EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr L Garcia	**v**	**(1) The Gift Corner 3 Wishes Ltd and**
		(2) Muhammad Ali Ashraf

Heard at: Watford **On**: 4 March 2020

Before: Employment Judge Bloch QC
Members: Mr P English
Mr P Miller

Appearances

For the Claimant: In person
For the Respondents: Mr Muhammad Ali Ashraf - Director

JUDGMENT

1. The claimant's complaint of sex discrimination is struck out pursuant to Rule 37(1)(a) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 on the ground that it is vexatious;

2. Alternatively, the claimant's complaint of sex discrimination is dismissed.

REASONS

1. The claimant complained of sex discrimination against the first respondent and the second respondent, its director. There were initially separate complaints, which were then consolidated.

2. By the tribunal's letter to the parties dated 3 November 2019, the issues in this case were defined as follows:

> "Whether the respondent treated the claimant less favourably because of sex when it advertised for a female shop worker in its window and, if so what is the remedy due to the claimant?"

3. The parties were given the opportunity to disagree with that statement of the issues by a certain date but did not do so. In any event this appears to be a fair statement of the issues in this case.

4. On 5 April 2019, the claimant, who lives in an area nearby, noticed that there was an advert in the window of the first respondent's shop in Southall, London, stating "Female staff required". It was too dark, he told us, for him to photograph the advert and the shop appeared to be closed.

5. On 6 April 2019, the claimant visited the shop again. On this occasion the shop was open and he switched on his iPhone camera, placing it in his outside suit pocket so that it could be operated secretly. He entered the shop with the camera switched on and saw a woman who was busy with customers. He walked around the shop and filmed the interior.

6. On 13 April 2019, the claimant returned to the shop. He engaged a woman who was working there in conversation. He learned from her that the advert was for working in the shop as a shop assistant. He told her that he was making enquiries about the job on behalf of his wife. That was obviously untrue as (the claimant told the tribunal) he is single and was not applying for the job for anyone else. On this occasion he appears to have carried out further secret filming of the interior of the shop on his iPhone.

7. On 18 April 2019, the claimant notified Acas of a potential claim.

8. On 7 May 2019, the respondents changed the advert and on 16 May 2019 Mr Ashraf emailed the claimant apologising for the wording of the previous advert. He referred to the claimant's claims submitted to Acas and apologised for any offence, stating that it was a genuine mistake and it had not been intended to discriminate or cause hurt. They had already recruited a male staff member around three weeks ago and female staff member trials were going on (he elaborated in evidence that the male staff member was not for working in the shop but for purchasing product required in it). He stated that when they realised the mistake, they took the following steps:

    - Removed the advert from the window on 7 May 2019
    - Suspended all recruitment
    - Put a new job advert in place which would be up until the end of May
    - Started fresh recruitment process on the above date.

9. Mr Ashraf's apology did not satisfy the claimant. The claimant did not reapply for the job.

10. On 11 June 2019 the claimant issued two complaints (ET1s) against the company (the first complaint) and against Mr Ashraf personally (the second).

11. We heard evidence from the claimant about his educational background. He had obtained two degrees from an Italian university, and in particular a master's degree in international trade in 2006. In France he had worked for a short time as a door-to-door salesman in 1984. He had been a maintenance engineer in 1986. The claimant said that he had worked as a waiter in 1990. He came to the United Kingdom in 1997. Once he arrived in England he worked in import/export. He was mainly self-employed as a Corporate Advisor since 2006. In the export/import business he was employed by a company called Swan Shine in 2008 and worked for them for about three months. He was also party to a number of zero hours contract contracts for market research and mentioned working for Kudos Research and Roneen Corporation, both from about 2010 until December 2019 and another company called Resolver from 2010 until 2016.

12. From 2013 until now he worked for a company called Unisol Industrial Limited and continues to do so (but described this as freelance work) advising on import and market research. He also mentioned that he had worked as an IT Tutor for the Government in Newcastle, from 2003 to 2007. He has been a freelance interpreter from 2019 until now, working for a company called Empire Group.

13. It was clear from the claimant's evidence that he had never worked as a shop assistant. He maintained that he had applied for other shop jobs in Southall in 2018, referring to a pawnbroker called Almeida, but he did not get the job. He then added that he had applied for "plenty" of jobs in shops and restaurants and referred to Poundshop (99p) two years ago and a restaurant job in 2019. He had succeeded in none of his applications for a restaurant or shop keeping role. He believed he was too old (being 55 years old) for restaurant work. He also thought that part of his problem was that many of these establishments conducted business in Asian languages. For instance, he had applied to a travel agency but they said that he needed to be able to speak Asian languages.

