



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE MORTON

**BETWEEN:**

**Mr L Garcia**

**Claimant**

AND

**Nationwide Cleaners Ltd**

**Respondent**

**ON:** 18 March 2019

**Appearances:**

**For the Claimant: In person**

**For the Respondent: Ms C Hodge (Counsel)**

## **JUDGMENT**

1. The Claimant has brought a justiciable claim under ss13 and 39 Equality Act 2010 and the tribunal has jurisdiction to determine it.
2. The claim has a reasonable prospect of success. It is not appropriate to strike it out or to make a deposit order.
3. The Respondent's application for costs is refused.

## **Reasons**

1. In October 2018 the Claimant saw an application for a cleaning job posted under the name of a "recruiter" named Prascovia Cravtova. It was advertised on Gumtree with a contact address of "swlondon@nationwidecleaners.co.uk". The advertisement stipulated that applicants must be "very good at domestic cleaning" and set out the languages sought, which included Spanish, which

- the Claimant speaks. However the advertisement also specified that the recruiter was looking for “European lady cleaners” and stated in the title “European ladies preferred”. The Claimant was concerned by these statements, which he considered to be discriminatory because of both sex and race. Nevertheless on 11 October he applied for the job.
2. The Claimant commenced the ACAS Early Conciliation process on 12 October, the day after applying for the cleaning job. He instructed ACAS not to contact the Respondent – his explanation at the hearing was that he wanted to give the recruiter time to respond to his application but was also concerned that if he did not receive a positive response and decided to bring a claim as a result, that he should do so quickly in case the potential respondent went out of business. The Respondent challenged that assertion and submitted that the timing was evidence of the fact that the Claimant had only applied for the job with the intention of bringing legal proceedings if he were not successful and that he did not have any real interest in the job.
  3. The CV the Claimant had supplied with his application listed many accomplishments, but did not mention cleaning. It was the Claimant’s case that cleaning required no special expertise and a person able to clean their own house will have the necessary skills. His application was however unsuccessful. In fact he received no response at all.
  4. He then received an early conciliation certificate on 29 October 2018 and on 9 November he presented a claim of sex discrimination to the tribunal. Initially the claim was rejected for want of jurisdiction, but it was then accepted and served on the Respondent (which resisted the claim). It was then listed for an open preliminary hearing to determine whether the tribunal had jurisdiction and whether the Claimant’s claim had either no or limited prospects of success such that it would be appropriate to strike it out or order the Claimant to pay a deposit as a condition of continuing with the claim.
  5. At that hearing I heard evidence from the Claimant himself and from Mr Munro, majority shareholder and director in the Respondent. I was referred to a small number of documents including copies of job advertisements and extracts from a franchise agreement between the Respondent, Sweethome Cleaners Limited trading as Nationwide Cleaners South West London and Prascovia Cravtova.
  6. I questioned Mr Munro about the corporate structure. He is the sole shareholder in the Respondent and a majority shareholder in Nationwide Cleaners Franchising Limited which entered into the Franchise Agreement with Ms Cravtova and her own company Sweethome Cleaners Limited. , Sweethome Cleaners Limited trades as Nationwide Cleaners South West London. Mr Munro told me that in connection with the franchise arrangement he provided Ms Cravtova with training and advice but that Ms Cravtova operated independently and autonomously. He said that he provided Ms Cravtova with template advertisement emails but he emphasised that the advertisement to which the Claimant objected had not been based on his template. However copies of the templates were not made available to me.

Nor was a full copy of the Franchise Agreement provided. Mr Munro said that the email address [swlondon@nationwidecleaners.co.uk](mailto:swlondon@nationwidecleaners.co.uk) is Ms Cravtova's and has nothing to do with the Respondent.

