counsel that it was the first case to come on appeal concerning misuse of Twitter by an employee and requested that she lay down specific guidelines for this sort of case. She refused on the basis that normal rules should apply and that to accede to such a request would 'run the risk of encouraging a tick-box mentality that is inappropriate in unfair dismissal cases'; see **DI [1351.02]**.

Remedies; failure to reinstate; compensation

DI [2441]

University of Huddersfield v Duxbury [2023] EAT 72 (16 May 2023, unreported)

As the text points out at **DI [2441]**, the law on compensation in a case where an order for reinstatement has not been complied with was amended in 1993 to ensure that the defaulting employer cannot gain by its refusal, by hiding behind the statutory cap on the compensatory award, in the case of a higher earner. This was done by adding what is now s 124(4) **Q [748]** which permits the exceeding of the statutory cap if that is necessary to ensure that the claimant receives in full what would have been back pay (s 114(2)(a)) if the order had been obeyed. This is quite a complex provision and this relatively rare case on s 124(4) before Eady P in the EAT shows how an ET may get the calculation wrong. The temptation is to assume it means that the cap can be disregarded if the compensatory award itself is insufficient to cover the back pay but the decision shows clearly that what must be considered is the *aggregate* of the compensatory *and* additional awards.

The claimant was unfairly dismissed and obtained an order for reinstatement, which the employer said it would not comply with. His salary was £63,532, which would normally have been the cap under s 124(1ZA)(b). However, the ET took his owed back pay as £67,469 and awarded that under s 124(4). In addition, it ordered a basic award of £11,025 and (crucially) an additional award for the failure to comply of £27,300. The employer appealed against the compensatory award amount, arguing that it should have remained capped at £63,532. The EAT upheld the appeal. The ET adopted the correct approach generally (as shown by the two cases in the text, namely *Selfridges Ltd v Malik* [1997] IRLR 577, [1998] ICR 268, EAT and *Parry v National Westminster Bank plc* [2004] EWCA Civ 1563, [2005] IRLR 193) and not fallen into the trap of awarding both the back pay and a compensatory award. However, where it had erred was in looking only at the size of the compensatory award, whereas s 124(4) permits exceeding the cap 'to enable the aggregate of the compensatory and additional awards fully to reflect [the back pay].' Here, that aggregate of the capped £63,532 and the additional award of £27,300 was £90,832, well above the back pay. At [26] the judgment explains:

> 'The protection thus provided by section 124(4) means – as was recognised in both *Parry* and *Malik* – that the statutory regime does not provide an employer with a financial benefit from a failure to comply with a reinstatement order. In assessing whether that is the case, however, regard is to be given to the total sum that the employer will be required to pay, taking account of both the compensatory and additional awards. It is only where that aggregated total falls short of the sum that would have been payable under section 114(2) that it will be necessary for the statutory limit otherwise imposed on the compensatory award to be exceeded.'

DIVISION E REDUNDANCY

The definition of redundancy; diminution in the requirement for employees

E [365]

***Campbell v Tesco Personal Finance plc [2023] EAT 68* (*2 May 2023, unreported*)**

The definition of redundancy in the ERA 1996 s 139 **Q [763]** does not produce much case law now, having been in force since 1965, but there are still cases showing the ultimate truth here, namely that it is always necessary for an ET to consider the actual wording of the section and not come to too ready conclusions if a case *looks* like a classic redundancy. This decision of Lord Fairley in the EAT is an example.

The claimant was employed by the respondent as a risk manager within one of its three teams carrying out such work. When the respondent undertook a review of its business, the decision was taken to consolidate the three teams together into two. The appellant was treated by the respondent as being at risk of redundancy and was ultimately dismissed by the respondent for that reason. On his claim for unfair dismissal, the claimant argued that there was no genuine redundancy situation because the number of risk managers remained the same after the re-structuring as it had been before. However, the ET found that the two risk manager posts under the old structure had been replaced by two new risk manager posts within the new structure, one of which had a leadership function, meaning that there was a redundancy situation, that the reasons for the dismissal of the appellant was redundancy and that the dismissal was fair.