14. Having told us that on 13 April 2019 he told the lady in the shop that he wanted a job for his wife, he said that he wanted information from her: "To know if I had been discriminated or not". He maintained, however, that he did want to work in the shop. He said that he wanted to know if he had been discriminated against or not, explaining that he could envisage circumstances in which the use of the word female could have been justified, for example, if the job had related to services of a personal nature required to be given to, for example, a Muslim woman.

15. Mr Ashraf gave evidence about the shop. He said that 90 per cent of his customers were female, the majority of them being Muslims and that the shop was located in that part of London, which he described as "saturated" with the Pakistani, Indian, Bangladesh, Afghan and Somali communities. His shop sold mostly female-related items. These included handbags, watches, perfumes, jewellery and at one stage, he had a woman using some of the space in the shop to carry out hennaing activities. They offered henna designing and bangles especially for festive seasons such as Eid ul Fitir, Eid ul Adha, Diwali or for private bookings. We were shown

photographs of the interior of the shop. They were not particularly helpful given Mr Ashraf's evidence that the nature of the goods sold changed from time-to-time in accordance in particular with the religious seasons. He stated that usually the shop operated selling services such as hamper making, henna, balloon decorations, party decorations and that involved a lot of interaction between the customer and the sales person. There was much interaction for long durations, so that female customers were more open and comfortable with female staff, especially in the Muslim community. He stated that when he displayed the advert referring to a female assistant in his shop window in April 2019, he urgently needed a female staff member whom he could train before the up-coming festive season Eid ul Fitir, in early June 2019, to take care of the female customers who need henna designing on their hands, arms and feet. He stated that no woman would accept these services from any male staff, including himself.

16. In the course of preparation for this case, Mr Ashraf found a number of tribunal judgments in cases brought by a Mr L. Garcia against various companies (one of them was by a Mr I Garcia against the Dolce Vita restaurant). One of these judgments (part of which appeared at page 12 of the respondents' bundle) refers to the claimant having seen an advert for a cleaning job posted under the name of a "recruiter", named Prascovia Cravtova. The advertisement, from what the claimant eventually told us, was for female speakers of Spanish and Romanian.

17. The claimant submitted a document which was in the form of a witness statement, which he produced as his evidence under oath. At paragraph 7 he said:

> **"The respondent put forward other claims and alleges that I am involved in them simply because the name of the claimant contains the initial and surname "L Garcia". However, these claims are irrelevant and prove nothing for the following reasons:**
>
> a. The surname "Garcia" is very widespread in the Spanish speaking countries.Hence there are many people with the initial and surname "L Garcia" and there is no evidence that I have something to do with these claims.
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> b. It is not illegal to have several claims in the Employment tribunal because discrimination in the workplace is widespread and the respondent is certainly not the only employer who discriminates. And, contrary to what says the Respondent this does not prove that an applicant did not have the intention to look for work."

18. In evidence the claimant flatly denied that any of the judgments referred to in the respondent's bundle, had anything to do with him. In particular, he stated that the case L Garcia v Market Probe Europe Limited was not to do with him nor was the case against Prascovia Cravtova. He accepted that a judgment (on a preliminary issue) in a claim against British Airways on 27 January 2020, did relate to him. He said that the judgment at page 12 of the

bundle was not to do with him (we note from the commencement of the Reasons on the first page of that decision (the only page in the bundle) that reference is made to the "recruiter named Prascovia Cravtova", so there seems to be some overlap with the above complaint against Prascovia Cravtova. He doggedly maintained that he had not issued any of these claims, except the one admitted by him against BA. When he was shown the tribunal file in relation to the claim against Ms Prascovia Cravtova, (case number 3313977/2019) and that the name, date of birth, address and email details of the claimant matched his own, he then accepted that this was his claim. However, he said that it had been settled which is why he had not referred to it earlier. The tribunal could not accept this as being an honest answer, given his earlier firm and repeated denials that this case had anything to do with him. He said he had been looking for jobs on the internet and had found the job which referred to a female Spanish and Romanian speaker.

19. This conduct of the claimant before us necessarily had a serious effect on his credibility before the tribunal and, in particular, on the key question of whether the claimant actually intended to apply for the job advertised by the respondents. While misleading the tribunal about other claims (as we found) was not necessarily decisive of the issue of intention to apply for the job with the respondents, when taken in the broader context described below, it substantially undermined his credibility regarding his professed genuine intention of applying for this job. His credibility on this issue was further undermined by the way in which the claimant conducted himself in the witness stand including his insistence, even when confronted by the judgments in the respondents' bundle, that he had brought fewer claims than were actually before the tribunal under the name of L.Garcia and (to a lesser extent) his familiarity with the Vento guidelines and other aspects of sex discrimination cases, showing an unusual familiarity with this kind of case.

