



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Miron

**Respondents:** 1 Adecco UK Ltd  
2 Whitman Laboratories Ltd

**Heard by Cloud video** On: 9 April 2021

**Before:** Employment Judge Reed

## **Representation**

**Claimant:** In person

**First Respondent:** Mr R Hayes, in-house lawyer

**JUDGMENT** having been sent to the parties on 27 April 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. This was a preliminary hearing to address two matters. Firstly, the claimant Mr Miron invited me to make a reference to the Court of Justice of the European Union (CJEU). He wished the tribunal to seek guidance from that body in connection with the identification of the correct comparator for a claim of discrimination.
2. The other matter I was called upon to determine was the respondent's application for deposit orders in relation to four distinct claims that he made.
3. I heard submissions from both parties and made the following determinations.
4. I do not have the power to refer matters to the CJEU. The UK has now left the European Union and the power to make such a reference exists only in

very limited circumstances (principally relating to the withdrawal agreement).

5. Even if I had that power, I would not have been inclined to exercise it in this case. The claimant seeks in effect a determination from a higher court as to what an appropriate comparator might be. He is well able to make representations on that subject at the final hearing in this matter before the employment tribunal, in November. It may well be that the tribunal accepts his submissions which brings an end to that matter. If he has the “wrong” result, he can appeal the matter to a higher court. There is no requirement for this matter to be considered by any higher court at this stage.
6. I now turn to the deposit orders. I have the power to make an order that the claimant should pay a deposit of up to £1000 as a condition of taking forward an allegation or argument. There were several matters in respect of which deposit orders were sought.
7. The claimant was employed by the first respondent and worked at the site of the second respondent. He appeared to say that his being removed from the site in question and not restored amounted to discrimination against him by the first respondent on the ground of his race or sex. However, Mr Miron indicated that his actual claim was slightly different from that, namely that inadequate efforts were made by the first respondent to persuade the second respondent not to give a direction that he should be removed from site. He accepts that if they did make reasonable efforts and failed to persuade them, then a direction to move him essentially would have to be obeyed. Compliance with that direction could not give rise to a cause of action in itself.
8. That is a matter which has to be determined upon the hearing of evidence. Mr Hayes suggested that no efforts were made by the first respondent. If that was the case it makes the first element of Mr Miron’s case relatively straightforward. He then has to persuade the Tribunal that the reason for that failure was related in some way to his race or sex.
9. I would have, effectively, to try the case in order to take a view as to the likelihood of him succeeding in that contention. That was not an appropriate task to undertake at a preliminary hearing and I was therefore not inclined to make a deposit order in relation to that matter.
10. Similar considerations apply to the claimant’s contention that the first respondent victimised him by failing to find him assignments, having been removed from the second respondent’s site. In order for me to take a sensible view on that I would have to investigate what efforts were made, what vacancies were available, what restrictions the claimant had put on his availability and how they might have impacted on the efforts made by the first respondent. Again, those are matters that must be determined upon the hearing of evidence at the final hearing.
11. Similarly, the claimant says that the first respondent failed to offer him jobs that were available. At some stage if they have done so a point must be reached where it is reasonable for any impartial bystander to conclude that the employment has terminated. The actual agency of that termination was

an interesting point and is one that the tribunal can investigate at the final hearing but it was not something upon which sensibly I could take a reasonable view at this stage.

12. For all those reasons I concluded that it was not appropriate for any deposit orders to be made.

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Employment Judge Reed

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Date: 24 May 2021

REASONS SENT TO THE PARTIES ON  
08 June 2021  
By Mr J McCormick

FOR THE TRIBUNAL OFFICE

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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