



EMPLOYMENT TRIBUNALS

Claimant: Mr Amadeu Organista

Respondent: Abbey Total Care Group

RECONSIDERATION

1. The application for reconsideration has no reasonable prospect of success and is dismissed.

REASONS

1. By an application dated 27 February 2023 the Claimant applies for reconsideration of the tribunal's judgment dismissing his claim. The grounds for reconsideration are set out in italics below.

Regarding the document provided by the Respondent attached to their email on the 25th January 2023 (by 13.24) which is a fit note related to other member of staff, the lack of response from the respondents, both Mr Amit Patel and Mrs Dusoruth, the complete silence regarding such matters, despite persistent requests for clarification on that subject from the claimant is the prove that racial discrimination happened, once such attitude did not happen to other Asian members of staff, namely the one to who belongs such fit note which was shown. The intention behind such lack of response from the respondents (both) was to upset the claimant and make him quit the job, once they had already another Asian member of staff replacing him (Mr Mahindra Patel). None of the respondents were able to give a coherent explanation in their defence during the hearing.

2. The comparison with the other member of staff does not assist the Claimant in any way. The fit notes belonging to this other member of staff (which appeared at p.52.1 of the bundle) show that her GP gave the Respondent advice about the adjustments she needed upon returning to work following an operation. By

contrast, the Claimant's Fit Notes signed him off as unfit for any work for a lengthy period of time. They then ceased. As set out further in the tribunal's reasons, the Respondent simply wanted to be satisfied he was fit to return to work and whether he needed any adjustments to do so. This was wholly benign.

3. The silence the Claimant refers to is presumably the delay in contacting him between 4 October and 15 October 2020. He was invited to a return to work meeting on 15 October to take place the following day. At the meeting the requirement for the Claimant to provide medical evidence was removed. The delay between 4 and 15 October 2020 does not, set in the circumstances of the case and in any event, even begin to hint at or suggest race discrimination. No doubt it was frustrating for the Claimant but it was nothing more than that. It had nothing whatsoever to do with employing Mahindra Patel whose employment had begun on 21 August 2020. The tribunal identified the reason for the delay at paragraph 95.

The fact that the claimant wasn't given a uniform until November 2020 (7 months after he started his work) despite the respondent had in stock second hand uniforms returned by ex-members of staff, forcing the claimant to buy his own uniform is also a discrimination incident, once all the other Asian staff had their own piece of uniform since they immediately started to work, including the new one (Mr Mahindra Patel). The respondents were not able to give solid evidence against this issue.

4. This ground seeks to go behind the tribunal's finding of fact at paragraph 20. There is no basis for doing so.

The reduction of working hours to the Claimant but not to other permanent members of staff is also a discrimination issue, despite that Mr Mahindra Patel, had his hours reduced but that could be explained for the fact that he was hired for the Claimant's replacement while he was homesick, and not as a permanent basis. After the claimant had raised such issue, it was fixed by taking some hours off from another Asian member of staff (Muntas) who started to do more hours in the kitchen, therefore she hadn't her hours reduced as had the claimant.

5. The tribunal's findings of fact and discussion and conclusions dealt with these points. There is no basis for going behind what the tribunal has already said.

Asian members of staff were stalking the claimant and reporting him, however the claimant was not allowed to report his colleagues for not performing their cleaning duties, resulting a rude and intimidating reaction from Mr Amit Patel, who said the claimant "should not supervise their work". Contrary to what was stated by Employment Judge Dyal on paragraph 130 what the claimant was reporting was not

"poor cleaning", but instead was certain areas NOT TOUCHED at all for 3 months, which forced the claimant to extra efforts and therefore it had to be intrinsically reported to the management without the claimant had stepped on the supervisor's role. The fact that others were not doing such work for months, but the claimant had to do it, otherwise his colleagues would report him, caused extra stress and distress to the Claimant resulting in the aggravating of health condition to which he has been homesick for more than 2 years. Regarding this issue, the management encouraged the Asian staff to report the claimant by doing repeated enquiries to each member of staff about his work, as spoken by Muntas to the Claimant, an Asian member of staff from Kerala, South India.

6. The tribunal's findings of fact and discussion and conclusion deals with these points to the full extend necessary. There is no basis for going behind what the tribunal said.

Discrimination happened before inside the respondent premises, exactly in the same facilities in which the claimant was working, as reported by other members of staff, and it was based on a different ethnic origins of a staff member. None of the respondents were able to explain why it happened while cross examined during the hearing.

7. The Claimant did assert that another member of staff had been discriminated against when he was cross-examining. None of the Respondents witnesses accepted that there had been any discrimination previously nor if there had been that they were aware of it.
8. Asserting something in a question in cross-examination is not evidence. There was no basis upon which the tribunal could have found that someone else had been discriminated against. In any event, there was no discrimination in the Claimant's case.

On paragraph 113 the Employment Judge Dyal ignored the Claimant's claim that some rules were created exactly to entrap the claimant and that is the reason why those rules were not followed by other members of staff without any consequences. The claimant accepts that in the work environment rules are broken, what he cannot accept is that after it was reported to the management that rules were not followed as instructed there was no consequences because the ones who broke them were Asian.

9. The tribunal did consider the Claimant's case that there was a management agenda to set him to fail in order to get him out of the business. Indeed it

described this as the central theme of his case. However, for the detailed reasons given the tribunal rejected that case.

Employment Judge Dyal
Date 14 March 2023