



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr B Ganji  
**Respondent:** University of Reading  
**Heard at:** Reading **On: 17 May 2021**  
**Before:** Employment Judge Gumbiti-Zimuto  
Members: Mrs D Ballard and Mr A Morgan

## Appearances

**For the Claimant:** Not attending not represented  
**For the Respondent:** Ms C Ibbotson, counsel

*"This has been a remote hearing not objected to by the parties. The form of remote hearing was court video platform. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing."*

## JUDGMENT

The claimant's complaint is not well founded and is dismissed.

## REASONS

1. In a claim form presented on the 30 October 2019 the claimant complained of direct race discrimination in respect of his non-appointment to the position of lecturer in international security. The respondent denied the claimant's complaint.
2. The case management summary following a hearing on the 22 April 2020 stated:
  - (7) *In respect of his direct discrimination claim the claimant describes his national and ethnic origin and being Iranian. He contends that the respondent was aware of his national ethnic origin at the time of the decision not to appoint him to the role due to (i) his name, (ii) his description of himself (in his application) as being a native Persian speaker and (iii) his*

*history of research interest in and publications in relation to Iran.*

- (8) *The claimant's comparators are (i) the person appointed to the role, and (ii) a hypothetical comparator whose national or ethnic origins are the same as those of the person appointed to the role but whose skills and experience were those of the claimant.*
- (9) *The claimant said that he would rely on the following support of inferences that this non-appointment was a matter of race discrimination; (i) that the individual appointed did not have experience of supervising MA or PhD students (when this was supposedly a requirement for the role), (ii) that the individual appointed to the role had published articles mainly in his own journal rather than more widely (when a history or publication in 3\* and 4\* journals was supposedly a requirement of the role), and (iii) that the person appointed to the role was not a specialist in security studies (which was supposedly a requirement of the role).*

3. The claimant has made a number of applications for a postponement of this hearing. The applications have been refused. In a number of emails sent to the Employment Tribunal 17 May 2021, yesterday, the claimant made further applications for (a) an adjournment of the hearing, and (2) to strike out the response. The claimant also stated that he would not be attending today's hearing because he was appealing earlier case management decisions with which he disagreed including the refusal of the postponement application and orders for disclosure. The application for a postponement has been previously considered on the same grounds as those presented today and was refused, including an application on the basis that the claimant wishes to appeal. There are no new grounds for a postponement of the case, the circumstances have not changed so as to justify reconsideration of the decision already made to refuse the postponement application. The claimant has refused to participate in the proceedings today, he explains his position as follows in an email sent to the Employment Tribunal at 13:31 on 17 May 2021

"The Claimant also reiterates for the record that his non-attendance was due to the fact that this would have been tantamount to waiving his access to due process and might have been construed as being tantamount to tacit compliance with the judgments against which he has appealed. Hence the Claimant's decision to e-mail and telephone the Employment Tribunal to apply for the postponement of the hearing."

4. We refused the claimant's application for a postponement because the application has previously been considered on the same grounds and refused. The circumstances as they exist today do not justify a postponement of the case.

5. The claimant has also made an application for the response to be struck out. We considered the claimant's application to strike out the response and refused the application. In refusing the application we take into account the following matters which involve consideration of all the circumstances of the case.
6. Rule 47 of the Employment Tribunals Rules of Procedure provide that, *"If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."* The respondent asked that we proceed with the hearing.
7. The claimant's application to strike out the response is set out in a document running to 48 pages and a further document running to 18 pages. The application to strike out the response is without merit and is dismissed. We have taken into account the contents of these documents in coming to our conclusions on the merits of the claim. The application to strike out the response is refused because there are no grounds justifying striking out the response established. The various matters relied upon either do not justify a strikeout of the response because they involve resolution of factual issues to be decided in the case or to the extent that they might be capable of justifying an order to strike out the response they have not been established by the claimant.
8. The claim form presented by the claimant included the following in section 9.2
  1. Compensation for Reading University's blatant breach of the terms of the 2010 Equality Act. It denied me the opportunity to be employed as a lecturer and even failed to investigate my complaint properly. Even a cursory glance at my record as a scholar- practitioner in the field of international security would have indicated that I would have made a major contribution to enhancing the status of the department of politics and international relations at Reading University....
  2. Given the fact that racial discrimination against people of Iranian origin is rife in the UK, it will take me a long time to be able to secure a similar type of position in the academe. The available evidence collected by researchers shows that highly qualified Britons of Iranian origin are frequently discriminated against for no reason other than racial prejudice. The available evidence also shows applicant who are of Middle Eastern origin have to apply for 90 percent more jobs....

