



EMPLOYMENT TRIBUNALS

Claimant: Dr R Masunga

Respondent: Bishop Grosseteste University

Heard at: Nottingham **On:** Thursday 11 March 2021

Before: Employment Judge Blackwell

Members: Ms D Newton
Ms K Mcleod

Representatives

Claimant: In person

Respondent: Mr M Salter of Counsel

Covid-19 statement:

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

RESERVED JUDGMENT

The unanimous decision of the Employment Tribunal is that:-

1. All of the claims of direct discrimination pursuant to the protected characteristic of race fail and are dismissed.

RESERVED REASONS

1. Dr Masunga represented himself and gave evidence on his own behalf. Mr Salter of Counsel represented the Respondents (the University) and he called Dr G Meeson, Mrs J Lindley-Baker, Mrs V Burrows (formerly Thorn) and Professor S Fleming. There was an agreed bundle of documents and references are to page numbers in that bundle. We are also grateful to both parties for providing us with skeleton arguments which also form the basis of their final submissions.

Preliminary point

2. It is the unanimous decision of the Tribunal that Dr Masunga's application to amend so as to include complaints of indirect discrimination as set out at pages 66 and 67 of the trial bundle is refused.

Reasons

3. The history of the matter is as follows. At page 63 of the bundle Dr Masunga filed a document making reference to two claims of indirect discrimination. That led to Employment Judge Heap writing to the parties on 19 December 2019 as follows:

“Your letter has been referred to Employment Judge Heap. She says that the contents will be discussed at the forthcoming Preliminary Hearing. However it is noted that you are advancing your fourth complaint as one of indirect discrimination rather than direct discrimination as was previously understood to be the case. Further information will be needed about the legal basis on which you are advancing that complaint. A table is therefore attached for you to provide the details of that claim and you must complete that and provide a copy to the Tribunal and to the Respondent by no later than 8 January 2020. The complaint will then be considered at the Preliminary Hearing on 15 January 2020 including whether it should be struck out (whether on jurisdictional grounds or by reason of prospects of success) or made subject to a deposit order.”

4. Dr Masunga by way of an e-mail of 6 December forwarded the documents referred to above at page 66 and 67. He makes two complaints of indirect discrimination; the first with an alleged provision, criterion or practice of “being placed in the visiting tutor pool”. The second PCP is said to be re-advertising the same job under the heading Perm 196/2018.

5. There then followed on Friday 5 March 2021 Dr Masunga’s skeleton argument at which he refers at page 6, 7 and 8 to indirect discrimination. The first allegation is recognisable as being the first allegation on page 66.

6. The second allegation on page 8 is an entirely new allegation of indirect discrimination which Dr Masunga accepted a few minutes ago that he did not wish to pursue. He did However wish to pursue the two allegations on pages 66 and 67 which I have set out. Firstly I accept that Dr Masunga is a litigant in person. I also accept that Employment Judge Clark in his decision beginning at page 70 makes no specific reference to indirect discrimination. However he does at paragraph 4 set out what he understood to be the allegations and they are all of direct discrimination.

7. Thus we are faced with an application to amend because Dr Masunga does wish to pursue the claims of direct discrimination. That means that there are a number of factors that we need to consider; the first of which is the nature of the amendment. As Mr Salter correctly submits a claim of indirect discrimination is an entirely different claim to one of direct discrimination involving a different legal framework.

8. The second matter is whether the claim of indirect discrimination would be out of time and the answer to that is plainly they certainly are today and they were well out of time in December 2019.

9. The third point is the nature and timing of the application and it was made during the opening minutes of the full hearing today.

10. We also have to consider the balance of hardship. For Dr Masunga that means he cannot pursue claims of indirect discrimination. However we are entitled to take into account the merits of those claims. It seems to us that there are considerable difficulties with them in particular establishing in either case a provision, criterion or practice. We also note that Dr Masunga has not brought any evidence that is specifically directed at the claim of indirect discrimination. The hardship to the Respondent is are faced with an entirely different claim which would require additional evidence. Inevitably that would mean that we would have to adjourn the hearing and there would be a considerable delay as a consequence.