The claimant appealed and the EAT allowed the appeal, remitting the case to a different ET to reconsider. It held that the ET had not correctly considered or applied the statutory test. The fact that three risk teams became two (which the ET had stressed) did not, of itself, assist in answering the question whether the requirements of the respondent for employees to carry out risk management work had ceased or diminished. The tribunal had made no finding in fact that the requirements of the employer for employees to carry out risk management work (or risk management work of a particular kind) had ceased or diminished. Further, the addition of a leadership role to one of the two risk manager positions in the new structure was not directly relevant to the question posed by the statute.

DIVISION L EQUAL OPPORTUNITIES

Definition of disability; likely to last twelve months; effect of dismissal

L [165.05]

***Morris v Lauren Richards Ltd [2023] EAT 19* (*6 December 2022, unreported*)**

A possible sub-text for this decision of Mansfield DHCJ in the EAT is that an employer should not be able to benefit from its own action in dismissing the claimant when arguing that they were not 'disabled'. Indeed, the decision of the ET here could be seen as something of a self-fulfilling prophecy.

The claimant was suffering from anxiety. When she was dismissed, she claimed disability discrimination. Whether she was 'disabled' was considered at a pre-hearing, at which the ET held that she had an impairment that affected her day-to-day activities, *but* that at the time of dismissal it had only lasted three and a half months. The question was therefore whether it had been likely to last for twelve months. It was held that it was not because the causes of the anxiety were work related and had therefore ceased on being dismissed. On her appeal, this was accepted by both parties as being contrary to the law as set out in *Parnaby v Leicester City Council* UKEAT/0025/19 (19 July 2019, unreported) which held that this reasoning cannot stand – the likelihood of continuance must be considered as at the time of the alleged discrimination, not in the light of later events. Arguably, this (logical) approach is particularly important where the supervening event is dismissal. The respondent argued that, although the ET had erred on this, its decision could still stand because the claimant had not adduced medical evidence of the condition and its causes, relying on *RBS v Morris* UKEAT/0436/10 (12 March 2012, unreported), but this was rejected because that decision does not establish a need for such evidence in all cases.

Direct discrimination; cause or reason; assessing the reason in the case of a corporation

L [274.04]; CIII [126.03]

***Alcedo Orange Ltd v Ferridge-Gunn [2023] EAT 78* (*30 March 2023, unreported*)**

This is yet another 'Iago' case of having to determine who represents 'the employer' where that is a corporate body. It concerned a discrimination claim. The EAT overturned the ET's decision that the claimant had been subjected to discrimination because of her pregnancy; it did so on two grounds: (1) the ET had not made sufficient findings as to who took the decision to dismiss her and whether that person did so because of her pregnancy; and (2) the ET had not had referred to these issues and had not considered the decision of the Court of Appeal in *CLFIS (UK) Ltd v Reynolds* [2015] IRLR 562, [2015] ICR 1010. The case was remitted for rehearing.

This reference to *Reynolds* may however be problematic. It is argued in this work that that case must now be considered doubtful since the decision of the Supreme Court on Iago cases generally in *Royal Mail Group Ltd v Jhuti* [2020] IRLR 129, [2020] ICR 731 – see **L [274.05]** and **CIII [126.03]**. However, in the instant case the judgment of Judge Tayler in the EAT holds that *Reynolds* (with its more restricted approach to isolating the 'real' company representative) remains good law in discrimination cases. At [32] it states:

> 'In *Royal Mail Group Ltd v Jhuti* [2020] ICR 731 the Supreme Court held that corrupted information provided to a decision-maker could, in certain specific circumstances, be attributed to that decision-maker when deciding whether the reason for dismissal was automatically unfair pursuant to section 103A ERA. However, that approach does not apply to discrimination claims. That is a result of the decision in *Reynolds*, which was accepted in *Jhuti* to remain good law when considering discrimination claims.'

The problem with this is that *Reynolds* is not cited in the *Jhuti* judgment *at all*, let alone approved for continued use in discrimination cases. It was cited in passing in the Court of Appeal's judgment (though primarily in relation to remedy), but of course that judgment was reversed by the Supreme Court. A higher appellate decision on this point would now be appreciated.

