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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr F Fonche

**Respondent:** Hourglass Education Recruitment Ltd

**Heard at:** East London Hearing Centre

**On:** 18 April 2018

**Before:** Employment Judge Prichard (sitting alone)

## **Representation**

**Claimant:** Mr H Anyiam (counsel – instructed by Oak Legal London SE5)

**Respondent:** Mr J Peel (Solicitor, Elcons Employment Law Consultants, Ripponden, West Yorkshire)

## **JUDGMENT**

**It is the judgment of the Employment Tribunal that the claimant's claim against this respondent, Hourglass Education Recruitment Ltd, is struck out under Rule 37 of the Employment Tribunal Rules of Procedure 2013 on the basis that it is misconceived.**

## **REASONS**

1 This is the second of two claims the claimant has brought arising out of his relationships with his employer in the case of Sir Charles Kao UTC, and in the case of Hourglass his relationship with this educational employment agency with whom he registered and has been registered since 2011.

2 He has never once been offered an interview at any educational establishment through Hourglass. The claim was initially hard to comprehend and was formulated by the claimant in person. It is now easier to comprehend since the claimant instructed

solicitors, Oak Legal, through whom Mr Anyiam is instructed for today. Nonetheless, the claim remains bizarre.

3 The claimant provided amended grounds following a hearing before Judge Goodrich in January. It was clear that the claimant was completely out of his depth and needed help formulating his claims. What he said is that Hourglass admitted they made an error.

4 It is true. They did. It looks like a clerical error in handling information in circulation about the claimant. The information found its way, it is not clear how, from one school to Sir Charles Kao University Technical College when Sir Charles Kao was taken over by that other school.

5 The form with the information on contained an obvious error. The box marked "Nationality" they have filled in with "redundant". "Nationality" is relevant information for prospective employers because they wish to know whether or not they will be restricted by immigration sponsorship. "Redundant" is also helpful information because it usually suggests that the candidate in question is available to start work immediately or at the start of the academic year.

6 This mistake itself has been characterised by Mr Anyiam, on the claimant's behalf, as section 13, direct race discrimination. The contention is bizarre.

7 Even before that there is a greater logical problem that the claimant and his counsel have completely failed to address, namely that the relationship of a prospective employee under the Equality Act 2010 has to be the relationship with a prospective employer. See section 39 which provides:

- "(1) An employer (A) must not discriminate against a person (B) –
- (a) in the arrangements A makes for deciding to whom to offer employment;
  - (b) as to the terms on which A offers B employment;
  - (c) by not offering B employment."

I cannot see any section of the Equality Act 2010 that goes to the relationship between an employment agency and a prospective employee. That is even more so in this case where the claimant was not even employed in a job which this agency had secured for him.

8 In the sections in between section 39 and section 63 of the Equality Act 2010 many different relationships are covered and are expressly justiciable in the Employment Tribunal e.g. trade organisations, local authority councillors, barristers, advocates, qualifications bodies, and public offices. Employment agencies are not covered. There are partnerships, limited liability partnerships could be discrimination between an employer as a result of an interview which is arranged following a referral from Hourglass but that situation never occurred anyway.

9 That in turn is before one gets to the question of race discrimination. To

characterise an obvious clerical error such as this as race discrimination stretches logic and credibility beyond breaking point. The claimant has suggested nothing relating to his race, or anyone else's, which might have had a bearing on this clerical error. It is impossible to see, upon what has been presented, any reading of the error, or any motive in its making, which could amount to discrimination.

10 I cannot see any legal or factual basis upon which liability against Hourglass could be sustained. It is misconceived in the true literal sense of the word in Rule 37 of the Employment Tribunals Rules of Procedure 2013. It should be struck out, and is so struck out.

Employment Judge Prichard

4 June 2018