Case No: 2301518/18
2301517/18

EMPLOYMENT TRIBUNALS

Claimant: **Ms S Fiorini**

Respondent: **Independent Home Solutions CIC**

UPON APPLICATION made by letter dated 31st October 2018 from Ms S Fiorini to reconsider the holiday pay aspect of the judgment given on 25th October 2018 (and sent to the parties on 10th December 2018) under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing.

JUDGMENT

The Judgment is confirmed.

REASONS

1. By letters dated 31st October, 2018 10th January and 14th February 2019 Ms Fiorini has asked for a reconsideration of the failure of her claim for holiday pay. By letter dated 27th February 2019, I sought the views of the parties on a provisional recalculation of the holiday pay element of her claim.

2. The Respondent replied by letter dated 11th March 2019 and submitted that the reconsideration should proceed without a hearing. Ms Fiorini sent in further representations in emails dated 4th and 11th March 2019.

3. I have concluded that the Respondent's calculation of the holiday pay due is correct for the reasons set out in their letter of 11th March 2019 and that therefore no further amounts are due to Ms Fiorini. I accept that EU law only requires 20 days holiday in each leave year, including bank holidays, and that as the Claimant had taken 20 days holiday including bank holidays in the preceding holiday year, (11 days annual leave and 9 bank holidays) there was no further EU holiday entitlement which was required to be carried forward. Carry forward of the additional contractual entitlement was at the Respondent's discretion.

4. The Claimant refers to amounts set out in a settlement agreement, representing 24.5 days accrued holiday. However, amounts agreed for payment in a settlement agreement are provisional on the case being settled and made without admission of liability. As it was not settled, the agreement is not binding.

5. The Claimant also refers to a letter from the Respondent sent on 16th April 2019 in which Mr Rendle accepts the Claimant's resignation and states that Claimant had accrued 28 days unused holiday entitlement and that this would be paid with her final salary payment. However, that letter misstated the amount contractually due. Further it does not amount to a contractually binding agreement, there

having been no consideration passing from the Claimant. It was simply an error.

6. Ms Fiorini also asserts in her email of 4th March 2019 that the Respondent's change of position as to the amount of holiday pay due amounted to a whistle blowing detriment. This was not pleaded as part of the issues in the case. The pleaded detriments were as set out in paragraph 6.4 of the case management order made by EJ Fowell on 29th June 2018. It is now too late to raise this a new issue. The case has been concluded and determined.

____

Employment Judge F Spencer
21st March 2019