



EMPLOYMENT TRIBUNALS

Claimant: Mr L. Garcia

Respondent: Landbased Limited, trading as J.P.Pharmacy

**London Central
Employment Judge Goodman**

11 May 2021

ORDER

The claimant's application dated 4 March 2021 for reconsideration of the decision dismissing the application for reconsideration dated 17 February 2021 has no reasonable prospects of success and is dismissed .

REASONS

1. At an open preliminary hearing on 29 January I dismissed the claim of direct and indirect race discrimination which arose from an unsuccessful job application where the respondent asked for Romanian speakers. The decision was sent to the parties on 2 February 2021.
2. On 17 February 2021 the claimant applied for reconsideration under rule 70. I refused the application under rule 72 on grounds that there was no reasonable prospect of success. That decision was sent to the parties on 18 February 2021.
3. On 4 March the claimant applied for reconsideration of this decision on the basis in part that he had not completed the application to reconsider when he sent it on 17 February, and I should have waited longer. He also argues that the decision to strike out was wrong.
4. This application was only sent to me by London Central on 5 May 2021. I should add that the EAT sent me direct an email on 24 April, after the claimant had lodged an appeal, saying "please see attached", but regret I did not open all the emails nested within the second attachment, and so did not appreciate that it contained a second application.

5. The law relevant to reconsideration is summarized in the refusal of reconsideration decision sent on 18 February, and I refer to that, rather than repeating it here.
6. The first application to reconsider concerned a document not produced to the tribunal for the hearing. In answer I explained why it made no difference to the decision that the claim had no reasonable prospect of success.
7. In the 17 February application the claimant said he would send “other chapters” of his application shortly. There was no reference to when this would be, nor was there an application to extend time for his reconsideration application, nor any explanation of the hold up. The application was very full, not a barebones holding application. It was made at the outside limit of the 14 days allowed to seek reconsideration. Any additional application would have been out of time. I do not consider the decision to have been premature. I had a full diary of hearings for the next few weeks and was aware that if not decided then, the claimant may have been driven to the appeal deadline without it.
8. The 4 March application does not explain why the claimant could not (and did not) send anything more by or after 17 February. It is itself made at the very end of the 14 days for seeking reconsideration of the first reconsideration decision.
9. I cannot see any argument in the 4 March application indicating that the interests of justice require reconsideration, save by implication that it should have been recognized that his first application was incomplete and there was more to come. So far as I am aware nothing more came until 4 March.
10. The claimant suggests perhaps there was no screening question (speaking Romanian) in the online application. This cannot be right because he answered it, as shown in the print out. He seems to suggest that perhaps the successful candidate was not asked this question. This is entirely speculative, and may be based on the respondent saying (which the claimant disputes) that the successful candidate was Italian. It is hard to see how that shows he was discriminated against on grounds of national origin. The requirement he complains about was a requirement to speak Romanian, and he said he could speak it. That does not show less favourable treatment than someone who was not asked the question.
11. He then takes up the earlier argument that the respondent will have suspected from his CV that he did not have any Romanian, by adding that they will have read the covering letter in which he did not mention language competence. As before, I consider it far fetched that an employer faced with over 200 applications for a basic skills job will read all the CVs and all the covering letters with close and suspicious attention to decide that perhaps the claimant’s statement that he did speak Romanian was not true, because he did not refer to it in his covering letter. As this question had already been answered on the website, an employer by that stage would have been looking at other qualities making him suitable or unsuitable for employment.

12. In any case, these are points for appeal. They are not of the character of failing to hear a party when a point is argued, or new evidence that could not have been foreseen at the time, which give rise to reconsideration. The interests of justice also require finality. If I am mistaken about the law or its application, that is for the Employment Appeal to decide.

Employment Judge GOODMAN

Date : 11th May 2021

JUDGMENT SENT TO THE PARTIES ON

11/05/2021.

FOR THE TRIBUNAL OFFICE