Special cases; contract workers

L [717]

***The Royal Parks Ltd v Boohene [2023] EAT 69* (*5 May 2023, unreported*)**

The purpose of the provisions in the EqA 2010 s 41 **Q [1483]** on contract workers is to ensure that an organisation cannot evade potential liability by contracting out work. As such, it has generally been given a broad interpretation and considered largely a question of fact for the ET. This decision of the EAT under Eady P is a good example.

RPL (and its predecessors in the function) had committed to paying the London Living Wage (LLW) to its direct employees. However, when contracting out toilet and cleaning functions to a company called Vinci (which had offered two versions of the contract, one paying its own employees the LLW and one not), RPL chose the non-LLW option. In fact, several years later, on a retendering and after union involvement, it agreed to Vinci paying the LLW. In this case, an employee of Vinci claimed race discrimination against RPL for the period of non-payment, relying on s 41(1) to sue the 'principal'. The ET upheld the claim, as to both the correct respondent and the substance of the claim.

When RPL appealed, the EAT held that the ET had come to a permissible conclusion on the application of s 41. It relied on *Harrods Ltd v Remick* [1997] IRLR 583, CA and *Allonby v Accrington & Rossendale College* [2001] EWCA Civ 529, [2001] IRLR 364, [2001] ICR 1189 (see **L [719]**). In the latter, a distinction was drawn between a simple contractual dispute between the

contractor and its employee and a case where the wording of the section (especially s 41(1)(a)) involves the principal, especially the wording 'the principal *allows* the worker to do the work'. That is a question of fact for the ET, as was the case here. It was true that Vinci *could* still have decided off its own bat to pay the LLW, but the ET took the view that that ignored the realities of the relationship between it and RPL. This is summed up at [70] and [71]:

> 'If the reality is that the principal has effectively dictated the terms on which the worker is to carry out the work, the ET would be entitled to conclude that this falls within section 41(1)(a), notwithstanding the fact that the principal's decision is then implemented by the contractor through its contractual relationship with that worker. What the true position is in any particular case will … require the kind of common sense, fact-based enquiry that the ET is best placed to undertake. In the present case, the ET recorded that it was not in dispute that Vinci's tender had offered the respondent's predecessor two options: the first would mean that the work would be undertaken on terms that did not include the LLW as a minimum; the second provided that the work would be done for pay that was at least at the LLW rate. It was the choice of the respondent's predecessor as to which option it decided to accept. That choice, the ET found, was determinative as to the terms on which the workers would undertake their work insofar as the minimum level of pay was concerned: as contractor, Vinci might have executed the decision but it was taken by the principal in this relationship. The respondent says that it had still been open to Vinci to pay its workers the LLW as a minimum rate, but the ET was entitled to also have regard to the higher level of control exercised by the principal in this case, which further supported its conclusion that this was the entity which had really determined the terms on which the workers would be allowed to carry out their work.'

The EAT in fact went on to allow the respondent's appeal on substance on the ground that the ET had used a wrong comparison, but the decision on s 41 clearly went the claimant's way.

DIVISION M TRADE UNIONS

Check off; discontinuance by the employer; remedies for employees and unions

M [3641]; AII [84.01], AII [92.02]

Secretary of State for the Home Department v Cox; Secretary of State for DEFRA v Crane; Commissioners for HM Customs and Excise v Smith [2023] EWCA Civ 551

The decisions of the High Court in these cases are considered at **M [3641]**. They all concerned challenges to the actions of the three departments in unilaterally withdrawing check-off facilities that had been agreed with the union, PCS. Upholding these challenges, it was held that the check-off

agreements in the relevant collective agreements had become part of the individuals' contracts of employment, that in spite of considerable delay in bringing these challenges they had not impliedly agreed to vary their contracts to remove this provision and/or waived any contractual breach by the departments, and under the Contracts (Rights of Third Parties) Act 1999 the PCS could sue directly as well as the individuals. On the question of incorporation into contracts there was no appeal, but the departments closely fought the other two holdings. The lead judgment was given by Lewis LJ, with shorter judgments by Stuart-Smith LJ and Underhill LJ.

