EMPLOYMENT TRIBUNALS

Claimant: **Cameron Bennett**

Respondent: **Equans Services Limited**

RECONSIDERATION JUDGEMENT

The Respondent's application for a reconsideration dated 27th February 2024 for judgement dated 23rd January 2024 has no reasonable prospects of success and is dismissed

REASONS

1. The factual background to this case can be found the Tribunal's Judgment and full written Reasons which have been provided to the parties separately. I therefore do not repeat the factual history here.

2. In an e-mail dated the 27th February 2024, the Respondent sought reconsideration of the Judgement dated 23rd January 2024, sent to the parties on the 13th February 2024. They challenge the Tribunal's finding that it was just and equitable to extend time to allow the claim for age discrimination to proceed.

The Law

3. The relevant rules can be found at:

> *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.*

4. In ***Ministry of Justice v Burton [2016***] ICR 1128 the Court of Appeal said, at paragraph 21: "… *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*…"

5. In ***Outasight VB Ltd v Brown 2015 ICR D11***, EAT, Her Honour Judge Eady QC stated that the wording 'necessary in the interests of justice' in rule 70 gives Employment Tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, "*which means having regard not only to the interests of the party seeking the review or 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".*

Findings and Decision

6. My understanding of the basis of the reconsideration is two-fold:

- Firstly, that inconsistent references to dates on which the Claimant's alleged incidents of age discrimination had

- second issue raised by the Respondent is a procedural error in relation to consideration of the balance of prejudice to the Respondent.

7. Firstly, that inconsistent references to dates on which the Claimant's alleged incidents of age discrimination had taken place, none of which reflected the actual dates on which the claimant have heard the events took place. The Respondent highlights that it was agreed by the claimant during the preliminary hearing on the 22nd August 2023 that the correct date range for the allegations of age discrimination was from June 2018 – 31st January 2019.

8. The Respondent accordingly submits that the inaccuracy in the timeline is material to my finding that it would be just and equitable to extend time in relation to the age discrimination claim. My findings can be summarised as follows.

9. The Claimant set out that he had been discriminated on the basis of his age during a period where Liam Brown was his manager, which was out of time as they occurred between September 2018 through to January 2019. Given the wide discretion afforded to me I considered the following relevant matters, that is the potential strengths of the claims as well as whether acts occurring after that time limit have expired can still be included in the claim if they can be said to be part of *"conduct extending over a period".*

10. I was satisfied on the totality of the matters presented against that is, whether or not it would be just and equitable to extend time and also considering the balance of prejudice to the Respondent that according the Claimant with the benefit of doubt, in particular the timeline of the Claimant's time of work due to (his claimed) ill-health and the period in which he returned to work and eventually resigned, may have caused him to delay bringing such a claim. I further considered there was no prejudice to the Respondent, simply because Liam Brown has left the company as other individuals such

as Conway Crosson who remain employed with the Defendant could be made available. I was therefore satisfied that it is just and equitable that this claim is included and therefore time ought to be extended.

11. Whilst the Respondent is correct that the relevant range for the allegations of age discrimination are from June 2018 – 31st January 2019 as agreed, this however, does not alter my finding that it would be *"just and equitable"* to extend time in relation to the age discrimination.

12. I have considered that the Tribunal has a wide discretion when considering whether to extend time and as per the matters summarised above (see §37-§38 of reconsideration judgement) my reasons for extending time remain the same and I find this point raised by the Respondent has no reasonable prospects of success.

13. The second issue raised by the Respondent is a procedural error in relation to consideration of the balance of prejudice to the Respondent. My decision recorded that the perpetrator, Liam Brown was no longer employed by the Respondent, however that an individual such as Conway Crosson who remained employed and would be in a position to give evidence on the relevant issues relating to the historical age discrimination allegations.

14. The Respondent's highlight that Liam Brown left employment in or around November 2020 and that had I sought clarification this would have become known at the hearing. Therefore, as this was expressly raised at the preliminary hearing and as it was a material issue insofar as the decision to extend time, then clarification ought to have been sought from the Respondent. The failure to do so rendered an error in the decision.

15. However, the original decision made clear that the fact that the claimant had "*identified Liam Brown who was responsible for the incident and the fact that there appeared to be other individuals such as Conway Crosson who remained employed with the defendant… then there is no prejudice to the Respondent…"* The point made was that if Liam Brown was unavailable then other individuals connected to the claim who remained employed were likely to be available. The name of Mr. Crosson was given by way of an example rather than definitively naming him for the purposes of any future hearing.

16. Additionally, I note the Respondent appealed to the Employment Appeals Tribunal (EAT) on this very point and by way of a decision on the 26th March 2024, a decision was made that the appeal disclosed no reasonable grounds.

17. The EAT held that whilst *"the Tribunal may have been mistaken about Mr. Crosson leaving, I cannot see that this is likely to have affected the exercise of the discretion whether to extend time… Further, the fact that a person no longer works Equans, does not mean they cannot be called to given evidence, by witness order if necessary…"*

18. The EAT, recording the wide power of the Tribunal to extend time in discrimination claims therefore concluded that it was clear that the Tribunal were alive to the prejudice an extension of time would cause to Respondent, but ultimately, they had exercised that discretion in favour of the Claimant.

19. I am satisfied that that this further reinforces my decision that there are no reasonable prospects of success in relation to the points raised by the Respondent. I dismiss the application pursuant to rule 72 (1) of the ET Rules of Procedure on the issues as raised by the Respondent.

Tribunal Judge S Iqbal acting as an Employment Judge
Dated: 25 April 2024