



EMPLOYMENT TRIBUNALS

Claimant: Mr MD Rashed Molla

Respondent: Tendercare Management Ltd

JUDGMENT

The Claimant's application dated **19 January 2024** for reconsideration of the judgment sent to the parties on **05 January 2024** is refused.

REASONS

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

1. The sole issue to be determined in relation to the Claimant's remaining claims at the final hearing was the start date of the Claimant's employment with the Respondent. In his request for reconsideration, the Claimant submits that (i) the findings as to the role of the certificate of sponsorship dated 6 October 2021 amounted to a clear error as a matter of law; (ii) the findings of fact indicated that an agency relationship existed between the individuals referred to by the Claimant as 'Mohammad Yasin Jibon, 'Sharmin Sultana Shati' and ' Saimon/Suhel' and the Respondent and that they are incompatible with the finding that no such relationship existed; (iii) the judgment fails to make it clear whether the agency relationship was one of actual or apparent authority; and (iv) the Claimant seeks to admit fresh evidence (namely a certified translation of covert recordings made by the Claimant) in support of grounds his contention that an agency relationship existed between the individuals referred to by the Claimant as 'Mohammad Yasin Jibon, 'Sharmin Sultana Shati' and ' Saimon/Suhel' and the Respondent. In the alternative, the Claimant asks that I vary or set aside two case management orders, both made at the final hearing, refusing the admission of four covert recordings and two screenshots of WhatsApp messages.
2. The existence of a certificate of sponsorship, dated 6 October 2021, does not assist in determining the start date of the Claimant's employment with the Respondent or support the Claimant's contention that his start date for his employment with the Respondent was actually 29 January 2022.

3. It is not in dispute that the Respondent was the Claimant's sponsor and that the Claimant did, in fact, complete his first shift with the Respondent on 28 May 2022. The arguments raised in paragraphs 12 – 21 of the Claimant's application do not displace my finding, at paragraphs 58 – 59 of the written reasons that there was no express written or oral contract between the Claimant and the Respondent between 29 January to 27 May 2022 inclusive. I also note in this regard, my conclusions at paragraph 62 of the written reasons, that the Claimant could not have started work in the healthcare sector until the mandatory pre-employment checks and training, including DBS checks, had been carried out. As noted in that paragraph, the Claimant's commencing work as a care worker before he had fulfilled those obligations would potentially have rendered him, and any employer, in breach of their respective legal and regulatory obligations.
4. The finding of fact in my judgment, at paragraph 29, in relation to the individuals referred to by the Claimant as 'Mohammad Yasin Jibon, 'Sharmin Sultana Shati' and 'Saimon/Suhel' is as follows '...despite what the Claimant might have been led to believe, as a matter of fact, these individuals were not acting as agents on behalf of the Respondent'. Therefore, any issue of whether they had actual or apparent authority to act on behalf of the Respondent does not arise, as a finding was made that they were not acting as agents on behalf of the Respondent. I further elaborate on my conclusions in this regard at paragraph 60 of the written reasons and, as I expressed orally at the hearing, I have sympathy with the Claimant's position, insofar as it relates of my findings as detailed within that paragraph.
5. Subsequent to the final hearing, the Claimant obtained translations of four covert recordings (three of which were translated from Bengali to English) certified by Talking Heads, a business accredited by the Association of Translation Companies. The Claimant seeks to admit these translations as 'fresh' evidence in support of his contention that an agency relationship existed between individuals, referred to by the Claimant as 'Mohammad Yasin Jibon, 'Sharmin Sultana Shati' and ' Saimon/Suhel', and the Respondent. The contents of the conversations. as detailed by the Claimant in paragraph 27 of his application, do not differ, either in substance or materially, from the contents of the same conversations that were the subject of the application at the final hearing. Therefore, I do not consider that they amount to 'fresh' evidence, in accordance with the test as set out in *Ladd v Marshall* [1954] 1 WLR 1489, as is contended by the Claimant.
6. Turning to the aspect of the Claimant's application that requests that I vary or set aside the case management orders made at the final hearing failing to admit in evidence (i) the transcriptions of the four covert recordings and (ii) screenshots of two WhatsApp messages. In respect of the covert recordings, I note the Claimant's submissions at paragraph 50 of his application, in which he states that my written reasons do not represent the way in which my oral decision was made with complete accuracy (in relation to issues of relevance and prejudice). I have set out my conclusions on this matter at paragraphs 19 – 23 of the written reasons, including the test for admission of unauthorised recordings as set out in *Vaughan v Lewisham LBV UK EAT/0534/21/SM 2013 WL 617510* at para 22. This requires that the issue of relevance be assessed and, as that authority states, issues of degree and proportionality are necessarily involved in any decision in relation to relevancy. Therefore, I reject the Claimant's contention in that regard and, with respect, I dismiss the Claimant's assertion (in paragraph 27 of his application) that the lack of evidence linking the 'agents and the Respondents' in this case was provided by the covert recordings (see paragraph 23 of the written reasons).

7. In relation to the admission of the two screenshots of the WhatsApp messages, the Claimant submits 'had they been disclosed earlier there would have been no question as to their relevance' (paragraph 57 of the application). I do not accept the validity of this argument. The application to admit the messages was made after both parties had called all their evidence and I therefore applied the law as set out in paragraph 25 – 26 of the judgment to the situation as I found it on that day, as opposed to what might have been had the situation been different. I therefore decline to vary or set aside the case management orders in respect of both the four covert recordings and the screenshots of two WhatsApp messages.

**Employment Judge L Townley
Date: 25 April 2024**