11. Dr Masunga submitted that Employment Judge Clark was only dealing with matters of time. In other words whether the Tribunal had jurisdiction to hear Dr Masunga's claims were they brought within the relative time frames. That is plainly not true. At paragraph 1.2 at page 71 Employment Judge Clark says:

“Before I could consider the issues for this hearing it was necessary to spend some time ensuring the individual allegations were fully understood.”

12. So it is clear that Employment Judge Clark did understand the allegations to be ones of direct discrimination.

13. There was of course a further case management discussion held before Employment Judge Butler on 22 June, see page 89 and it is clear from paragraph 3 on page 90 that what was being advanced were claims of direct discrimination.

14. In our view then the balance is overwhelmingly in favour of refusing Dr Masunga's application.

Issues and the law

15. These were determined by Employment Judge Clark in a reserved judgment and reasons sent to the parties on 14 February 2020. The issues are as follows:-

4. The Race Discrimination Claims

4.1 It is necessary to start by summarising the 4 claims of direct race discrimination under s. 13 of the Equality Act 2010 advanced by the claimant.

4.2 **The first allegation** – not being given any work.

a) The treatment amounting to a detriment is not being deployed to teach or given any VT work to do.

b) The comparator relied on is an actual comparator called John Ingoldsby, a white VT tutor who was given hours of teaching during that academic year.

c) The claimant seeks to shift the burden to show the difference in treatment was influenced by race relying on inferences being drawn from the conduct of his subsequent complaint; the evidence found in the internal investigation and the acknowledgement of poor communication; and the circumstances of the 2018 advert to appoint additional VT staff.

4.3 **The second allegation** – “deliberate Silence” / not responding to the claimant’s concerns.

a) The treatment amounting to a detriment is the failure of the respondent to reply to his messages and telephone calls and to address his concerns about getting VT work.

b) The comparator relied on is a hypothetical comparator.

c) The claimant seeks to shift the burden to show the difference in treatment was influenced by race relying on inferences being drawn from the conduct of his subsequent complaints and the evidence in the later emails about not offering him any hours.

4.4 **The third allegation** – Having to go through a selection process / be interviewed.

a) The treatment amounting to a detriment is the claimant having to go through an interview / selection process to be considered for VT work.

b) The comparator relied on is an actual comparator called Lois (or Louise) Connolly who was appointed to the VT pool for that year without having to undergo an interview selection process.

c) The claimant seeks to shift the burden to show the difference in treatment was influenced by race relying on inferences being drawn from the handling of his subsequent complaints and the fact that he was later required to re-apply to re-join the VT pool for a second year.

4.5 **The fourth allegation** – Failure to formally investigate his complaints and/or treat them seriously and genuinely.

a) The treatment amounting to a detriment is the respondents failure to investigate his complaints both in September 2018 and January 2019 at all or seriously / genuinely.

b) The comparator relied on is a hypothetical comparator.

c) The claimant seeks to shift the burden to show the difference in treatment was influenced by race relying on inferences being drawn from the handling of his complaints as set out in his schedule.”

16. In relation to the fourth allegation as a consequence of paragraph 2 of Employment Judge Clark's reserved decision it was agreed that the fourth allegation at 4.5(a) should read as follows:

"the treatment amounting to a detriment is the Respondent's failure to investigate his complaints both in September 2018 and January 2019 at all or seriously/genuinely.

Otherwise the allegations are as Employment Judge Clark sets out above.

The law

17. Section 13 Equality Rights Act 2010 - 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.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) If the protected characteristic is sex:-

(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

(7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).

(8) This section is subject to sections 17(6) and 18(7)."

18. Section 136 Equality Rights Act 2010 - Burden of proof:-

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.
- (6) A reference to the court includes a reference to:-
- (a) an employment tribunal;
 - (b) the Asylum and Immigration Tribunal;
 - (c) the Special Immigration Appeals Commission;
 - (d) the First-tier Tribunal;
 - (e) the Special Educational Needs Tribunal for Wales;
 - (f) an Additional Support Needs Tribunal for Scotland.”

