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EMPLOYMENT TRIBUNALS

Claimant: Mr JW Lam

Respondent: London Borough of Hackney

RECONSIDERATION JUDGMENT

1. The Claimant's application dated 18 July 2019 for a reconsideration of the Judgment sent to the parties on 4 July 2019 is refused.

REASONS

1 In his application for a reconsideration, the Claimant raises 14 specific challenges to the Judgment and Reasons which he says render it just and equitable that the Judgment be reconsidered. The Respondent has provided no representations on the application. The application is detailed and lengthy, some points are requests for further findings of fact, others are attempts to re-argue points already considered and not accepted. In recognition of the care and effort expended by the Claimant in making this application, I consider it appropriate to address each ground in turn.

2 Paragraph 1 – Race Discrimination. The Tribunal found that there was no incitement to share hate, no literal threat and that the comment was because of the Claimant's lengthy and pedantic emails and refusal to accept that his manager disagreed with him. The Claimant is referred particularly to paragraphs 14, 84 and 98 of the Reasons. No further finding of fact is necessary.

3 Paragraph 2 – Sharing dismay/hostility, hate. The Claimant disagrees with the findings of fact which he cites. His application is an attempt to re-argue points with which the Tribunal disagreed for the reasons given.

4 Paragraph 3 – Bullying or harassment? The Tribunal made the findings of fact required to decide the issues raised. The list of issues did not include a harassment claim and it is not necessary to make a finding whether the comment or subsequent events were bullying. The Tribunal were aware that the Claimant had complained to his employer about bullying and harassment (see for example paragraphs 9 and 34) but decided the claims of victimisation, protected disclosure detriment, race discrimination and unfair dismissal which were before it.

5 Paragraph 4 – Mr Pillai's belief. The Tribunal has made its findings of fact at

paragraphs 12 and 13 based upon the Claimant's evidence of what Mr Pillai said at the time and the contents of his subsequent grievance. The Claimant's application is an attempt to re-litigate points considered and rejected by the Tribunal.

6 Paragraph 5 – the Claimant's reaction. The Claimant makes further submissions in his application based upon the evidence already considered by the Tribunal. The Claimant's application is an attempt to re-litigate points which were considered and rejected for the Reasons given.

7 Paragraph 6 – did Carol Hinvest lie? It is correct that the Claimant first described the comment as a "death wish", the Tribunal took this into account for example at paragraph 87 of the Reasons. The Claimant's further points are an attempt to re-litigate an issue fully considered by the Tribunal and based at times upon an erroneous premise (for example referring to an "illegal restructuring" despite the Tribunal finding at paragraph 94 that it was due to genuine organisational need).

8 Paragraph 7 – Grievance procedure. The Tribunal's findings and reasoning deal fully with the reasons why Mr Scorer did not have a meeting, see in particular paragraphs 9 and 34.

9 Paragraph 8 – Mr Davies. The submission now advanced by the Claimant that Mr Davies handled Mr Owugo's complaint improperly or unfairly because management were "closing ranks" to protect Ms Hinvest was not part of the issues to be decided. The challenges to the investigation made by the Claimant were identified and addressed at paragraph 104. The Tribunal also found that Mr Davies was a truthful witness (paragraph 37), that he was aware of the comment prior to suspending the Claimant (paragraph 38) and that his investigation report was a full and comprehensive analysis of the information available (paragraph 49). No further finding of fact is necessary to determine the issues before the Tribunal.

10 Paragraph 9 – Disciplinary and Appeal. The Reasons deal with the relevance of the evidence of Ms Hinvest, Mr Scorer and Mr Pillai to the disciplinary hearing at paragraphs 51, 104 and 111. No further finding of fact or reconsideration is required.

11 Paragraph 10 – reasonableness of the Claimant's conduct. The Claimant disagrees with the Tribunal's findings and conclusions. This is not surprising as we found that his belief in a real threat was genuine albeit misplaced. The application is an attempt to re-litigate this issue.

12 Paragraph 11 – Mr Pillai's NDA. The Claimant is repeating submissions about the NDA and Mr Pillai's duty of care which were made at the hearing. The Tribunal did not consider it necessary to make a finding of fact on whether there was a breach of duty of care by Mr Pillai to decide the issues before us. A finding was made on the effect of the NDA on the fairness of the disciplinary hearing, see paragraphs 104 and 111. No further findings of fact are required.

13 Paragraph 12 – the non-investigation. This ground of the application raises criticisms of Ms Anderson's response to the initial complaint raised by the Claimant in August 2016. The adequacy of that investigation was not an issue to be decided nor is

any finding necessary for the findings which were required.

14 Paragraph 13 – Tribunal’s final conclusion. The Claimant considers the conclusion to be wrong. His failure to accept the decision and reasons of the Tribunal is evident from his suggestion that Ms Hinvest had realised that she was the “death wish perpetrator” since August 2016 when the Tribunal clearly found that she had not. The Claimant seeks again to justify his conduct by reference to Ms Hinvest’s initial comment. The Tribunal has explained why it does not agree.

15 Paragraph 14 – Unlevel playing field. A County Court interim injunction and undertakings made under the Anti-Social Behaviour legislation prevented the Claimant from coming within a specified distance of Ms Hinvest. Although it expired on 19 February 2019, the Tribunal considered that evidence via video-link was a proportionate way to ensure that Ms Hinvest was available to the Claimant for cross-examination whilst mindful of her own concerns and need to give her evidence fairly. The Tribunal does not agree that the “crucial questions” identified by the Claimant under this heading were necessary or relevant to the issues to be decided.

Conclusion

16 Having carefully considered the grounds of the reconsideration application, I am satisfied that it is a repetition of arguments which the Claimant made at the hearing in an attempt to re-litigate points which were considered and rejected for the reasons given. Disagreement with the findings and decision of the Tribunal is not a valid ground for reconsideration. The further findings of fact sought are not relevant or necessary to decide the issues before the Tribunal. None of the matters raised by the Claimant are such that they would give any reasonable prospect of original decision being varied or revoked and it is not necessary to reconsider the judgment in the interests of justice. Accordingly, the application for a reconsideration is refused under rules 70 and 72.

Employment Judge Russell

14 August 2019