EMPLOYMENT TRIBUNALS

Claimant: **Dr Anil Taneja**

Respondent: **Barts NHS Trust**

Heard at: **East London Hearing Centre**

JUDGMENT FOLLOWING RECONSIDERATION

1. The Claimant's application made by e-mail and letter on 12 December 2023 for a reconsideration of the tribunal's judgment dated 29 November 2023 and sent to the parties on 29 November 2023 has no reasonable prospects of success and is dismissed.

REASONS

The rules

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

> *"Principles*
>
> *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*
>
> *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.

2. 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."

3. 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."

4. 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.

5. 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

6. By a letter dated 12 December 2023 the Claimant asks me to reconsider my judgment striking out two allegations that he did a protected act (but not striking out any claims having allowed an amendment to introduce a further protected act) and striking out two claims of direct age discrimination.

7. The basis of each decision was as follows:

7.1. I held that the Claimant had no reasonable prospects of success in showing that what he said on two occasions amounted to an allegation that there had been a breach of the equality act (or was a protected act on any other basis) and

7.2. I struck out the two claims of age discrimination on the basis that the Claimant had no reasonable prospects of establishing that those acts formed conduct extending over a period (extant at a date which would mean the claim was in time) or that it would be just and equitable to extend time.

8. In his application for a reconsideration the claimant suggests that his application is based on 'additional and clarity of information'. As I have set out above the test of the interests of justice is not to be understood as being met because a party wants to make additional submissions or present information that could and should have been deployed at the first hearing.

9. I have considered whether the Claimant has said anything new that would require me to reconsider my decision that he did not do any protected acts in bringing a 'Job Planning' grievance in or around December 2017; and orally during grievance meetings that were held on 15 November 2018 and 20 February 2019.

10. As far as I can see in the Claimant's application he says nothing at all about what he said on those occasions. At paragraph 9 he refers to his e-mail of January 2017 which I have accepted is arguably a protected act. The Claimant goes on to complain that his allocation of duties was discriminatory. That might be right but to convert that state of affairs into a protected act he would have to draw attention to that using language capable of being understood as an allegation that there was a breach of the equality act rather than some general unfairness. I have

held that the Claimant has no reasonable prospects of success in showing that on the two occasions he has identified he did this.

11. I turn to the allegations of age discrimination. The Claimant rehearses the same points that he made before me. These were (1) that he thought he needed to exhaust internal processes before submitting a claim and (2) that the conduct complained of extended over a period up to and including the time he submitted his claim.

12. I have dealt with both of these points in my judgment. It is not in the interests of justice to permit the Claimant a further opportunity to say what has already said or indeed to allow him to expand upon the points when he could and should have made the entirety of his arguments earlier.

13. It follows that I do not consider that the Claimant's application for a reconsideration has any reasonable prospects of success.

14. The Claimant's application touches on the decisions I took to order him to pay deposits as a condition of pursuing certain claims. Such matters cannot be the subject of an application for a reconsideration but may be revisited where, under rule 29, it is in the interests of justice to do so.

15. Like judgments there is a strong public interest in the finality of litigation. It is not a proper use of the resources of the Tribunal to attend a hearing, make submissions and then to revisit those submissions and arguments in an application seeking to vary or set aside an order see ***Serco-v-Ltd v Wells*** **[2016] ICR 768**.

16. The Claimant simply repeats information that he had already given or at the least had the opportunity to give. He provides no proper basis which would cause me to revoke or vary orders I made following a 1-day hearing.

17. At paragraph 13 of his application the Claimant suggests that the deposits I have ordered him to pay are 'heavy' financial obligations. He tells me that he pays tax and national insurance on his income. That is something that he said in the hearing.

18. The Claimant is a consultant in the NHS doing a large number of sessions. He told me that he also works in the private sector. He told me that he did not know how much he earned from his private work. I found that to be a very unusual assertion. The Claimant has provided no evidence of his income, assets and outgoings. He rests on a mere assertion that the deposits are unaffordable and complains that he has to pay tax and national insurance like everybody else.

19. The deposits that I have ordered are a fraction of the legal costs that the Respondent will incur defending the claims subject to the deposit orders. The size of the deposits was intended to be sufficiently onerous as to make the Claimant think about the wisdom of pursuing claims that an employment judge has determined have little reasonable prospects of success.

20. I see no proper basis for revisiting my decisions in respect of the deposit orders.

Employment Judge Crosfill

9 January 2024