19. We further bear in mind the guidance given by Lord Nicholls in the case of **Nagarajan v London Regional Transport** [1999] ICR 877:-

“Many people are unable or unwilling to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant’s race. After careful and thorough investigation of a claim, members of an Employment Tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did.”

20. At the root of every case like this a Tribunal must ask “why did the alleged discriminator act as he or she did? What consciously or unconsciously was his or her reason”.

Findings of fact

21. Dr Masunga is Black. He is a PHD educationalist.

22. The University is a small university having about 150 staff and some 1500 students.

23. Dr Masunga applied for a post at the University in early March 2017. He says and we accept that he applied in response to the document which is at page 121. That document has a number of inconsistencies for example it is described as a permanent job with full time hours yet it also described the post as a visiting tutor and it is common ground that a visiting tutor is neither a full time post nor does it have a permanent contract.

24. Mrs Burrows (formerly Ms Thorn) asserts, which we accept that the advertisement at page 121 is a document concocted by a third party, probably an employment platform or recruiter and that the official advertisement is that at page 120. Amongst other things it refers to standard VT rates and begins as follows:-

“Bishop Grosseteste University Lincoln is seeking to recruit additional visiting tutors to support teaching in the area of Special Educational Needs and Inclusion and Disability.”

25. It also says:-

“It is essential that you are research active and a practitioner and willing to support the growth of research in your area of expertise.”

26. The parties were therefore at cross purposes and this gave rise to a dispute which led to Dr Masunga bringing a claim for breach of contract based on the contention that reading the contract he entered into in December 2017 and verbal representations he was entitled to be paid for a minimum of six hours per week. That claim was struck out as being out of time by Employment Judge Clark.

27. There are three types of tutor at the University, the first being full time permanent tutors who teach, undertake teaching related work and conduct research; the second are fixed term tutors with temporary contracts for around ten months with full teaching responsibilities during that term and they are described as Associate Tutors. And the third category is visiting tutors (VT's). VT's are used as essentially supply teachers with responsibility for teaching a module, a series of lectures, marking or supervision of individual assignments. VT's are also used to support full time tutors where there are absences, sometimes this can be at short notice. In other contexts VT's would be described as being on a bank system or as casual workers or on zero hour contracts.

28. Alongside Dr Masunga five further candidates were shortlisted for interview. They were Ms S McFarlane, Ms S Farrell, Mrs B Goddard, Mr C Bridges and Dr M Bagshaw. Other than Dr Masunga all the candidates were white. Dr Bagshaw did not attend for interview.

29. The interviews took place on 23 March. In accordance with the University's usual policy the notes taken by the two interviewers, Dr Meeson and Mrs Lindley-Baker, the head of the SENDI department (Special Educational Needs, Disability and Inclusion) were destroyed in September 2017 and are thus not available to us.

30. After the interviews Dr Meeson e-mailed Dr Masunga to inform him that he would be entered into the pool of VT's. That e-mail has been lost but we know it was sent because Dr Masunga refers to it in his e-mail of 22 September 2017 at page 141 in which he enquires about being entered upon an induction course.

31. As well as Dr Masunga, Ms McFarlane, Ms Farrell, Mrs Goddard and Mr Bridge were all added to the VT list and Ms McFarlane, Ms Farrell and Mr Bridge were all allocated hours of work. Mrs Goddard went on maternity leave and as a consequence was not allocated any hours but she too was placed in the VT pool.

32. As well as the formal approach which was applied to Dr Masunga as above, there was an informal route by which people were added to the VT list. Such were appointed either because they had already supplied services or were otherwise known to the University.

33. Mr Sean or John Ingoldsby was appointed in that way and was allocated work by Ms Lindley-Baker. Mr Ingoldsby was recommended by Ms Murphy, Ms Lindley-Baker's peer and fellow Programme Leader. His CV is at pages 104/105. He was appointed to a specific task, namely to deliver sessions as part of the "inclusion international/cultural perspectives course".

34. The other example of an informal appointment ie without interview is Ms L Connolly who was recommended to Mrs Lindley-Baker by Dr Meeson. She was not appointed to carry out a specific task but because of her experience in SEND. Her CV is at pages 394-397. Both Mr Ingoldsby and Ms Connolly are white.

