Case No: 2205106/2019

EMPLOYMENT TRIBUNALS

Claimant: **Professor R Carter**

Respondent: **University College London**

Heard at: **London Central** **On:** **17-18 August 2020**

Before: **Employment Judge Emery**

Representation
Claimant: Ms. K Hosking
Respondent: Mr. E Williams QC

UPON APPLICATION made by letter dated 7 October 2020 to reconsider the judgment under rule 71 Employment Tribunals Rules of Procedure 2013:

PRELIMINARY HEARING JUDGMENT

The Preliminary Hearing Judgment is confirmed.

REASONS

1. On 7 October 2020 the respondent applied for a reconsideration of the Preliminary Hearing Judgment. The reconsideration application refers to an email the respondent's lawyers sent to the Tribunal on 20 August 2020, following the Preliminary Hearing which took place on 17-18 August 2020. The 20 August 2020 email discloses an email dated 22 January 2017 from the claimant to members of the UCL-Q's management and HR team (Mr. Evans, Ms. Balogun and others), and other emails dated 25-6 January 2017 between the same.

2. I have no record of receiving the 20 August 2020 email or its attachments or the application for reconsideration until they were sent to me by email on 20 April 2021. I have since considered the Hearing Bundle, my notes of evidence, the submissions and witness statements as well as the 20 January 2020 email and the reconsideration application and documents referred to therein.

3. The position of the parties as set out in the 20 August 2020 email is that the application to adduce the 22 January 2017 email is made by consent and both parties make submissions on the meaning of the 22 January 2017 email. I therefore accepted it was in the interests of justice and clearly proportionate with the overriding objective to consider the 22 January 2017 email and the documents provided along with it and the parties' submissions. I also considered the respondent's submissions it makes in its reconsideration application on the meaning and implications of the 22 January 2017 email.

4. I have not considered in detail the issue of timing of disclosure of this email as set out in the respondent's reconsideration application. But, the 22 January 2017 email is a document clearly of relevance to issues in the case, the claimant would undoubtedly have been taken to it in his evidence, it should have been disclosed earlier. I note that emails on similar issues were disclosed by the respondent early on the 2nd day of the PH.

5. The 22 January 2017 email is titled *"response to 1-2-1"* and states:

> *"… I have been considering the options presented to me at the 1-2-1 last week, and this is my informal response, prior to further discussion.*
>
> *I am not satisfied with the title "Professorial Research Associate", and prefer my current title to be retained. If there has to be a change because the current post is to be deleted, I ask that it is very similar to my current title, and that it avoids the terms "professorial" and "associate"….*
>
> *I also note that there is no clear indication that I will be kept on until the end of my research project … A confirmed minimum timescale will also allow me to plan schooling for my children, to minimise disruption.*
>
> *The third issue is that it is UCL policy for a sabbatical to be considered for one term after three years … . In my case six full years would have been completed by September 2017. I consider that a sabbatical is justified in order to maximize the outcomes of my research, which until now has been hampered by my extremely heavy teaching and administrative workload. …*
>
> *I am therefore prepared to maintain or take up a position with the same job specifications as those given in the current proposed job description, but on the condition that:*
> *• My current job title is retained, or something very similar.*
> *• The position is guaranteed to last at least until the end of my current grant (at least the end of January 2019).*
> *• At least two terms of it can be taken as sabbatical leave. …*
>
> *Regarding Statute 18 and the taking up of a non-academic position, I am willing to consider renouncing Statute 18 provided the conditions I listed above are met. …"*

6. The respondent submits that this email and relevant other documents to which it refers in its 20 August 202 email shows the claimant:
    a. understood that a condition of the new role was that he would be renouncing statute 18
    b. understood he would be taking a non-academic position, a research role where statute 18 did not apply, distinguished from his 'academic' role
    c. got two out of three of his requests set out in the 22 January 2017 email
    d. *"has not been able to be cross-examine[d]"* by the respondent, his vague recollection about statute 18 continuing to apply is not credible and he knew Statute 18 no longer applied.

