EMPLOYMENT TRIBUNALS

Claimant: **Mr Charles Iseki**

Respondents: **(1) McColl's Retail Group Limited (In administration)**
(2) Christopher Richardson

JUDGMENT FOLLOWING RECONSIDERATION

1. The Respondent's application made by e-mail on 25 November 2022 for a reconsideration of the tribunal's judgment dated 10 November 2022 and sent to the parties on 16 November 2022 has no reasonable prospects of success and is dismissed.

REASONS

1. On behalf of the Respondents Mr Singh makes an application for a reconsideration of the Tribunal's judgment dated 10 November 2022. His application is limited to seeking a variation of the judgment that the Second Respondent pays interest to the Claimant.

2. The application was made before full written reasons for the Tribunal decisions were provided. This reconsideration decision needs to be read alongside those reasons.

The Applicable Law

3. The Employment Tribunal Rules of Procedure 2013 as amended set out the rules governing reconsiderations. The pertinent rules are as follows:

> *"Principles*
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> *70. - A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.*
>
> *Application*
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> *71 - Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties)*

within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused 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 to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), 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.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

4. The expression 'necessary in the interests of justice' does not give rise to an unfettered discretion to reopen matters. The importance of finality was confirmed by the Court of Appeal in ***Ministry of Justice v Burton and Anor*** **[2016] EWCA Civ 714** in July 2016 where Elias LJ said 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. In particular, 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; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."

5. In ***Liddington v 2Gether NHS Foundation Trust*** **EAT/0002/16** the EAT chaired by Simler P said in paragraph 34 that:

"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 by 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."

6. Any preliminary consideration under rule 72(1) must be conducted in accordance with the overriding objective which appears in rule 2, namely to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay.

7. In accordance with the Employment Tribunal Rules of Procedure I must reconsider any judgment where it is in the interests of justice to do so. Further, if I considered that there is no reasonable prospect of the original decision being varied or revoked I must refuse the application for reconsideration.

Discussion and Conclusions

8. The essential point taken in the application for a reconsideration is that the Tribunal were wrong not to regard the long delays in bringing this claim to a final hearing as a reason not to disapply the ordinary rules on the calculation of interest. That was a point that Mr Singh made, and made very well, during the hearing.

9. The Tribunal held that the delays were not a factor sufficiently strong to depart from the usual method of calculating interest.

10. In his application Mr Singh refers to the power to depart from the ordinary method of calculating interest provided by Regulation 6(3) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. Whilst that power was not expressly referred to by either Mr Singh or the Tribunal during the hearing we have referred to it in our written reasons and it was a matter that the Tribunal was aware of when it announced its decision.

11. The exception given by Regulation 6(3) is a narrow one. The Tribunal would have had to have identified serious injustice. Mr Singh suggests that there is serious injustice in expecting Christopher Richardson to pay interest for nearly 4 years when the delays were not of his making. As we set out in our written reasons we accept that there were delays but it was always open to Christopher Richardson to have decided not to defend the part of the claim where the Claimant succeeded.

12. We accept that the delays will have increased the interest. On the other hand the Claimant has been kept out of money that was rightfully his for a long period. 'Serious Injustice' required the Tribunal to look at the position of both parties. The rate of interest that is proscribed is not so far out of line with what might have been earned or saved had the money been paid earlier that the test of 'serious injustice' is met.

13. I have concluded that there are no reasonable prospects of success in persuading the Tribunal to reconsider its judgment. The Respondents have no

reasonable prospects of persuading the Tribunal that an award of interest has given rise to a serious injustice.

14. I apologise for the time taken dealing with this application it was the result of a heavy workload.

Employment Judge Crosfill
Date: 30 March 2023