



EMPLOYMENT TRIBUNALS

Claimant: Mr D Beech

Respondent: Avon Fire and Rescue Authority

Heard at: Southampton

On: 4 September 2020 at 10.00am by CVP

Before: Employment Judge Rayner

Representation

Claimant: Miss A Williams, Pupil Barrister

Respondent: Mr A Roberts, Counsel

JUDGMENT

The complaint of **direct sex discrimination** is struck out.

REASONS

1. The respondent applied for the claims of direct sex discrimination to be struck out on the grounds that it has no reasonable prospect of success, within the meaning of section 37 (1)a ET (Constitution and Rules of Procedure) regs 2013.
2. Following representations from both parties, the claim of direct discrimination is struck out, because it has no reasonable prospects of success.
3. The claimant made a claim to the tribunal alleging sex discrimination in a claim form dated 16 December 2019.
4. In this claim, he alleged that he had been discriminated against on grounds of his sex in a recruitment exercise carried out by the respondents for apprentice firefighters, which he failed at the second stage of the process, following attendance at an assessment centre day.

In brief, he alleges that the respondent operated a system which favoured women in the process over men, because the respondent wanted to recruit more women firefighters to the service.

5. The respondents deny discrimination, and assert that whilst Mr Beech was not successful, this was nothing to do with his sex, but was wholly attributable to the fact that he failed an essential part of the assessment centre, which was the ladder climb.
6. The claimant refers to and relies upon various data provided by the respondent to him, following a freedom of information request, which he states shows that a higher proportion of women than men were successful at the stage 2, which he failed.
7. He also refers to a letter dated 12 September 2019, sent in response to a request for information made by the claimant's mother, which says this in respect of an allegation of bias:

In response to your concern that the outcome for female candidates was significantly better than male candidates who performed better, we have reviewed the process that was followed and set out our findings below. Our review has revealed that there were some shortcomings in the process that was followed as part of the recruitment exercise. These relate specifically to the decision by the lead assessors to apply a selection criteria, which was in accordance with the information you have been provided with, but which also had regard to the under representation of female firefighters within the workforce. Following our review, it has come to our attention that the selection process was fundamentally flawed and it has been halted. We have subsequently concluded that we are not able to proceed with the firefighter apprenticeship programme during 2019.

8. The paragraph goes on to say that they will not be taking on any apprentices following the recruitment exercise.
9. In his ET1 the claimant refers to the number of people who applied for the apprenticeship scheme broken down by sex: 125 people applied, of which 14 were women, 3 failed the first hurdle; 3 failed the assessment centre and 8 got some form of offer. Of the 111 men who applied, 7 men got some sort of offer.
10. The claimant relies upon the asserted fact that a higher proportion of the women who applied were made offers than the proportion of men who applied.
11. The claimant refers to section 19 and direct discrimination in his ET1.
12. Following a telephone case management hearing to discuss the issues in the case, at which Mr Beech was represented by Miss Anwar from Bristol law centre the claimant's claim of indirect discrimination was

identified and further particulars were sought. No claim of direct discrimination was asserted, following discussion of the nature of the claim being made.

13. Following that hearing, the claimant provided further particulars of the indirect discrimination claim, identifying the PCP and confirming the disadvantage suffered by men compared to women, and by the claimant as follows:

The PCP relied upon is the passing of the second stage in a 3 stage recruitment process as a prerequisite to progress to the final pool for selection.

This was conducted for everyone but put men at a disadvantage compared to women and by the Claimant.

14. In respect of the disadvantage, the claimants stated that it was difficult to advise what the disadvantage suffered was as it was not clear why the proportion of men failing at the second stage was higher than the proportion of women failing at the second stage.
15. The claimant also clarified that he was making a claim for direct discrimination, because the *scores showed detrimental treatment compared to women applicants*. This is a reference to the fact that some women scored more than the claimant at the second stage. No further details of any direct discrimination claim are made.
16. From the information before me, there is no obvious basis for asserting less favorable treatment on grounds of sex.
17. The claimant must be able to point to something more than a difference is sex and a different in score. Mr Beech has no obvious evidence that I have seen of any less favourable treatment, but nor does he even have evidence of different treatment.
18. It is highly likely that, as the respondent asserts, he was subjected to the same treatment as every other person who went through the second stage.
19. The respondent asserts, and the documentary evidence I have been shown supports, that Mr Beech did not progress because he could not climb a ladder in a satisfactory way. If this is right, it is nothing to do with sex, and Mr Beech does not suggest that it is.
20. Here, on the basis of the materials before me, it is highly likely that the claimants scores and failure to progress, will be because of his failing to climb a ladder at the required standard, which is highly likely to be found to be a reason that is nothing to do with sex. A difference in his score and that of a woman is not evidence of sex discrimination.

21. The claimant's remaining claims remains listed for hearing on **4 and 5 January 2021**.

Employment Judge Rayner
8 September 2020