7. The claimant's response is that this was a negotiation, it was a conditional offer, his conditions were not met; *"…**This** email therefore does not support an inference that Professor Carter renounced Statute 18, because it is clear that his conditions for doing so were not met."*

8. As I heard no evidence on the 22 January 2017 email, I can only take what it says at face value. The claimant references, the *"options presented to me"*, that he was not satisfied with various issues; he complains that he was no longer going to have the title of "*Professor",* and that he was not prepared to renounce this title. He explicitly states that he is not prepared to accept a job title with *"professorial"* in it, as this *"…implies something like a professor but not actually a professor."* and he sets other conditions including a sabbatical. The last sentence states, *"Regarding Statute 18 and the taking up of a non-academic position, I am willing to consider renouncing Statute 18 provided the conditions all listed above are met…".*

9. Between this 22 January 2017 email and his email of acceptance at 09.34 on 26 August 2017, the claimant had a further meeting, he had gained more information, he received clarification that the precondition of his remaining a Graduate Tutor was being *"an experienced member of the academic staff of UCL"*. The claimant's carefully worded email of acceptance refers to meetings and emails, but not to the 22 January 2017 email.

10. Accordingly, events had moved on between the 22 January 2017 email and his acceptance of 26 January 2017, including a suggestion at least some of his duties would remain academic in nature. Legally, the 22 January 2017 email appeared to me to be an "offer" to renounce statute 18 "if" certain conditions were met, and clearly very important to the claimant "conditions" of job title and sabbatical were not met.

11. However, I also accepted that the words he was prepared to renounce Statute 18 carried some force, given the respondent's position is that it was clear to the parties that Statute 18 did not in fact continue to apply to the claimant under his new role. I carefully considered the claimant's witness statement and the evidence at the Preliminary Hearing and the documents on this point. I note the contents of paragraph 46 of the PH Judgment, that the claimant was told that 'researchers' do not follow Statute 18 and his new role would not be an academic role, as he appears to accept in the 22 January 2017 email, again giving some credence to the idea that Statue 18 would no longer apply was accepted by the claimant this time.

12. I also considered the claimant's witness evidence which refers repeatedly to the stress he was under during this period, including his not receiving any union advice during the negotiations. I accepted this evidence and it is likely that the 22 January 2017 email, which was his first response to the 1-2-1, was written under such conditions.

13. The full wording of the final sentence of the 22 January 2017 email does bear some consideration: *"Regarding Statute 18 and the taking up of a non-academic role…".* Subsequently the respondent had clarified to him that a Graduate Tutor must be an experienced member of the respondent's academic staff (paragraph 47 PH Judgment). His evidence was that from his date of agreement onwards his position, as an academic or not, was ambiguous. He refers to time and a heavy workload playing its part in not seeking further clarification (paragraph 53 PH Judgment). He received his contract documents some months later and none of them make reference to the claimant losing the provisions of Statute 18, instead that Statutes were to continue to apply *"insofar as these are applicable"* (134). Notwithstanding the 22 January 2017 email, I continue to accept his evidence that he viewed

this documentation at the time as *"contradictory and evidentially inaccurate"* (paragraph 53 PH Judgment) and I concluded that the 22 January 2017 email wording did not change the claimant's position, that from 26 January 2017 onwards he did not consider he had renounced Statute 18, instead he regarded the position on Statute 18 as unclear and ambiguous.

14. I also accepted his view was accurate that he retained at least some elements of his academic role, and I also accepted Professor Rehren's evidence on this issue (paragraph 47 PH Judgment). The ambiguity, the pressure of work thereafter amongst other issues, meant that he let the issue of his formal academic status lie (paragraph 53 PH Judgment). I considered that these findings are not affected by the contents of the 22 January 2017 email.

15. Accordingly, the Preliminary Hearing Judgment is confirmed.

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11 May 2021

Employment Judge Emery

JUDGMENT SENT TO THE PARTIES ON

13/05/2021..

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FOR THE TRIBUNAL OFFICE: