



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Voronov

**Respondent:** University Hospital Southampton NHS Foundation Trust

**Heard at:** Southampton **On:** 23 – 25 November 2020

**Before:** Employment Judge Reed  
Members Mrs M Metcalfe  
Mr R Spry-Shuite

**Representation**  
**Claimant:** In person  
**Respondent:** Mr H Sheehan, counsel

## JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The claimant was not unlawfully discriminated against, harassed or victimised.
2. There is no order as to costs.

## REASONS

1. In this case the claimant Mr Voronov alleged unlawful discrimination against University Hospital Southampton NHS Foundation Trust (“the Trust”). Mr Voronov was rejected for employment by the Trust following an interview in April 2019. He said the reason for that rejection was his age, sexual orientation or nationality. He subsequently applied, in June 2019, for a

further position within the Trust but was not shortlisted. He alleged that the failure to shortlist him was an act of victimisation.

2. We heard evidence from Mr Voronov himself and we read a statement submitted on his behalf by his partner Mr Ware.
3. For the Trust we heard from Mr Hamer and Mr Gisborne, who interviewed Mr Voronov for employment in April 2019, from Mr Treasure-Jones, who dealt with the subsequent correspondence with him and from Mr Cable, who declined to shortlist Mr Voronov for the position with the Trust advertised in June 2019.
4. Our attention was also directed to a number of documents and we reached the following findings.
5. Mr Voronov is gay, originates from Russia and was at the relevant time aged 53.
6. In March 2019 he applied for a vacancy with the Trust of IT Systems Developer. In his application form he declared that he was 53 years old and that he was gay.
7. He was shortlisted for the position and called for interview on 4 April 2019. The process adopted by the Trust on that date had two elements. In the first instance, he had to undertake a technical test. He scored 13 out of 16 in that test.
8. He was then called to an interview before Mr Hamer and Mr Gisborne. He scored 19 out of 45.
9. He was informed on 8 April that his application had failed and he would not be offered employment. On 9 April he wrote to Mr Hamer taking issue with his rejection and there then ensued correspondence between Mr Voronov and Mr Treasure-Jones, the Trust's recruitment manager.
10. In June 2019 Mr Voronov applied for a further position of IT Systems Developer with the Trust. Shortlisting was undertaken by Mr Cable. Mr Cable was approached by Mr Brewer who informed him about Mr Voronov's unsuccessful application earlier in the year. Mr Voronov was not shortlisted by Mr Cable.
11. Under s13 of the Equality Act 2010 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.
12. Under s26 of the Act, a person (A) harasses another (B) if:
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) The conduct has the purpose or effect of –
    - (i) violating B's dignity, or

- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
13. Under s27 of the Act, a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act. A protected act includes making an allegation (whether or not express) that A or another person has contravened the Act.
  14. Mr Voronov relied upon the protected characteristics of sexual orientation, race and age (ie being in his 50s, the Trust allegedly favouring younger applicants). He claimed that by reason of one or more of those characteristics he had been rejected for employment following the interview in April 2019, such that he was directly discriminated against.
  15. In the score sheets produced by Mr Hamer and Mr Gisborne during the interview on 4 April, Mr Hamer described Mr Voronov as “quite arrogant” in his response to one of the questions from himself and Mr Gisborne. Mr Gisborne himself indicated on the sheet that Mr Voronov had “rambled” in his application form in dealing with the Trust’s values. Mr Voronov said that those entries amounted to harassment of him.
  16. Finally, Mr Voronov claimed that in his correspondence with Mr Treasure-Jones he had carried out protected acts by alleging discrimination and that the reason Mr Cable had rejected him from the position in June 2019 was by reason of those acts. That, he said, amounted to victimisation.
  17. We begin by addressing Mr Voronov’s non-appointment in April 2019.
  18. It is clear that Mr Hamer and Mr Gisborne were aware of the Mr Voronov’s protected characteristics. Furthermore, Mr Voronov was able to point to a number of aspects of his treatment that might give rise to a suspicion of unlawful discrimination.
  19. Firstly, an offer of employment was made to an applicant who, overall, had a lower point score than Mr Voronov. Secondly, the narrative within the score sheet produced by Mr Hamer and Mr Gisborne was less than expansive (and indeed was criticised for its brevity by Mr Treasure-Jones). Thirdly Mr Hamer expressed the view that Mr Voronov would not “fit in” – a comment to the Tribunal is always bound to look at carefully in the context of an unlawful discrimination claim.
  20. The essence of our enquiry was to determine whether Mr Hamer and Mr Gisborne were telling the truth when they said their rejection of Mr Voronov was a genuine reflection of his perceived abilities and not related to the protected characteristics.
  21. They told us that although Mr Voronov was technically proficient, the way he presented himself at interview led them to understand he would not be a satisfactory employee. In particular, they considered him somewhat arrogant. They also felt he was disdainful about the technology within the Trust, such that he might not be particularly motivated to deal with it. They further claimed he was also in the habit of interrupting them in the course of the interview and seemed unable to stay “on point”. Although his total score

was higher than an applicant who was offered employment, the Trust said it was not bound to appoint by slavish adherence to the overall score. In particular, however technically skilful he was, there was no point in employing him if he would be difficult to manage.