35. As a consequence of the interview with Dr Masunga Mrs Lindley-Baker determined that he was not suitable to be deployed as a VT in her programme. However Dr Meeson considered that in the light of Dr Masunga's expertise and research in governance matters he would enter him onto the list of VT's.

36. There was an induction course for VT's held in June 2017 but Dr Masunga was not included because Mrs Lindley-Baker who was organising the course did not do so because she had concluded that she would not offer Dr Masunga any work.

37. After the e-mail at 141 Dr Masunga corresponded with Ms Thorn in HR and was eventually entered onto an induction course held on 22 November 2017.

38. Dr Masunga was entitled to be paid for his attendance but the only route to do so entailed there being a contract in place and one was sent to Dr Masunga (see pages 188-192) which he returned duly signed on 19 December 2017. To put it charitably its drafting is confusing and as we have said above it led to Dr Masunga's contract claim.

39. On 12 January Dr Masunga e-mailed Ms Lindley-Baker at page 198 informing her that he had been on campus but had not met her. He enquired whether there was "any plan going forward". The response he received is at 199 and was an out of office reply.

40. The out of office reply gave an alternative address to which Dr Masunga wrote on 19 January at 2:03 again enquiring if there was any work for him. There was no reply. He was also in correspondence with the University concerning joining an associate fellow programme.

41. Towards the end of January Dr Masunga was paid for the six hours he spent attending the induction course in November 2017.

42. At 212 Dr Masunga e-mailed both Mr Meeson and Ms Lindley-Baker again enquiring about work. He got an out of office reply from both addressees.

43. At page 215 is a rather testy e-mail from Ms Lindley-Baker to Ms Thorn responding to an enquiry by Ms Thorn as to which VT's would return in the next academic year. Ms Lindley-Baker indicates that Dr Masunga would be one of those not returning.

44. On 29 June at page 220 Dr Masunga e-mailed the University as follows:

"I have just come across an advert for Visiting Tutors on the University website and wondered if I needed to apply if I am already in your VT pool?"

45. The response was in the affirmative.

46. On 29 September 2018 Dr Masunga's wife sent an e-mail of complaint to Ms Thorn at 235. The complaint did not identify the identity of the aggrieved person. That was however done in an e-mail of 2 October identifying Dr Masunga as the complainant.

47. There followed some internal correspondence and Dr Meeson and Ms Lindley-Baker approved a response which was sent to Dr Masunga on 15 October at pages 248 and 249. The reply is sent from Sabah Homes the Senior people and OD business partner for the University.

48. The response is courteous and well drafted. In summary it indicates that Dr Masunga was not allocated work by Ms Lindley-Baker as follows:

"As the initial planning was for under graduate courses it was decided to use VT's with greater school experience/professional practice. On this occasion you were not found to be the best fit for available work for the under graduate courses.

The team were reluctant to give an outright reject as an MA course was in the process of validation. This would involve a different skill set for that of the UG course – where it was felt you may potentially be a better fit."

49. It also said as follows:

"We do not believe there was discriminatory treatment or unfair practice present here. We recognise that communication and feedback could have been much better, more timely and more thorough/comprehensive offering you a better explanation at the time as to why work was not offered on this occasion while you were part of a pool of VT candidates. We sincerely apologise for this and have taken on board this learning to improve upon future interactions with our candidates."

50. The response concluded by inviting Dr Masunga to respond by way of either correspondence or a meeting.

51. Dr Masunga responded on 17 October at 251 rejecting the response, maintaining that there was discriminatory treatment. He stated that he wished to make a formal complaint. There was considerable e-mail correspondence between Dr Masunga and Ms Holmes. At one point Dr Masunga indicating that he remained eager to work for the University.

52. Because the parties were exploring whether there was a resolution to Dr Masunga's continuing complaint on 5 November at 261 Dr Masunga indicated that the complaint process could be paused so as to explore the potential solution of available work.

53. It is clear from the internal correspondence that Ms Holmes worked hard with Dr Meeson to explore potential solutions. It is equally clear that Ms Holmes was aware that the University faced a potential claim of race discrimination.

