



EMPLOYMENT TRIBUNALS

Claimant: Mr A Osinuga
Respondent: First Security (Guards) Limited
Heard at: Watford
On: 1 June 2017
Before: Employment Judge Skehan
Representation:
Claimant: In person
Respondent: Mr S Roberts, Counsel

JUDGMENT

The Employment Judge considers that the claimant's allegations or arguments of indirect discrimination have no reasonable prospect of success and that claim is struck out under rule 37 of the ET(Constitution etc) Regs 2013, Schedule 1.

REASONS

1. The respondent applied for the employment tribunal to strike out the claimant's claim for indirect race discrimination. The respondent's application to strike out aspects of the claimant's claim was made under Rule 37 of the Employment Tribunal Rules 2013 on the grounds that it had no reasonable prospect of success.
2. The claimant argued that the respondent applied a provision criteria or practice of "location to the site" in relation to a particular job opportunity. The claimant claimed that as the other two applicants lived closer than the claimant to the client site, the claimant was disadvantaged in a way that constituted indirect race discrimination.
3. We revisited the definition of indirect discrimination as contained at s.19 of the Equality Act 2010:

"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

- (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

4. It was clear from the claimant's submissions that although the claimant noted that the alleged PCP was applied to all as required by s.19(2)(a) the claimant could not show that the PCP in relation to 'location to the site or proximity to the site' puts or would put persons with whom the claimant shares the characteristic (black people) at a particular disadvantage when compared with persons with whom the claimant does not share it.

5. The concept of indirect discrimination was discussed with the claimant using the example of a height requirement applied by the police appearing to be gender neutral but potentially disproportionately affecting women applicants. On listening carefully to the claimant's submissions, I concluded that the claimant's claim for indirect race discrimination in these circumstances had no reasonable prospect of success. For these reasons, the respondent's application to have that claim struck out was granted and the claimant's claim for indirect race discrimination was struck out.

Employment Judge Skehan

Date: 1 July 2017

ORDER SENT TO THE PARTIES ON

.....01/07/2017.....

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FOR THE TRIBUNAL OFFICE