(1) *Variation/waiver.* On this point the judges were unanimous. Lewis LJ relied on the leading case of *Abrahall v Nottinghamshire County Council* [2018] EWCA Civ 796, [2018] IRLR 628 and the extensive guidance given there by Underhill LJ, which is set out at **AII [92.02]** ff. While there had been a five-year hiatus after the withdrawal, it was important that the PCS *had* objected on their behalf and indeed in 2016 had brought legal proceedings in the matter (*Cavanagh v Secretary of State for the Home Department* [2016] EWHC 1136 (QB), [2016] IRLR 591, [2016] ICR 826). Ultimately, the question was one of factual inference and the decisions of the first instance judges in favour of the employees were ones that were open to them.

(2) *Third party rights.* Here, the court split. Lewis LJ discussed the Contracts (Rights of Third Parties) Act 1999 s 1(1)(b) and (2). It was correct that the contracts did confer benefits on the union, and so (in the lack of any express agreement on the point) the question was whether the departments had shown an intention of the parties (plural) that as a third party it should not be able to enforce the contracts. Differing from the first instance judges, it was held that on the facts there had been no intention to extend rights to the PCS; the object of the agreement was to give rights to check off to the individuals, not directly to the union. Underhill LJ agreed, saying that the intent under sub-s (2) must be that of both parties, and placing emphasis on the factor that the initial provision for the check off was in a collective agreement which in itself was not legally binding. Here, however, the court split because Stuart-Smith LJ dissented on this point. He would have held that the judges below had interpreted the 1999 Act properly and thought that there was no evidence of an intent that the PCS should not be able to enforce third party rights. There was no dispute as to the law itself; the difference was as to its application to the facts. The end result was that the departments' appeals were allowed in relation to the PCS as a proper party, but the individual claimants' cases were upheld.

DIVISION PI PRACTICE AND PROCEDURE

Unless orders; relief; interests of justice

PI [390]

Bi v E-ACT [2023] EAT 43, [2023] IRLR 498

Where an unless order has been made under ET Rules SI 2013/1237 Sch 1 r 38 **R [2795]** and a claim has been struck out for non-compliance, the question whether relief can be given under r 38(2) 'in the interests of justice' can be particularly difficult where the party in question has medical conditions amounting to a vulnerability. Presidential Guidance on this point (**PI [2561]**) shows a relatively sympathetic approach in general *but* this decision of Eady P in the EAT shows that that is not always a complete answer and that the interests of justice must be considered from the point of view of both parties.

The claimant succeeded in her unfair claims for whistleblowing dismissal and victimisation. Before the remedies hearing, a pre-hearing ordered her to provide full medical records to the appointed expert. The claimant was unwilling to do so and only provided incomplete ones. The respondent applied to have the claim struck out and the ET did so. The claimant appealed, but in the meantime she sought a review on the basis that she had been diagnosed with autism, which could have affected her failure to comply. The ET considered that this evidence did not give a satisfactory explanation and refused to reconsider. This then went on appeal. The EAT upheld the ET's decision. On the facts, it was open to the ET to so hold, in the light of other factors (such as her ability to respond on other occasions). More broadly, however, it was held that, important though it is to treat vulnerable people fairly and to allow victims of whistleblowing and victimisation to be properly compensated, the other side of the coin must not be lost sight of. Here, it was a defensible decision to take that her refusal to provide relevant evidence seriously prejudiced the respondent and ultimately made it impossible to have a fair hearing.

Postponement; high court proceedings pending; test to be applied

PI [903]

Lycatel Services Ltd v Schneider [2023] EAT 81 (26 May 2023, unreported)

The provisions of Part II of the ERA 1996 on unauthorised deductions from wages were doubtless intended originally as a quick way of claiming relatively small amounts of money owed to the employee (rather than going to the county court with a breach of contract action). However, unlike the provisions on claiming moneys due on termination (with a maximum of £25,000), these provisions have never had a cap, and so can be used for much larger claims. That raises a potentially more difficult question of forum if the alternative is High Court proceedings. There is considerable case law on when

existing ET proceedings should give way to a parallel High Court case, which is set out at **PI [903]–PI [905.01]**. This case before Eady P in the EAT is a good example of the application of this law.