54. On 5 December at 269 Dr Masunga expressed his impatience but agreed to speak to Dr Meeson.

55. At 270 is an e-mail from Ms Holmes of 7 December seeking to ensure that both parties understood each other. As with all her correspondence it is written with courtesy and common sense.

56. It is apparent that Ms Holmes tried to speak to Dr Masunga over the telephone but that failed (see page 272).

57. On 14 December at 274 Dr Meeson made a proposal of work in an attempt at compromise.

58. Dr Meeson and Dr Masunga also spoke over the telephone on 14 December.

59. On 6 January 2019 at page 281 Dr Masunga indicated that he was looking for "something more solid" and Dr Meeson responded on 7 January at page 283 indicating that the hours proposed are for a visiting tutor.

60. On 8 January 2019 at page 284 Dr Masunga indicated that he would not be taking up the University's offer and he wished to proceed with his formal complaint.

61. Dr Meeson passed the matter to the Deputy Vice Chancellor, Professor Fleming.

62. Professor Fleming invited Dr Masunga whom he unfortunately mis-described to proceed by way of the student complaint procedure.

63. By e-mail of 15 January Dr Masunga understandably rejected the student complaint procedure as inappropriate.

64. Professor Fleming then went away to devise a complaints procedure which would fit the particular bill of Dr Masunga. Unfortunately he did not inform Dr Masunga that that was what he was doing. Understandably the procedure required internal approval. That was achieved and by an e-mail of 4 February Professor Fleming wrote to Dr Masunga enclosing the new procedure and inviting him to use it. Dr Masunga did not respond because on that date he had commenced these proceedings.

Conclusions

65. We remind ourselves of the statutory burden of proof provision set out above. We also accept Mr Salter's submission based on the case of **Madarassy v Nomura International Plc** [2007] ICR 867 as follows:

"The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal could conclude that on the balance of probabilities the Respondent had committed an unlawful act of discrimination."

66. Returning to the issues to be determined it seems to us to be logical to consider the third allegation first because it is the one that occurred first in time. The less favourable treatment is Dr Masunga having to go through an interview selection process to be considered for VT work. That statement is not in dispute. Dr Masunga relies on Ms Connolly as the comparator. He could equally well rely on Mr Ingoldsby who was also given VT work without having to go through an interview process.

67. We are also invited to draw inferences from the handling of his subsequent complaints and the fact that he was later required to reapply to re-join the VT pool for a second year. In regard to that complaint that is indeed so, see the exchange of e-mails at page 220. It is clear however that such a response would have been sent to any VT in the circumstances described by Dr Masunga.

68. Pursuant to section 23 of the 2010 Act:-

Section 23 - Comparison by reference to circumstances:-

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

(2) The circumstances relating to a case include a person's abilities if:-

(a) on a comparison for the purposes of section 13, the protected characteristic is disability;

(b) on a comparison for the purposes of section 14, one of the protected characteristics in the combination is disability."

69. We must therefore look at the material we have on the experience and qualifications of both Ms Connolly and Mr Ingoldsby. Ms Connolly's CV is set out at pages 394 to 397. She was a graduate of the University. She has some 20 years' teaching experience of which 13 years is direct experience in relation to SEND. She has spent 8 years heading a school's SEND programme. She also has the responsibility for auditing and monitoring safeguard and SEND provision across academies within the Trust she was employed by. She was thus highly experienced in both practical teaching and at management level in SEND.

70. As to Mr Ingoldsby his CV is at pages 104 and 105. His CV is also to be looked at in the context of the role Ms Lindley-Baker wished him to perform, namely an international IT role. As to the international element Mr Ingoldsby had taught in Kenya, Brunei and the UAE with a total of some 23 years international experience. He had also taught in the UK including holding the position of a primary school Special Educational Needs Coordinator.

71. Turning now to Dr Masunga's CV which begins at page 391 we note that as with most CV's it is generally drafted. Dr Masunga's experience is with secondary school pupils and adults. He is highly qualified academically having a Doctorate in Education and amongst other things a level 3 diploma in Health and Social Care. He has held 5 posts between the period of June 2009 and March 2017. He has not remained in any post for more than 2 years.