22. We were invited by the Trust to conclude that that Mr Hamer and Mr Gisborne's view was an accurate and genuine assessment of Mr Voronov, not least on the basis that it reflected the way he behaved before the Tribunal.
23. We take into account that English is not Mr Voronov's first language and furthermore that he is in an alien environment when appearing before a Tribunal. However, even making allowances for those matters, the way he presented to us appeared to be similar to the way Mr Hamer and Mr Gisborne said he presented to them. He did indeed interrupt others, found it difficult to stay on issue and seemed to have a somewhat inflated idea of his own abilities.
24. It was also clear that he took a dim view of the systems and software used by the Trust. Mr Hamer and Mr Gisborne were entitled to doubt how committed he might be to working in such an environment.
25. Although he performed best of all the applicants in the technical test, it would be unsurprising if the Trust took the view, in the light of his interview, that he simply would not be a manageable employee and would present them with difficulties.
26. We were mindful in this respect that Mr Voronov appeared in evidence to accept that the less than flattering written accounts given of his performance in the score sheet were accurate (although he did not accept that they had been properly translated into the scores he received).
27. The matters referred to above in paragraph 19 led us to look very carefully at the explanation given by the Trust for Mr Voronov's rejections. In short, however, we accepted as genuine the evidence given by Mr Hamer and Mr Gisborne to the effect that his rejection was a result of his behaviour during interview (and the contents of his application, insofar as it related to the Trust's values – see below). We concluded that the protected characteristics played no part in their decision to reject Mr Voronov. It followed that he was not directly discriminated against.
28. We then turn to the claims of harassment (which in any event may be in the alternative be expressed as claims of direct discrimination). For the reasons we have already given, we considered that the descriptions of Mr Voronov within the score sheet were perfectly accurate. We accepted that he presented as somewhat arrogant (as indeed he did before us). The relevant entry on the score sheet reflected a genuine perception that was unrelated to his protected characteristics.
29. In his application form Mr Voronov was asked about the Trust's values. His reply is undoubtedly "worthy" and expansive. It is clear the Trust was expecting something a little more down to earth and focussed. It was unsurprising that Mr Gisborne should take the view that Mr Voronov had rambled. We accepted that that entry on the score sheet had nothing to do

with Mr Voronov's protected characteristics but was a genuine (and reasonable) reflection of his views.

30. It followed that although the relevant entries on the score sheet were undoubtedly unwanted, they were not related to Mr Voronov's sexual orientation, nationality/race or age, such that his claims of harassment failed. Insofar as these might amount to claims of direct discrimination, we concluded that the entries were not made because of a protected characteristic such that Mr Voronov was not directly discriminated against.
31. Finally, we turn to victimisation. Mr Voronov sought to identify within the bundle a number of emails he sent to the Trust which he said amounted to protected acts. They certainly referred to his protected characteristics, although whether they could sensibly be seen to embody "allegations" was debatable.
32. That, however, was not something that had to concern us. We would have to be satisfied, in order for his claim to succeed, that Mr Cable was motivated to reject Mr Voronov for shortlisting on account of those documents. Put shortly, we accepted Mr Cable's evidence to the effect that he was wholly unaware of those communications. The rejection was satisfactorily explained by Mr Cable by reason of the information he received from Mr Brewer and Mr Gisborne (as to how poorly Mr Voronov had performed at interview in April), the fact that Mr Voronov had only recently been rejected for employment (which would ordinarily militate against his being interviewed again so quickly) and the absence on his part of experience in the particular area the Trust was looking for.
33. It followed that we concluded that Mr Voronov was not victimised and in all respects his claims failed.
34. The Trust sought its costs of defending the victimisation claim.
35. It was pointed out that the way Mr Voronov had proceeded with that claim before the Tribunal departed somewhat from the case the Trust had been expecting to meet. In any event, it was not clear how Mr Voronov could ever have hoped to succeed in circumstances where he had not even put to Mr Cable the allegation that he was motivated by the alleged protected acts.
36. The power to order costs is contained in rule 76 of the Employment Tribunal Rules of Procedure 2013. In the first instance we must consider whether a party has acted unreasonably (amongst other things). If we conclude that it has, we have a discretion as to whether an award of costs is made.
37. We did indeed conclude that Mr Voronov acted unreasonably in taking the claim of victimisation forward. There was a perfectly obvious and rational explanation for his rejection from the shortlist of the job in question and there was no obvious reason why he should have believed there was some ulterior motive.
38. We then had to consider how to exercise our discretion and whether it was appropriate to order him to pay costs.

39. Although the claim of victimisation was a weak one, we were conscious that Mr Voronov had a genuine sense of grievance following on from Mr Cable's rejection of him. He clearly felt he should have been shortlisted and we were satisfied that, to that extent, there was an absence of bad faith on his part.
40. An order for costs is very much the exception before the employment tribunal. Victimisation in particular is a relatively complicated concept and of course Mr Voronov was not legally qualified or represented. In the light of all those considerations, we declined to make an order for costs.

---

Employment Judge Reed

---

Date 7<sup>th</sup> December 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON  
11th December 2020  
By Mr J McCormick

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.