20. Turning to the law, the relevant section is s.13 of the Equality A9ct 2010, which states:

> "Section 13 (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."

21. On the evidence before it, the tribunal had no hesitation in concluding that the claimant never really wanted this job. We concluded this for a number of different reasons which can be shortly stated:

    21.1 His conduct in walking in to the shop with an iPhone camera surreptitiously filming the premises on two occasions;

    21.2 His admittedly false statement that he was looking for a job for his wife;

21.3 His admission that his purpose in entering the shop was that he wanted to know if he had been discriminated against or not;

21.4 His not replying to the apology letter and not applying for the re-offered job with the offending language removed;

21.5 His untrue evidence regarding his not being the claimant in other employment tribunal cases and, in particular, ones in which he had sought to base a sex discrimination case on the use of the word "female" in the advert;

21.6 The fact that he had no shop assistant's experience. The job was, on the face of it, manifestly below his capabilities as an educated and experienced person in the field of international trade and marketing; and

21.7 The general nature and circumstances of the job, namely a small retail business in which the majority of customers would be likely to be of Asian background and/or Muslim women and his own experience that his lack of Asian languages was an impediment to obtaining such a job.

22. Further, (although not decisive) the effect of claimant's evidence was that he was not so much hurt or upset as a result of the advert which he saw but as a result of his further investigations as to whether or not he had been discriminated against.

23. Even if the tribunal had held in the claimant's favour, it would not have awarded any lost earnings to him. Having seen the claimant in the witness stand, the tribunal unanimously concluded that there was no real prospect that he would, (but for any sex discrimination) have been appointed to this job. The shop's clientele was primarily Muslim women and the claimant had no qualifications nor experience for this job. While it is true, as he submitted to us, that the job did not require any qualifications or expertise, in our view there was nothing at all in the claimant's demeanour to indicate that he would have had any chance of obtaining this job. We add that we ourselves found the claimant's English (while reasonably fluent) very difficult to understand, given his marked accent and this would have been a further impediment to his obtaining this job. He would obviously not have been able to communicate in any Asian language.

24. As regards injury to feelings, if we had held in favour of the claimant (which we have not) the award would have been at the very lowest possible level allowed by Vento. We simply do not see that the claimant was the victim of, and or suffered in any substantial way, as a result of the use of the language in the advert (or the subsequent explanation of the job given to him).

25. It is right to say that the respondents urged upon us an innocent explanation of the advert which we understood might be an occupational requirement defence, (as set out in schedule 9 of the Equality Act 2010) as follows:

> "A person (A) does not contravene a provision mentioned in sub paragraph 2 by applying in relation to work a requirement to have a particular protected characteristic, if A shows that, having regard to the nature or context of the work –
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> (a) It is an occupational requirement
> (b) The application of the requirement is a proportionate means of achieving a legitimate aim, and
> (c) The person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it). "

26. Whilst we have some sympathy for Mr Ashraf in that it plainly would have been preferable to him (based on his evidence) to have had a female assistant (for the reasons which he gave and which we have accepted). Nonetheless, we concluded that he had not discharged the burden of showing that being "female" was an "occupational requirement" or that the advert was (in the terms in which it was written) a proportionate means of achieving a legitimate aim. In particular, he changed the advert and admitted that he had made a mistake, but more fundamentally, he did not persuade us that the characteristic of being a female was necessary (as opposed to advantageous) for the job.

27. Having made the decision which we have made, the tribunal thought it appropriate to consider the provisions of Regulation 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Regulation 37(1) which states that:

> "At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of the claim or response on any of the following grounds –
>
> (a) That it is scandalous or vexatious or has no reasonable prospect of success."

28. The tribunal concluded, unanimously, that this was indeed a vexatious claim. Having heard from the claimant and having read his written evidence we did not think that this was a genuine claim in which the claimant had suffered true hurt as a result of any discrimination practised on him. Instead, the tribunal concluded that this was a cynical attempt by the claimant to profit from legal proceedings brought against these respondents. The evidence indicates a pattern of behaviour in which the claimant seeks to find prima facie discriminatory conduct and then to bring proceedings to profit from that discovery. While the claimant is right to say that bringing multiple claims of discriminatory behaviour is not necessarily unjustified, his conduct in denying under oath that he had anything to do with the other claims before the tribunal and the other factors we have referred to, indicating that he had no intention of applying for this particular job, show a cynical pattern of behaviour and an awareness that this conduct would be

regarded by the tribunal as unacceptable. Plainly such behaviour should be discouraged.

29. The respondents did not seek a costs order.

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Employment Judge Bloch QC

Date: 9.3.2020

Sent to the parties on: 14.4.2020

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For the Tribunal Office