72. As Dr Masunga pointed out in his cross examination his CV is generally drafted and in his application beginning at 338 he amplifies his experience for the particular post. We need to remind ourselves what the University were looking for. This is set out at page 120 for example:

"The post requires flexibility, excellent inter-personnel skills and a lively and informed engagement with current issues in the field (ie Special Educational Needs and inclusion and disability). It is essential that you are research active and a practitioner and willing to support the growth of research in your area of expertise."

73. As to research Dr Masunga makes reference to this at paragraph 2 on page 338. However we see nothing in his CV to support his assertion that he is broadening his research skills in areas surrounding inclusive educational and special educational needs. None of the research in his CV supports that contention.

74. At paragraph 4 on page 339 he makes reference to his "excellent knowledge of my experience of international education". Again his CV does not support that assertion. At paragraph 6 also on page 339 Dr Masunga says:

"I have got a merit in inclusive education in its social context at Masters level and a level 3 diploma in health and social care. I also have 8 years of experience working with learners with SEN as a secondary school teacher as well as working with service users who have learning disabilities in residential homes. I believe the unique combination of having relevant qualifications and my experience of working with SEN learners and LD clients is extremely relevant for the visiting lecturer post in focus and therefore makes me suitable for this role."

75. Again apart from the Masters degree and the level 3 diploma there is nothing in his CV to support that contention. For example his experience in secondary schools is less than 4 years over 3 different posts.

76. In relation to the third allegation we are also invited to consider the handling of his complaints and to draw inferences from that.

77. In this context the second allegation is also relevant. So we shall consider those two allegations in chronological order ie the second allegation first and consider what inferences can be drawn.

The second allegation

78. This is described as deliberate silence and the less favourable treatment is the failure of the University to reply to Dr Masunga's messages and telephone calls and to address his concerns about getting VT work.

79. The facts we have set out above in summary Dr Masunga sent 3 e-mails at pages 198, 203 and 212 to which he received no substantive response. As to telephone calls Dr Masunga asserts that he made a number of such calls to Dr Meeson and Ms Lindley-Baker. There is however no documentary evidence to support that contention and we find it surprising that there is no such evidence given the concerns that Dr Masunga now expresses about the "deliberate silence".

80. Dr Meeson's explanation in cross examination was in effect that he was too busy and that he had overlooked Dr Masunga's e-mails. Ms Lindley-Baker evidence was to the effect that it was Dr Meeson's responsibility to respond because:-

(a) He was the head of the department.

(b) It was he who had included Dr Masunga on the VT list, she having decided that he did not fit her requirements. She also said that she did not wish to get into a dialogue with Dr Masunga because that might give him false hopes.

We accept those explanations.

Fourth allegation

81. We have set out above in The Findings of Fact the chronology. In summary the original complaint was dealt with within 11 working days, ie between 2 October 2018 and 15 October 2018. There then followed from a period of some 3½ months from 17 October, the point at which Dr Masunga rejected the University's response to the original complaint and 4 February 2019, the date on which a complaints procedure was sent to him and also the date on which he began these proceedings. Much of this period was taken up by the parties seeking to compromise a potential race discrimination claim. Some of the delay is at Dr Masunga's door, for example between 14 December 2018 when Dr Meeson made a formal offer and 8 January 2019 when Dr Masunga rejected that offer.

82. Overall we consider that Dr Masunga's complaints were dealt with timeously. They were certainly taken seriously and Ms Holmes and Dr Meeson genuinely attempted to reach a compromise with Dr Masunga.

83. Therefore in relation to the fourth allegation we find that there was no less favourable treatment because the complaints were dealt with both promptly and, objectively viewed, seriously and genuinely.

The first allegation

84. It is not disputed that all of the candidates who attended for interview alongside Dr Masunga were white and that 3, namely Ms McFarlane, Ms Farrell and Mr Bridge were given VT work to do. As we have said above Mrs Goddard would also have been given work but was prevented from doing so by her maternity leave. Again in our view it is necessary to look at the experience and qualifications of these candidates in the context of the University's requirements as set out at page 120.