7. In the absence of the documents and the evidence of Ms Cravtova I was however unable to arrive at a clear understanding of who was responsible for the placing of the advertisement, but it seemed to me that it could potentially have been either Nationwide Cleaners Franchising Limited or Sweethome Cleaners Limited or indeed both acting jointly. It seems less likely that it was the Respondent, but at this stage that possibility cannot be discounted entirely. I note that in its Grounds of Resistance the Respondent said that Sweethome Cleaners Limited had placed the advertisement using the Respondent's Gumtree account. Mr Munro said that that was an error and that what had actually happened was that he had allowed Sweethome Cleaners Limited to purchase Gumtree job advertisement credits from him. He had then informed Gumtree which allocated credits to Sweethome Cleaners' Gumtree account. That assertion however needs to be tested in light of all the evidence. I note also, as the Claimant pointed out, that the Respondent itself had published an FAQ document that included a similar discriminatory assumption to the job advertisement by referring to cleaners as 'she'. Furthermore, amongst the Respondent's own documents was the email from Gumtree enclosing copies of the advertisements to which the Claimant had objected – that email stated "Please find below your adverts which were posted in October" (my emphasis). I therefore consider that there are factual matters that need to be examined in more detail before any conclusions can be reached about where responsibility for the advertisement lay.
8. The Respondent admitted that the content of the job advertisement was potentially discriminatory but it made a number of submissions:
  - a. The Respondent was not responsible for placing the advertisement – that was done by a different company albeit one that is a franchisee of a company which, like the Respondent is owned by Mr Munro and of which he is a director;
  - b. The placing of the advertisement itself does not give rise to a cause of action. The Claimant could only succeed in a claim under ss 13 and 39 Equality Act 2010 if he can establish less favourable treatment by a prospective employer because of a protected characteristic.
  - c. The Claimant could not have been seriously interested in the role. His CV disclosed no experience in cleaning. Moreover he commenced early conciliation the day after applying, without waiting for a response, indicating that his real intention was to bring proceedings and obtain compensation.
  - d. If he had applied for a role that he had no serious intention of taking up then he would not have suffered any detrimental or less favourable treatment by being denied the role (Ms Hodge relied on *Keane v Investigo UKEAT/0389/09* and *Kratzer v R+V Allgemeine Versicherung AG* [2017] 1 CMLR 27);
  - e. The Tribunal had no jurisdiction to hear the claim or in the alternative it has no reasonable prospect of success and should be struck out. The

Respondent also sought an order for costs.

### The relevant law

9. The relevant law is set out in sections 13 and 39 Equality Act 2010 which provide as follows:

#### 13 Direct discrimination

**(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.**

#### 39 Employees and applicants

**(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.**

### Conclusions

10. I reject the Respondent's submission that the Tribunal has no jurisdiction in this case. There is an issue to be tried as to the reason why the Claimant was rejected for the role of cleaner. He has already established a prima facie case, based on the job advertisement, that his gender may have played a part and that the Respondent may have directly discriminated against him as a job applicant in breach of ss 13 and 39 Equality Act 2010 because he is a man and it was seeking "European lady cleaners". The burden of proof will therefore fall on the Respondent to show that the Claimant was rejected for a reason not related to his gender. The merits of the Claimant's claim on this issue cannot be determined without hearing evidence.
11. I do not accept that the Claimant will be unable show detriment because applied for the job with the purpose of bringing proceedings, having no real interest in taking up the position of cleaner. I find on the contrary that the Claimant was more likely than not to have been seriously interested in a cleaning role. His CV discloses experience in a number of different areas, but not a strong track record of employment. Some of his work has been voluntary. He describes himself as self-employed. I do not find it improbable that he would have been seeking to supplement his income by applying for a job as a cleaner. Whether he is qualified to do so is a different matter.
12. The Claimant also had a plausible explanation for applying promptly to ACAS but asking them not to contact the Respondent. He wanted to make sure that if he was rejected and decided to bring a claim that he would be in a position to act quickly. But at the same time he did not want to jeopardise his application for employment by letting the Respondent know that he had approached ACAS.

13. The Claimant's main problem is that he may have brought the proceedings against the wrong entity. I consider that to be understandable given the close connection between the Respondent and the entity that the Respondent suggests was responsible for the advertisement. I therefore consider that the right course of action at this stage of the proceedings would be to exercise my power under Rule 34 of the Employment Tribunal Rules to join both Nationwide Cleaners Franchising Limited and Sweethome Cleaners Limited (trading as Nationwide Cleaners South West London) as parties to the proceedings. The lack of ACAS Early Conciliation certificates against the additional respondents is not an obstacle to joining them to the claim as the addition of parties is treated as an amendment to the claim (*Science Warehouse v Mills*; *Drake International v Blue Arrow Nominees*). It is in my judgment premature to remove the Respondent at this stage for the reasons set out above in paragraphs 6 and 7. Further evidence is needed as to how the advertisement came to be drafted in the way that it was before it can be ascertained whether the Respondent played no part in the decision to advertise the role in those terms.
14. There is nothing in the Claimant's conduct of the case at this stage that would justify an award of costs against him and the Respondent's application for costs is therefore refused.
15. I propose that a further hearing for case management purposes should be listed at the earliest available date at which the issues can be clarified, the length of hearing required determined and a timetable established for preparation.

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Employment Judge Morton  
Date: 24 March 2019