



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE HALL-SMITH

**MEMBERS:** Ms BC Leverton  
Mr G Henderson

**BETWEEN:**

Miss A Simmons

Claimant

AND

Croydon College of Further Education Corporation Ltd

Respondent

**ON:** 5, 6 June 2017

**APPEARANCES:**

For the Claimant: In person

For the Respondent: Mr G Anderson, Counsel

## **REASONS**

*(for the Tribunal Judgment sent to the parties on 13 June 2017 and at the request of the Respondent)*

1. By a claim form received by the Tribunal on 8 September 2016, the Claimant Ms Andrea Simmons bought a complaint of unlawful racial discrimination against the Respondent Croydon College of further education Corporation Ltd.
2. At the hearing the Claimant attended in person and gave evidence before the Tribunal. The Respondent was represented by Mr G Anderson, Counsel, who called the following witnesses on behalf of the Respondent, namely, Ms Jo Bland, Director of Human Resources Mr Andrew Smith, Deputy Chief Executive, Mr Timothy Strange, former Head of School of Art and Ms Maureen Gilmartin, Head of Teaching, Learning and Assessment. There was a bundle of documents before the Tribunal.

**The issue**

3. The Claimant describes herself as Black British. The issue to be determined by the Tribunal was whether the selection by the Respondent of a white individual for the post of academic leader for art and design which the Claimant had applied for, involved less favourable treatment of the Claimant because she is Black. The Claimant contended that she had the relevant qualifications for the position, but that notwithstanding such qualifications, a white individual had been selected for the post by the Respondent.

**The facts**

4. The Respondent is a college of further and higher education. The Claimant who is Black applied for the post of Academic Leader Further Education Art and Design which had been advertised by the college. The closing date for the application was 6 June 2016.
5. The Claimant's application form, pages 92 - 102 of the Tribunal bundle, evidenced her impressive academic background and that she had a wide range of experience in design.
6. The Respondent's recruitment procedure is at pages 46 to 53 of the Tribunal bundle and sets out in significant detail the Respondent's approach to the recruitment process and its strategic objectives.
7. Paragraph 3.2 of the procedure provided that the college would seek to recruit the best candidate for the job based on merit as identified through the recruitment process.
8. The Claimant was shortlisted for the role and in an email to her dated 9 June 2016 she was invited to attend an assessment today on 16 June 2016 page 165. The email included the following:

**I am pleased to confirm that you are invited to attend the interview process for the post of academic leader art and design.**

**The selection process will take place on Thursday, 16 June 2016 and will take approximately four hours.**

9. The other candidates, who were shortlisted, were identified in the Tribunal proceedings as NH, KJ, JM, and MW. The Claimant herself was referred to as AS in the recruitment documentation.
10. The Claimant together with NH and MW were external candidates and JM and KJ were internal candidates who were working for the Respondent college in other positions. MW withdrew her application on 13 June 2016 and consequently the Claimant, NH, JM, and KJ represented the applicants who

attended the assessment day.

11. Andy Smith, Deputy Chief Executive, delivered a short welcome and introduction to the candidates at around 9:30 AM. There was then a short tour of the college. The welcome and the tour did not form part of the selection process.
12. The candidates were required to undertake three tests, namely a micro – teach exercise, a dated test, and a written test. The available facilities at the college meant that each candidate could only undertake the tests on a rotor but all the assessments were carried out in the same allocated time and under the same conditions. The process was designed to assess the abilities of the candidate in relation to the job role set out in the job description, which included teaching, management of teaching staff and course leadership.
13. Maureen Gilmartin, head of teaching, learning, and assessment was responsible for observing and assessing the candidates during the micro – teach exercise. A micro-teach represents a section of a lesson taught to assess applicants for a teaching post and involves sending candidates a task were then expected to produce a written plan and deliver that section of the lesson to a group of students. Maureen Gilmartin was an experienced observer who has observed a significant number of micro teaches and has received training from senior managers, two of whom are Ofsted inspectors.
14. The National Ofsted grading system was applied to the scoring process which scores teaching, learning, and assessment from 1 to 4. 1 is outstanding, 2 is good 3 requires improvement and 4 is unsatisfactory.
15. The lesson plans for each of the candidates were included in the Tribunal bundle, together with the candidates scoring sheets. By way of example the lesson plan for the candidate KJ and his scoring feedback sheet are at pages 128 -131, and 134 -136. KJ received a score of 2+ +.
16. The Claimant's lesson plan is at pages 154 – 156 and her feedback sheet is at pages 159 – 161. The Claimant received a score of 3/4, which indicated that she required improvement. We accepted the evidence of Maureen Gilmartin, whom we found was an entirely credible witness, that the Claimant was the only one of the four shortlisted candidates who had not followed the instructions which had been given. In her evidence to the Tribunal Maureen Gilmartin stated that she thought that the Claimant had misunderstood her task, and that rather than teach, the Claimant gave a presentation about herself and her experiences. I noted the following at page 160 of the Claimant's feedback under the heading '*Overall comment and score*':

**odd – a presentation not a lesson. More about herself than about students. No – me that anything apart from the fashion world is pressurised and count how many T-shirts they could design in 1 min. Verbal delivery unclear at times.**