The claimant has also provided detailed grounds of complaint setting out his version events.

9. The claimant did not attend the hearing and the claimant did not provide any witness statement evidence to support his case. The claimant has refused to provide a witness statement. We have taken into account the documents that

have been provided by the claimant, including his application to strike out the response.

10. We find the following has been established by the evidence presented by the parties.
11. The facts as they appear in this matter are as follows:
  - 11.1 In May 2019 the respondent advertised for a lecturer in international security in the School of Politics Economics and International Relations. The respondent received 65 applications including one from the claimant.
  - 11.2 The each member of the recruitment panel read all 65 applications and met on the 4 June to prepare a shortlist of candidates and produced a shortlist of candidates.
  - 11.3 The claimant was not shortlisted.
  - 11.4 Mr Shanahan accepts that it was possible for him to surmise that the claimant was Iranian. Mr Shanahan was adamant that the claimant's race was not a relevant consideration when the application was considered.
  - 11.4 In his application to strike out the response the claimant states that the respondent made a false claim that the claimant had not been shortlisted, and that in fact on 21 April 2021 the respondent disclosed information that showed that he had in fact been shortlisted. The claimant referred to a 'document 9' which the claimant says makes clear that members of the selection panel wanted to shortlist the claimant for the post.
  - 11.5 The claimant is wrong about this: the correct position was explained by Mr Mark Shanahan.
  - 11.6 The 'document 9' is a screen print from the respondent's applicant tracking system called Jobtrain. Applicants submit their applications online via Jobtrain. The applications are available for the managers responsible for the recruitment of the post to view.
  - 11.7 Mr Shanahan describes the shortlisting process at paragraphs 6-8 of his witness statement.
  - 11.8 In oral evidence Mr Shanahan states that the shortlisting panel discussed all the applicants. Mr Shanahan had made "scribbled notes" notes in respect of each of the candidates to use as an aide memoir or talking points to sat the shortlisting discussion with the panel. The notes have been produced in evidence and disclosed to the claimant. Mr Shanahan described this as a "fairly informal process where we looked at each candidate in relation to job specification, noting where

the candidate met or did not meet the job specification". The shortlisting panel did not use the Jobtrain system to record the shortlisting process. The 'document 9' does not show that the claimant was shortlisted, what it shows is that the system was not used in the claimant's case. A print out of the Jobtrain screen for each of the 65 candidates would have shown the same details as that for the claimant. Mr Shanahan confirmed that the claimant was not shortlisted.

- 11.9 The panel was unanimous that the claimant's application did not demonstrate the essential requirements of the person specification and was therefore not appropriate to be considered for shortlisting. The claimant's application did not provide evidence of the essential skills required for the job. The claimant's application did not meet the essential 'relevant experience' requirements of the person specification.
- 11.10 The successful candidate was Dr G.
- 11.11 The panel was unanimous in deciding that the successful candidate's application demonstrated the essential requirements of the person specification and was also able to meet some of the desirable requirements of the person specification. Dr G's application was therefore shortlisted for the job. Dr G's application met the essential skills required for the job. Dr G's application provided evidence that he had successfully achieved a PhD in International Relations from LSE and had an appropriate publication record for his career level. Dr G's application demonstrated that he had internationally-recognized expertise in International Security. Dr G's application evidenced that he was a team player; was highly motivated; was personable in engagements with students, colleagues and wider stakeholders; had enthusiasm for teaching at all levels, including a post-graduate teaching qualification. Dr G's application provided evidence for some of the desirable requirements of the role. Dr G's application was detailed, focused and at every stage aligned his skills to the job description and person specification.
- 11.12 The claimant stating that he wanted to know why his application had been rejected and what were the qualifications and experience of the successful candidate. Mr Shanahan wrote to the claimant and explained that the application process was on-going, and the claimant would be informed of the outcome once a final decision had been made. Although it is not standard practice to provide feedback to candidates other than those who have been shortlisted, the claimant was provided with feedback on his application. Mr Shanahan set out some of the essential job requirements considered to be at the core of the job that his application did not meet.
- 11.13 Following receipt of the response from Mr Shanahan the claimant complained about his rejection. The complaint was investigated by Professor Kambhampati who found that the claimant's application did

