



EMPLOYMENT TRIBUNALS

Claimant: Dr JB Ilangaratne

Respondent: Humber Teaching NHS Foundation Trust

JUDGMENT

The Claimant's second application dated 8 December 2019 for reconsideration of the Judgment sent to the parties on 11 October 2019 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked. The Tribunal refers back to its reasons in response to the first reconsideration application dated 23 October 2019.

The reconsideration process is not an open opportunity for a Claimant to re-argue his case.

The Tribunal's reference, in the reasons for its earlier reconsideration Judgment, to the disclosure of witness statements not having been said to be provided for in the Respondent's procedures, was not a statement of fact but a reference to how the Claimant's case was (not) put to the Respondent's witnesses before the Tribunal. The Tribunal notes that the sections of policies now quoted state that copies of statements "may" and not "will" be provided.

The Tribunal was not being asked to determine as a freestanding allegation that Ms Hall's failure to provide statements was an act of direct race discrimination. Again, the Claimant's further and better particulars were said by the Claimant to form "background matters, some minor, but from which the Tribunal might draw an inference of less favourable treatment."

The Tribunal did not take a blanket approach when deciding that the burden of proof had not shifted in respect of all allegations and indeed in respect of individual alleged acts of treatment from which it was said that it might draw an inference of less

favourable treatment. As regards the non-provision of statements to the Claimant at the appeal stage, there were no facts advanced by the Claimant from which the Tribunal could reasonably conclude that the treatment of the Claimant was because of race in order to shift the burden of proof and to require the Respondent to provide an explanation that the reason for its treatment of the Claimant was in no sense related to race. It is insufficient to show simply a difference in treatment and a difference in race. In any event there was no real attempt by the Claimant to show any less favourable treatment in the first place. The Claimant's case was that treatment was unreasonable and from that conclusion (if indeed reached) the Tribunal should require the Respondent to provide a non-discriminatory explanation, failing which a finding of discrimination should be made. As regards the non-disclosure of statements (and the allegation of a failure to investigate the Claimant's complaints properly and fairly), those thresholds were not reached.

The Claimant's approach before the Tribunal was that he need simply make assertions of ill treatment and that whilst he could not/would not necessarily say this was racially motivated, the Tribunal should look to see whether it was. He was reluctant to suggest any racial motivation to the Respondent's witnesses. His issue regarding the Tribunal not having heard from Ms Hall must be viewed in that context.

Employment Judge Maidment

Date 12 December 2019

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE