EMPLOYMENT TRIBUNALS

Claimant: **Kidan Nags**

Respondent: **Homerton Healthcare NHS Foundation Trust**

RECONSIDERATION JUDGMENT

The claimant's application dated 8 May 2024, supplemented by reasons provided on 22 May 2024, for a reconsideration of the Judgment dated 21 April 2024 fails. There is no reasonable prospect of the original decision being varied or revoked. The original Judgment is confirmed.

REASONS

1. By way of an email to the Tribunal dated 8 May 2024, which was not copied to the Respondent, the Claimant intimated a desire to apply for a reconsideration of the judgment dated 21 April 2024. On 22 May 2024, in an email sent to the Tribunal but not copied to the Respondent, she set out in a 15 page narrative, her reasons for asking for a reconsideration of the judgment.

Reconsideration – Legal Framework

2. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides:

   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.

3. Rule 72(1) then provides:

   The Tribunal shall consider any application made under rule 71. If the Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked…the application shall be refused and the Tribunal shall inform the parties of the refusal…

4. On a reconsideration application, the Tribunal has a broad discretion, but it must be exercised judicially, in accordance with the overriding objective and with regard not just to the interests of the party seeking the reconsideration but also to the interests of the other party and to the public interest requirement that there should, as far as possible, be finality of litigation, per

Flint v Eastern Electricity Board [1975] ICR 395 at 401. That principle was reconfirmed in **Ministry of Justice v Burton** [2016] EWCA Civ 714, [2016] ICR 1128, where Elias LJ held that the discretion to act in the interests of justice is not open-ended and he emphasised the importance of finality, which militated against the discretion being exercised too readily.

5. The reconsideration provisions are not intended to provide an opportunity to a party to:

   a. seek to re-litigate matters that have already been litigated, or to reargue matters in a different way. They are not intended to provide parties with the opportunity of a rehearing at which the same evidence / arguments can be rehearsed. In **Burton**, the Court of Appeal warned against judgments being reconsidered because of a failure by the party or the party's representative to draw attention to a particular argument. Such a failure "will not generally justify granting a review";

   b. present evidence that could have been presented prior to original judgment. If evidence subsequently relied upon was available but deliberately or inadvertently not used, that is not likely provide a basis for a successful application unless there are exceptional circumstances (per **Flint**, supra). In relation to new evidence, the principles that apply in civil proceedings, as set out by the Court of Appeal in **Ladd v Marshall** [1954] 3 All ER 745 still apply in the Employment Tribunal (per the EAT in **Outasight VB Ltd v Brown** [2015] ICR D11). In any event, an application for a reconsideration will be refused unless the new evidence is likely to have an important bearing on the case (**Wileman v Minilec Engineering Ltd** [1988] ICR 318).

Application to the Facts

6. There is no reasonable prospect of the original judgment being varied or revoked as a result of the Claimant's application. It does not disclose any reasonable grounds for concluding that it would be in the interests of justice for the original decision to be varied or revoked.

7. In essence, the Claimant provides further factual detail about her alleged treatment, some of which is relevant to the matters that were before me at the Preliminary Hearing and some of which is not. Some of the material she relied upon at the hearing and she is now seeking to deploy it again in an attempt to have a second bite of the cherry. Some of the information she has disclosed is new in that it was not relied upon previously, but is information that was or should have been available to her at the time. For example, she gives an account of things she was told after unsuccessful interviews. These are things that were within her knowledge throughout. This is not a case of new evidence coming to light only after the hearing.

8. Much of her current submission is directed to showing why she believes she has been on the receiving end of unfair and unfavorable treatment, much of which was not the subject of the complaint I was dealing with. However, in any event, her claim was one of unlawful discrimination, not unfair or unreasonable treatment, though I accept such treatment could be relied

upon in an attempt to establish a prima facie case.

9. A number of her contentions appear at odds with the case she advanced at the Preliminary Hearing. For example, she appears to be saying now that those who got the jobs she applied unsuccessfully for did not have direct experience of the role. However, as I recorded in the original judgment, the Claimant had accepted the successful (Asian) candidate for the October 2020 Ward Clerk role was good at her job and that the successful candidate for the Float Medical Secretary role in March 21 was a good person who was entitled to have got the job. In those circumstances, it is difficult to see that an alleged lack of direct experience would assist on the merits. In any event, it is a point she could have made previously and a provisional assessment of merits was only one factor, of relatively limited weight, in the decision that the claim was out of time and time should not be extended.

10. The Claimant suggests that she did not advance her case as well as she would have wished and was speaking in a monosyllabic manner at the hearing. The latter is not correct. She was able to give a lot of detail about her claims and her reasons for alleging discrimination. She was by no means monosyllabic.

11. She refers to factual matters that significantly post-date the claim, and which she accepts were not part of the claim I was dealing with, such as allegations about the eventual termination of her bank contract.

12. The Claimant says that she wants to correct one aspect of the evidence she gave at the last hearing, namely when she contacted ACAS. She says this was in fact in 2020 after she was suspended. If in 2020, it shows she was aware of her ability to contact ACAS and to gain information about bringing a claim, before these unsuccessful applications were made. If that date is also in error, and it was after that time, it does not detract from the point that the Claimant believed she had been discriminated against at the time, but took a conscious decision not to pursue a claim because she did not want to jeopardise her on-going relationship with the Respondent.

13. The Claimant avers that she wants her claim to be judged on merits of what took place in October / November 2022, but that is in fact a long time after the refusals about which she complained. This complaint was not about the termination of her contract.

14. Much of the narrative she relied upon essentially makes further submissions or adduces further facts about the merits of her claims, and other unrelated matters. However, she has not set out any cogent reason why it is necessary in the interests of justice to reconsider the key findings which were in relation to the time limits for bringing a claim and in particular the justice and equity of granting an extension. Even if I were to permit her to rely on evidence that she could have relied upon previously, it is not of such a character that it would materially impact the decision that the Tribunal had no jurisdiction to hear her claims.

15. A reconsideration application is not an opportunity to relitigate points already made and/or to use evidence that was available at the time of the

original hearing. The public interest in the finality of litigation here far outweighs any interest in revisiting the decision. I am satisfied the original decision was correct and there is no reasonable prospect of that decision being revoked or varied. I therefore dismiss the application without the need for further submissions or a hearing.

Employment Judge Sugarman
Dated: 7 June 2024