



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Munyiri

**Respondent:** London North Eastern Railway Limited

## JUDGMENT

The claimant's application dated 22 March 2023 and 24 March 2023 for reconsideration of the judgment sent to the parties on [22 March 2023] is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked, for the following reasons:

1. The tribunal took into account the evidence before it regarding the date of the incident and found that, on the balance of probabilities, it took place on 13 December 2020. In any event, the parties agree that there was an incident between the claimant and Kieran Weir, and the issue before the tribunal was what happened during that incident rather than the date the incident took place. Although the tribunal did not accept the claimant's position that the incident took place on 4 November 2020, it made no adverse credibility findings against him in relation to his evidence generally.
2. The tribunal did not find that the respondent altered the documentation which supported its position regarding the date of the incident and the claimant has not provided any evidence that this happened. The claimant suggests that the flexible working pack (disclosed part way through the hearing) included handwriting that was not his. Although not recorded in our Judgment as it was not central to our reasoning, we accept that the handwriting on the flexible working application is not the claimant's but we find it extremely unlikely that it was Mellissa Fitzsimmons's writing since her name is spelled incorrectly. We have assumed that the application was written by somebody on the claimant's behalf but the document was not before the tribunal when he gave his evidence and he was not asked about it. The part of the document that was relevant to our deliberations was the date of the

meeting, which is an agreed reference point for the date of the incident.

3. We have addressed the claimant's submission regarding his written statement in our decision and find no reason to vary our finding.
4. We found that Garry Smithson had not lied about not being aware of the case even though he had authorised the investigation. We found that he had no independent recollection of his earlier involvement.
5. We have found on the balance of probabilities, based on the evidence before us, that the claimant was 19 minutes late after his break. We note that the CCTV summary does not assist in relation to this issue. However, the issue before us was not how late the claimant was but what happened subsequently. Although we did not accept the claimant's account, we have made no general adverse credibility findings as a result.
6. There was no evidence before us that Kieran Weir was informed of the grievance outcome before the claimant. There was, however, evidence that he had not received the outcome prior to the claimant. We find no reason to vary our findings in relation to this matter.
7. The tribunal found that the claimant was not called a 'terrorist'. We do not, therefore, need to reach findings about whether that would constitute a racial slur against a black African. The reference in the decision is to the fact that this assumption was not necessarily accepted by us and was not argued before us.
8. We have taken account of the fact that English is not the claimant's first language and this is addressed in the decision. In his request for reconsideration, the claimant has not shown the specific impact this has had on the conduct of the hearing or the decision we reached.
9. We reminded ourselves that this case was not an unfair dismissal claim and therefore any criticisms of the respondent's processes were not, by themselves, of relevance unless we concluded that any defects resulted in the claimant being discriminated against. We did not find that to be the case.
10. No evidence of treatment of other employees was before the tribunal. We reached our decision on the basis of the evidence before us.
11. We did not take into account any of the evidence regarding the claimant's alcohol and drug use in reaching our decision.
12. We did not listen to the internal workplace mediation audio as we did not consider that it was necessary to do so in order to reach our decision. The mediation took place after the claim form was submitted. Kieran Weir was asked about the apology he gave at that meeting and his evidence was noted.

13. The claimant raises the connection issues during the hearing in his second email requesting reconsideration. He does not indicate any unfairness which he says resulted from the connection problems but suggests that devices should be provided by the courts where there are remote hearings. This is not a matter which falls to be considered in an application for reconsideration. Although there were connection issues with the claimant's video link, all parties were content to proceed with him on audio only. When there were connection issues with the claimant's representative, the hearing was adjourned until these were resolved.
14. For the reasons set out above, there is no reasonable prospect of the original decision being varied or revoked.

Employment Judge Davidson

Date 3 April 2023

JUDGMENT SENT TO THE PARTIES ON

.03/04/2023

FOR THE TRIBUNAL OFFICE