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# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Rush

**Respondent:** A-Day Consultants Ltd t/a Academics Ltd

## JUDGMENT FOLLOWING RECONSIDERATION

1. The Tribunal has reconsidered the judgment sent to the parties on **23 February 2021**.
2. The judgment is confirmed.
3. The remedy hearing will be relisted and the parties notified as soon as possible.

## REASONS

1. On 9 March 2021, the Respondent applied for reconsideration under Rule 71 of the Employment Tribunals Rules of Procedure 2013 of the Judgment sent to the parties on 23 February 2021. Also on 9 March, the Claimant wrote to the Tribunal to oppose the Respondent's application. The Tribunal apologises for the delay in responding to the application. The application was not shown to the Tribunal until just before the scheduled remedy hearing on 1 April, which led to that listing being vacated. A fresh listing will be obtained and sent to the parties as soon as possible.

2. In the application for reconsideration, it was the Respondent's contention that the Tribunal made factual errors in paragraphs 35 and 36 of the judgment, in the section headed 'Findings of Fact' and came to conclusions not supported by evidence. Also, that at paragraphs 55 and 56 the Tribunal had come to conclusions when applying law to facts that were also unsupported by the findings. The Claimant objected to the Respondent's application. She set out her objections in her letter dated 9 March. The Respondent had a further opportunity to respond to the Claimant's points. The Respondent incorrectly categorised the Claimant's objection to the application for reconsideration as predicated on her assertion that there were lines of cross examination that she could have explored with Mr Long. The Tribunal has not seen a document in which the Claimant refers to questions she would have asked Mr Long.

3. Having looked again at the documents and considered both parties' representations, it is this Tribunal's judgment that the judgment should be confirmed for the following reasons:

4. As the Claimant correctly pointed out, the Arbor Trust Pay Policy states that it is committed to the principle of pay portability. The Tribunal quoted section 23 at paragraph

13 of the findings of fact. The only flexibility in paragraph 23 of the Trust's pay policy is what teachers '*may wish to exercise*'.

5. There were two adverts in the bundle of documents. The Tribunal's notes do not record any live evidence from Mr Long that the job advert referred to in paragraph 35 specified the salary range within the £25,000 - £49,999 band because it was stipulated by the Guardian newspaper. That evidence was not in Mr Long's witness statement either. The Tribunal's expectation would be that no organisation, other than the Arbor Trust as the recruiter, would have the power to specify the salary range for the job. The salary range in that advert was between M1 – U3. The Respondent is correct that there was a second advert in the bundle at page 208 which had a salary range of £28,355 - £40,035 (M1 – M6). Paragraph 36 of the decision was therefore incorrect as there were two adverts in the bundle and they displayed different pay ranges. The advertised pay ranges in the two adverts were most likely for two different jobs. They gave the Trust the flexibility to place the successful teachers at the appropriate places in the pay scale, as appropriate for their experience and qualifications.

6. It is also true that the adverts did not promise pay portability. It would be impossible for these brief adverts to contain all matters relevant to recruitment. The Tribunal takes judicial notice of the fact that the purpose of an advert is to attract potential applicants, with further details provided later.

7. The finding in paragraph 36 should have said U3. That is a typographical error. Paragraph 24 correctly recorded that the Upper pay scale is between U1 and U3.

8. The Respondent did not take issue with paragraph 48 of the findings of fact in which the Tribunal set out what it considered was the main question in this matter. Had the Arbor Trust recruited the Claimant directly for the post of qualified Art Teacher, with all her skills and years of experience; what would she have been entitled to be paid?

9. The statement in paragraph 55 is not incorrect. It is a fact that the advert did not refer to any requirement to pass a performance threshold in order to be paid on the Upper pay scale. The Respondent objects to the last sentence in paragraph 56.

10. Paragraph 17 of the Trust's pay policy stated that before any teacher can access the Upper pay range, they would have to pass the performance '*threshold*' set out in the STPCD. The judgment addressed this in paragraphs 27 and 28.

11. The Respondent referred to a section of paragraph 27 of the Trust's Pay Policy. That paragraph is headed 'Application to be paid at the Upper Pay Range' and deals with how that might happen. It does not apply to the Claimant's situation as she had not made such an application. The particular section referred to by the Respondent must be looked at in context. It states that '*if a teacher is simultaneously employed at another school(s), they may submit separate applications if they wish to apply to be paid on the upper pay range in that school or schools. This school will not be bound by any pay decision made by another school*'. Paragraph 27 was referred to in paragraph 31 of the judgment.

12. It is this Tribunal's judgment that the Trust's commitment to the principle of pay portability was without qualification. The Claimant was a post-threshold teacher, paid at U1 at her previous school. She was not an existing teacher who had applied to pass the performance threshold. She was also not a teacher simultaneously employed at another school with an expectation that the Respondent would automatically follow any threshold decision of another employer. The Claimant was a qualified Primary Art Teacher who after 12 weeks was entitled to be paid at the level that she would have been paid at, had she been recruited by the Trust. It is this Tribunal's judgment that, given the application of the pay portability principle. This would have been at the U1 level.

13. It is this Tribunal's judgment on reconsideration to confirm the judgment. The interests of justice do not require the judgment to be revoked as although there were some factual errors in the judgment but they did not go to the heart of the decision.

14. The Tribunal confirms its judgment promulgated to the parties on 23 February 2021 and will now set a date for a remedy hearing.

**Employment Judge Jones**

**17 May 2021**