**Student voice – supportive but more of a lecture. Made us think about our futures but we didn't learn any skills. This felt like an enrichment lesson. She dried up and forgot what she was meant to be doing.**

17. After all the candidates had completed the micro-teach exercise, Maureen Gilmartin provided her feedback to the interview panel, which consisted of Jo Bland, Director of Human Resources, Fiona Minors incoming head of School of Art and Andrew Smith, Deputy chief executive. The Claimant's race age sex was not identified to the panel.
18. The panel had available the candidates' marks in all the tests they had undertaken. The Claimant was the lowest scoring candidate in the group. The threshold for interview following the tests was a 2 in each test and the Claimant and the candidate NH did not achieve sufficient scores to enable them to cross the threshold into the interview process. The successful candidates were KJ and JM, although there were up to 3 interview slots available.
19. All the candidates were provided with lunch if they wished it, and they were informed after lunch whether they had been invited to interview. Two of the applicants, JM and KJ, did not have the lunch provided.
20. On 20 June 2016 the college received a letter from the Claimant, pages 170 – 176, in which she complained about the interviewing process. In her letter the Claimant contended that the individual who had been in the job job role, namely Tim Strange, would have future involvement in the new proposed job role which she stated had led her to believe that the person selected for the role would need to have a pre-existent Croydon College connection. The Claimant also contended that she had not been given a fair interview and that the process of interview had not been conducted correctly. I noted the following entry in the Claimant's letter, page 173

**it was then the HR officer, made an appearance to state they were running late. Of which finally, an interesting situation arose on continued conversation with all candidates. Candidate 4 made remark towards predecessor of the job role, by pertaining that the said individual, seen to be a strong and valued member of the art team, and then asked both candidates 1 and 3 how they felt, about him leaving. Of which the Male Candidate, in a very blasé way stated he was leaving due to his family, but also stated the predecessor had discussed his leaving individually on a personal level.**

**This is when it became very apparent, to me it was quite clear that this interview process was redundant and the selection propose already been decided. It was on return of the HR officer; I was selected first and went into a private room, all of 3 minutes. Of**

which I was told, I would not be taken further for afternoon interview, I was asked if I wanted feedback which was not available at that point, but could be given this via phone call or sent to me.

This I categorically refused, as to me the decision was made and feedback was pointless. Also again this did not correlate with end agenda what documentation given and did not follow the correct protocol. I left the room feeling; the interview process was invalid and question the interview process rather than outcome.

21. During the Tribunal hearing at the outset of his cross examination of the Claimant, Mr Anderson put the following question to the Claimant:

**Q. *Your case is that you were not interviewed because of your race?***

**A. *No, I was an external candidate.***

### **Submissions**

22. The Tribunal heard submissions from the Claimant and for Mr Anderson on behalf of the Respondent. The parties' submissions are not repeated in these reasons.

### **The law**

23. Section 13 of the Equality Act 2010 provides:

***(1) a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.***

24. Section 39 of the 2010 act provides:

***(1) an employer (A) must not discriminate against a person (B) –***

***(a) in the arrangements A makes deciding to whom to offer employment;***

***(b) as to the terms on which A offers B employment;***

***(c) by not offering B employment.***

25. The Claimant's case is founded upon her contention that as a Black candidate she was not offered the position she had applied for, notwithstanding her academic qualifications and her experience and expertise for the position.

26. Section 136(2) of the 2010 Act contains burden of proof provisions and provides:

***if there are facts which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.***

27. In *Madarassy v Nomura International plc* 2007 ICR 867, the Court of Appeal (Mummery LJ) observed that the burden of proof does not shift to the employer simply on the Claimant establishing a difference in status and a different in treatment. Such facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal can conclude that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.

### **Conclusions**

28. The Tribunal reached its conclusions having regard to the evidence, to the parties submissions and to the relevant law.

29. In the circumstances of this case the Claimant had not been successful in the post she applied for at the Respondent College. The Respondent, as the Tribunal found, had adopted a recruitment process which was open and transparent. The Claimant had been shortlisted for the role and her complaint was founded upon the fact that she had not been one of the candidates selected for the afternoon interview. The Claimant was not the only shortlisted candidate who had failed to proceed to the interview.

30. The Tribunal heard no evidence which, in any way, supported a contention that the Claimant's rejection for the role was because of her race. Indeed the Claimant herself stated that the reason was because she was an external candidate. The Tribunal concluded on the evidence that the individual who was chosen for the role was the best candidate for the position, having regard to his performance on the day, and that issues of race or of any protected characteristic played no part in the Respondent's selection process.

31. At the Tribunal hearing the Claimant advanced her case on the basis that she had not been selected for the post because she was an external candidate and that the successful candidate had been an internal candidate.

32. The Tribunal considered that there was significant force in Mr Anderson's submission that if the Respondent had wanted to recruit a white individual, there would have been no need to have adopted an external process.

33. The Tribunal concluded that the Claimant's complaint of unlawful racial discrimination was not well founded. Accordingly, it is the unanimous judgment of the Tribunal that the Claimant's complaint of racial discrimination

is dismissed.

Employment Judge Hall-Smith  
Date: 7 August 2017