The claimant, a senior employee, was dismissed for gross misconduct. He disputed this and brought ET proceedings under Part II for what he claimed was an unpaid bonus that was due to him. It came to just under £8 million. His ex-employer, disputing this in turn, brought High Court proceedings for a negative declaration as to the claimant's entitlement. It then applied to the ET for a stay to let the case be decided in the High Court. The ET refused this and the respondent appealed. Normally, the EAT will be loath to interfere with such an ET decision on a case management issue. However, here the decision, allowing the appeal, was that the ET had erred in law by applying the wrong test – it had founded on a principle that it would require a particularly strong case to overturn a presumption that the ET claim should continue. The EAT held that there is *no* such presumption and that the correct test is in which forum the dispute would be most conveniently and appropriately tried (see in particular *Bowater plc v Charlwood* [1991] IRLR 340, [1991] ICR 798, EAT, **PI [903]**, **PI [903.08]**). Moreover, the ET had underestimated the complexity of the arguments in the case. It was accepted that it cannot simply be argued that the amount is too large or the issues too difficult for an ET but complexity does come into it in some cases. Here, the claim involved inter alia complex points of company law on the position of directors which pointed towards High Court resolution, in part because of that forum's more detailed pleadings system. Thus the latter was held to be the appropriate forum and the stay was granted. One sub-point that might be of significance in the tactics surrounding a case such as this from the point of view of the party seeking a stay is that (as is mentioned in the judgment) the respondent here had agreed in advance that if the case went to the High Court and it won, it would only seek costs on an ET basis, not a High Court basis.

Reconsideration of judgments; limits on scope of reconsideration

PI [1139]

Ebury Partners UK Ltd v Acton Davis [2023] EAT 40, [2023] IRLR 486

There is a broad provision in ET Rules SI 2013/1237 Sch 1 r 70 **R [2827]** for an ET to reconsider its judgment 'where it is in the interests of justice to do so'. However, this decision of Judge Shanks in the EAT shows that there are limits to this power. In particular, it is not to be used to seek a 'second bite of the cherry' by the losing party and there is a distinction between genuine reconsideration and cases where dissatisfaction with a decision needs to be dealt with by an appeal to the EAT. The judgment contains a very useful passage setting this out.

The claimant had been sent on secondment to Canada. This was covered by a side letter making necessary changes to his contract of employment. His pay

was to be heavily reliant on discretionary commission. Eighteen months later the employer announced that this would no longer be paid. After he received his first pay without it, the claimant resigned and claimed constructive unfair dismissal, based on breach of an express term and breach of trust and confidence. At the hearing there was a dispute as to the meaning of the side letter, with the employer arguing that it meant that the commission would cease after 12 months. The ET agreed with this interpretation and dismissed the claim on the bases that there had been no breach of contract or breach of trust and confidence. The claimant applied for a reconsideration. At the hearing for this, the ET stuck to its line on the side letter point *but* went on to look again at its decision overall and held this time that there *had* been a breach of trust and confidence. The employer appealed against this and the EAT upheld that appeal, holding that this went beyond the proper scope of a r 70 reconsideration (to the extent that the judgment says that the EJ went on a 'frolic of his own'). The line to be drawn is set out at [24]:

> 'The employment tribunal can therefore only reconsider a decision if it is necessary to do so "in the interests of justice." 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 had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed 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 alleged is one of law which is more appropriately corrected by the EAT.'

REFERENCE UPDATE

Bulletin	Case	Reference
536	*Glover v Lacoste Ltd*	[2023] IRLR 457, EAT
536	*Lloyd v Elmhurst School Ltd*	[2023] IRLR 477, EAT
537	*Ministry of Justice v Dodds*	[2023] IRLR 428, EAT
537	*Edward v Tavistock & Portman NHS Foundation Trust*	[2023] IRLR 457, EAT
537	*Minnoch v Interservefm Ltd*	[2023] IRLR 491, EAT

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