Mrs S McFarlane

85. Her application form begins at page 347 and her CV at page 351. Academically she has an MSC in psychology and a number of other post graduate qualifications all directly relevant to SEND. She has 3 years direct teaching experience in SEND and a further 3 years' experience of working for Nottingham City Council advising and supporting local mainstream schools in the Inclusion, Education and Supports for Students identified with learning difficulties. She oversees 15 schools. She has attended specialist courses organised by the British Dyslexia Association and the Downs Syndrome Association. She is responsible for the operational running of the City Council's SEN/Learning Support Department and managing 5 SEN specialist staff.

Ms Farrell

86. Her application begins at page 356 and her CV at page 360. Academically she has a Master of Education degree, an advanced diploma in Special Educational Needs, an Advance Certificate in Special Education. In terms of experience she has 25 years' teaching experience of which some 20 years' is experience of working in the field of SEN both within schools and within a training and consultancy role. She has a particular specialism in Autism and has developed Relationship and Sex education programs for learners with complex needs.

Ms B Goddard

87. Her application form begins at page 365 and her CV at page 369. In academic terms she is a qualified teacher and has a Masters degree in Child Law. She has 10 years' experience direct teaching experience in the SEND field and currently works with Lincolnshire County Council managing a team of case workers and assistant case workers and is responsible for overseeing approximately 1,000 children and young people with statements of Special Educational Needs. She is also involved with the preparation and hearing of Tribunal cases in the SEND field.

Mr C Bridge

88. His application form begins at page 374 and his CV is at page 378. Mr Bridge is an educational psychologist with an MSC in that field. He has 6 years' classroom experience. He is currently employed by Lincolnshire County Council as an educational psychologist working with families. His work is rooted heavily in special needs and young people 0-25. He is also the father of a child with cerebral palsy and has been the recipient of services around special needs.

89. It was Ms Lindley-Baker's decision to select these 4 candidates for work and not to select Dr Masunga. Her evidence was that in interview Dr Masunga did not provide strong responses to the questions put. She commented on the fact that there was little continuity in his employment history. She further commented Dr Masunga could not provide an example of where he had identified implemented and evaluated effective SEN teaching.

90. For the reasons set out above we do not have the interview notes. However we have carefully considered their respective applications and CV's of the five candidates including Dr Masunga who were interviewed on 23 March 2017. Set against the selection criteria set out at page 120 we are of the view that objectively judged Ms Lindley-Baker's conclusions are supported by the documentary evidence to which we have referred. In our view all four of the selected white candidates are a much better fit. We accept that Dr Masunga is the only candidate with a doctorate but it seems to us that this is far outweighed by the direct experience of the other candidates.

91. We accept therefore Ms Lindley-Baker's rationale for not selecting Dr Masunga because it is supported by the facts. In summary therefore our conclusions are as follows:-

First allegation

92. There was less favourable treatment but Dr Masunga has not proven facts from which we could decide in the absence of any other explanation that the University has contravened section 13 of the 2010 Act.

Second allegation

93. There was less favourable treatment in that the University through Dr Meeson and Ms Lindley-Baker should have explained to Dr Masunga in response to his e-mails why he was not to be offered work. However there is no evidence from which an inference could be drawn that the failure to communicate was influenced by Dr Masunga's race. We accept Dr Meeson's evidence that he simply overlooked the e-mails and Ms Lindley-Baker's evidence that she regarded it as Dr Meeson's responsibility.

Third allegation

94. There was less favourable treatment in that Dr Masunga did have to go through an application and interview process when Mr Ingoldsby and Ms Connolly, both white, did not. We accept that there was an informal route to appointment where candidates were known to the University. Again it can be seen from their respective CV's that they were both better suited to roles within the SEND department than Dr Masunga. Again there are no facts from which an inference can be drawn that the decision to appoint Ms Connolly and Mr Ingoldsby by an informal process and not Dr Masunga was influenced by their respective race.

Fourth allegation

95. We have found that there was no less favourable treatment at all.

96. It follows therefore that all of Dr Masunga's claims of direct race discrimination fail and are dismissed.

Employment Judge Blackwell

Date: 29 March 2021

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