



EMPLOYMENT TRIBUNALS

Claimant: Ms R Leher

Respondents: (1) Asperts (Stratford City) Limited
(2) Mrs K Joyce (née Greenyer)
(3) Mr T Greenwood
(4) Miss D Peneva

JUDGMENT

The claimant's application dated **4 October 2021** for reconsideration of the judgment sent to the parties on **24 September 2021** is refused.

REASONS

1. The Claimant makes an application for a reconsideration seeking to vary the Judgment to add a second finding of fact at paragraph 120.1. She seeks an express finding that Mr Greenwood said, during a private break in the meeting of 28 November 2018: '*Cause I'm 75 years old and I've been doing this for 3000 years* (whimpering mimicking voice)'. I shall refer to this as the 'second comment'.
2. The Claimant contends this finding of fact should be set out in the Judgment expressly because it is relevant to remedy.
3. The majority of the Tribunal took into account Mr Greenwood's 'mocking of her privately' at this break in the meeting in deciding that the reason he subject her to detriments was that she had made an age-related complaint, see paragraph 238 of the Reasons.
4. The minority member took into account this mocking to decide his conduct was also direct age and race discrimination, see paragraph 239 of the Reasons.
5. It is not clear from the application whether the Claimant wishes the judgment on direct discrimination and/or harassment to be reconsidered. I shall assume that she does so.

Decision on Claimant's Application

6. The Respondent is correct that I must first consider, under Rule 72(1) of the Tribunal Rules 2013, whether there is a reasonable prospect of the Judgment being varied.
7. In its deliberations over 3 days the Tribunal was well aware of both the first and second comments made by Mr Greenwood privately in a break of the 28 November meeting. There was no dispute that they were said. The only factual dispute concerned whether they were about Mr Greenwood or the Claimant. We decided that they were about the Claimant. We referred to the first comment in our findings to explain our reasoning but did not expressly to the second comment. That the second comment was in our minds as we deliberated can be seen on the face of the judgment by reference to 'mocking' in general at paragraph 238 and the use of the plural 'remarks' at paragraph 308.
8. Those comments were part of the evidence that led to the majority deciding that Mr Greenwood's antipathy was about the age-related complaint. But the comments themselves were not the act of victimisation found. It is not therefore necessary for the consideration of remedy to require them to be set out expressly in the findings of fact.
9. The Claimant's application may be for a reconsideration of the direct discrimination and/or the harassment decision on the basis that the second comment was not set out expressly. This application has no reasonable prospect of success. This is because both comments were well in our minds as the full Tribunal deliberated. There is no need for the Tribunal to set out absolutely every matter in its findings of fact, especially where the fact that both comments were made is undisputed. The Tribunal, in its reasoning, referred to 'mockery' in general. There is no reasonable prospect therefore of the judgment being varied.
10. The Claimant's application is therefore dismissed.

Employment Judge Moor

25 October 2021