not meet the minimum 'essential' requirements for the role as set out in the person specification and she did not consider that the recruitment panel had acted in error in rejecting the claimant's application. After the claimant was informed of the outcome of the investigation the claimant complained for the first time about discrimination on the 4 September 2019.

12. An employer must not discriminate against an employee by dismissing him or subjecting him to any other detriment. An employer discriminates against an employee if because of his race he treats the employee less favourably than he treats or would treat others. Race includes colour, nationality ethnic or national origins. Where the employee seeks to compare his treatment with that of another employee there must be no material difference between the circumstances relating to each case.
13. If there are facts from which the employment tribunal could decide, in the absence of any other explanation that the employer contravened the provision concerned the employment tribunal must hold that the contravention occurred. However, this does not apply if the employer shows that it did not contravene the provisions.
14. The claimant bears the initial burden of proof; he must prove primary facts, on the balance of probabilities, which could show, or from which the Tribunal could properly draw an inference that, he has been discriminated against. It is only if the claimant manages to establish an initial case that the burden of proof shifts onto the respondent, who must then prove on the balance of probabilities that the treatment complained of was "*in no sense whatsoever*" because of the claimant's race. The burden of proof does not shift to the respondent simply by the claimant showing that he was treated less favourably than a comparator, "*something more*" is required.

### **Conclusions**

15. The respondent contends that the claimant has not discharged the initial burden of proof because: (i) his actual comparator, Dr G who was appointed to the role, was not in the same circumstances in all material respects given that Dr G's application showed that he possessed most of the required skills whereas the claimant's application did not, (ii) he has failed to identify anything from the surrounding circumstances from which it can be inferred that he has been treated less favourably than a hypothetical comparator, and (iii) he has failed to identify the "something more" which is required in order to shift the burden of proof.
16. The respondent further contends that that the respondent can prove on the balance of probabilities that the reason that the claimant was not appointed was not his race but rather that the claimant's application did not meet many of the selection criteria. In particular, the claimant failed to demonstrate that he had the required skills or experience.

17. The claimant has not given any evidence. The Tribunal has however considered the claimant's detailed grounds of complaint and also the application to strike out the response. From these documents we can see the claimant's case is based on a rejection of the respondent's position that the claimant failed to evidence his suitability for the role in his application form. The claimant further contends that the respondent was wrong to treat his application as not meeting the selection criteria when the respondent compared it to the successful candidate.
18. Notwithstanding the claimant's contentions as set out in the documents referred to we have not been able to conclude that the respondent's evidence is impugned. The claimant has not given evidence and chose not to attend the proceedings and so provided no direct challenge to the evidence produced by the respondent. The account given by Mr Shanahan was clear and cogent on his reasons why the claimant was not shortlisted. The claimant's suggestion that he was initially shortlisted is based on a mistake on his part as to the meaning of the screen shot 'document 9'. The claimant has not shown that there is evidence from which we could conclude that the claimant was treated less favourably.
19. The claimant's complaint is not well founded and is dismissed.

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Employment Judge Gumbiti-Zimuto  
Date: 1 June 2021

Sent to the parties on: ..15 June 2021..  
THY

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For the Tribunals Office

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