Case *No: 2200279/*2019

EMPLOYMENT TRIBUNALS

Claimant		***Respondents***
Ms M Mulumba	**AND**	Partners Group (UK) Ltd (R1)
		Partners Group (USA) Inc (R2)

Judgement

The Respondents' application dated 9 September 2021 and the Claimant's application dated 11 September 2021 for reconsideration of the Judgement sent to the parties on 28 August 2021 (the Judgement) are accepted in part as set out below and as transposed to the revised version of the Judgement of even date. For the avoidance of doubt the revisions made on reconsideration under Rule 71 by way of clarification and do not materially vary or revoke the Judgement which in terms of its conclusions remains extant.

Reasons

1. I have considered the requests in accordance with the provisions set out in Rule 70 which provides that reconsideration is only appropriate where it is necessary in the interests of justice and under Rule 72 there is a reasonable prospect of the original decision being varied or revoked.
2. Reconsiderations are limited exceptions to the general rule that employment tribunal decisions should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a second bite of the cherry.
3. Reconsideration is not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced, which was available before.

4. A tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly and justly' - Rule 2.

5. In considering the application regard needs to be given to not only the interests of the party seeking the reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

Respondents' application dated 9 September 2021

6. Adopting the same numbering as appears in Macfarlanes letter dated 9 September 2021 I comment as follows:

7. In relation to a paragraph of 4 I do not consider that I made findings of fact at the Remittal Hearing which were outside the matters considered at the hearing on 3 and 4 December 2019 (the Original Hearing) and which were material to the Judgement.

The Offer Letter (paragraph 94 and paragraph 95 in the Judgement amended on 1 September 2021)

8. For clarification it represented my assessment based on experience of the workplace, as per the function of an employment tribunal applying its experience of the dynamics of the workplace, and by way of judicial notice that a junior recruit would have a limited bargaining position in relation to standard terms and conditions of employment. Whilst it is acknowledged that Leading Counsel submitted that the Respondents were not able to answer that assertion, I do not consider that this deviates from the conclusion referred to above but nevertheless, I consider it appropriate to amend paragraph 95 so that it reads as follows:

   In considering the reality of the situation, as opposed to the contractual agreement entered between the parties, I took account of the Supreme Court's judgment in Uber and others v Aslam and others [2021] UK SC 5 and specifically the requirement to look at the reality of a working relationship and not necessarily the label the parties have placed on it. It is probable that all recruits to the Associate Program were required to sign a standard offer letter and had little scope to negotiate alternative terms, to include an alternative governing law provision even had they wanted to, which I consider unlikely at the commencement of an employment relationship, particularly in the context of graduate recruits eager to impress. I confirm that in reaching this conclusion I was not making any new findings of fact.

   The Respondents' motivation (paragraph 96 and paragraph 97 in the Judgement amended on 1 September 2021)

9. I do not accept the assertion that I have made new findings of fact in relation to this issue. I consider that this conclusion was materially consistent with my judgement dated 10 January 2020 (the Original Judgement) and, inter-alia, the conclusions at paragraph 80. Nevertheless, I accept that the Judgement should be revised to include the insertion of the word "arguably in paragraphs 96 (now 97) and 117 (now 118). I further add the sentence below at the end of paragraph 118:

I confirm that any determination/decisions/actions of the Respondents which were arguably taken to reduce the level of connection because she was a potential litigant could only have been taken after 3 January 2018 because that was the earliest time that the Respondents were aware of the Claimant's threatened claims.

Permanent offer (paragraph 104 and now 105)

10. I do not consider that any amendment is required in respect of paragraph 105. I consider that to my conclusions on this issue as applicable to the date upon which the Claimant acquired UK jurisdiction remain as stated and no variation is required.

Claimant's application dated 11 September 2021

Paragraph 7

11. There is no need for this paragraph to be varied. It simply records the position in relation to be a witness statement of Ms Megan Burke Leeds for the purposes of the Remittal Hearing and I confirm that this does not represent a determination as to whether her evidence would be relevant at the full merits hearing.

Paragraph 28

12. I acknowledge that neither the Original Judgement nor the Judgement contain a definition of the term Accommodation Period. Nevertheless, I do not consider that the inclusion of such a definition within the Judgement is appropriate given that the use of this term, and what period in respect of which it relates, is a matter of dispute between the parties but nevertheless I consider that the distinction that the Respondents seek to draw between their standard Associate Program and the specific circumstances pursuant to which they say the Claimant's employment was extended are clear and do not need further clarification for the purposes of the Judgement.

Paragraph 47

13. My recollection of the Claimant's submissions was to the effect that it had always been her intention that long-term she would be based in the UK, and I do not consider that a material distinction exists between this and what was stated in paragraph 17 of her witness statement and specifically it does not have any bearing on the conclusions I reached in the Judgement. As such I do not consider that any amendment is required.

Paragraphs 48 and 50

14. These paragraphs were included for completeness as a part of the potentially relevant submissions made on behalf of the Respondents. Their inclusion does not represent any finding of fact as to the standard of the Claimant's performance but rather goes to what the Respondents argue are relevant factors as to the Claimant's realistic expectations regarding the possibility of ongoing longer-term employment in London. For the avoidance of doubt the inclusion of the Respondents' assertions, to include arguably selective quotations from the chronology of relevant emails, should not be interpreted as any finding by the Tribunal as to the Claimant's performance and/or the

Respondents' approach and motivation in making such comments. I do not consider that any amendment is required to the Judgement.

Paragraph 55

15. What was included in the Judgement were those findings of fact and conclusions which were directly germane to the issues I had to determine on remittal. It is neither necessary nor appropriate for the Judgement to be amended to include what are in effect the Claimant's arguments as to the interpretation to be placed on the origin and use of the term "Accommodation Period".

Paragraph 59

16. As paragraph 13 above.

Paragraph 66

17. I do not consider it necessary or appropriate to add further commentary. The purpose of reconsideration under Rule 71 is to either confirm, vary or revoke a judgement where it is necessary in the interest of justice to do so. It is not an exercise pursuant to which the parties can request the insertion of additional wording which may arguably be of assistance at the full merits hearing.

Paragraph 68 and 69

18. I do not consider any amendments are required.

Jurisdiction start date

19. I reached a clear finding at paragraphs 103 to 119 of the Judgement as to when the Claimant acquired UK statutory jurisdiction. I do not consider that the arguments advanced by the Claimant at paragraphs 38 to 47 of her letter require any variation of the relevant conclusions within the Judgement.

Employment Judge Nicolle

Dated: **3 October 2021**

Sent to the parties on:

04/10/2021

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For the Tribunal Office