



EMPLOYMENT TRIBUNALS

Claimant: Mr S Kisitu

Respondent: Inclusive Care Support Ltd

JUDGMENT

The Respondent's application dated 20 March 2019 for reconsideration of the judgment sent to the parties on 22 February 2019 is refused.

REASONS

Rule 71 Employment Tribunals Rules of Procedure 2013

There is no reasonable prospect of the original decision being varied or revoked, because:

1. The Respondent seeks a re-consideration of the Tribunal's findings at paragraph 8.6, presumably up to and including paragraph 8.9, that the Respondent's manager, Mr Justin Gardner discriminated on grounds of age and race against the Claimant over the period January to 3 August 2017 and that this conduct also amounted to harassment over the same period.

2. The Respondent states that it now has documentary evidence not disclosed at the Hearing on 28, 29 and 30 November 2018 in the form of timesheets and rotas which will establish the exact dates on which the Claimant and Mr J Gardner worked together at the Respondent's care unit at Crow Lane, Romford. This is not new evidence. It was available and could have been produced at the Hearing but was not. I am satisfied that even in the absence of these documents the issue of Mr Justin Gardner's start date at Crow Lane was properly ventilated and argued and that, as appears from paragraph 8.5 of the judgment, the Tribunal preferred the evidence of the Claimant.

3. Rule 70 of the Employment Tribunal Rules 2013 provides that a reconsideration will only be granted where it is "necessary in the interests of justice to do so". The interests of justice apply to both parties.

4. The Respondent contends that at the remedy hearing listed for 13 May 2019, it will be necessary for the Tribunal to admit and consider this additional documentary evidence in order to ascertain "*the number of occasions on which the Claimant and Mr Justin Gardner came into contact and the number of incidents of discrimination or harassment*". The Respondent states that this will be necessary in order to assess quantum presumably only in relation to the award for injury to feelings since no claim for financial loss relates to the period before 3 August 2017 (whereafter no further shifts were allocated to the Claimant).

5. I do not agree that the Tribunal will need, in the interests of justice to both sides, to inevitably make any such findings in detail as to the number of times Mr Justin Gardner and the Claimant interacted over the relevant period. The findings of the Tribunal at paragraphs 8.1-8.4 make it clear that there was a course of conduct of direct age and race discrimination and at paragraph 8.8 that it was made clear to Mr Justin Gardner from May 2017 onwards that this was unwanted conduct by reference to s.26 Equality Act 2010 (harassment).

6. It is not contrary to the overriding objective or contrary to the interests of justice for the Tribunal to assess remedy based on its original findings of fact and the documents which were disclosed and available at the liability hearing.

7. In all the circumstances, the Respondent's application is refused.

Employment Judge Elgot

12 April 2019