



EMPLOYMENT TRIBUNALS

Claimant: Mr M Kler

Respondents: 1. Desap Enterprises Limited
3. Ilyas Isik

Heard at: Manchester (remotely, by CVP)

On: 8 November 2021

Before: Employment Judge Whittaker

REPRESENTATION:

Claimant: In person

1st Respondent: Mr R Archbold (Director)

3rd Respondent: In person

JUDGMENT

The complaint of the claimant contrary to section 13 of the Equality Act 2010 as identified at paragraph 19 of the further and better particulars of claim supplied by the claimant relating to the comment made by Mr Archbold that he did not believe in God is struck out on the basis that it has no reasonable prospects of success.

REASONS

1. This judgment was made by the Tribunal during the course of a preliminary hearing held on 8 November 2021. Mr Archbold told the Tribunal that he did indeed make the remark, but it was neither directed at nor involved the claimant in any way. Mr Archbold told the Tribunal that it was a comment which was made in the course of a conversation between himself and another employee, Kelvin Mwangi. Mr Mwangi is of Kenyan origin and his religion is that of a Christian. Mr Archbold was adamant that this was a conversation simply between himself and Mr Mwangi and that Mr Kler was not a party to that conversation at all. The claimant when questioned about this agreed that it was not a conversation in which he was involved at all. The claimant simply indicated that he had overheard what Mr Archbold had said to Mr Mwangi.

2. The Tribunal noted that Mr Mwangi was both of a different race to the claimant and also had different religious beliefs. The claimant suggested to the

Tribunal that if Mr Mwangi had been John Smith and he had not been of Asian origin as the claimant is, and had not been a Muslim as the claimant is, that the comment would not have been made and that on that basis the claimant was treated less favourably because of his own racial origins and because of his own religious beliefs. The Tribunal rejected this as a relevant comparison. It was very clear that Mr Mwangi was the relevant comparator. The comment was not made because of the claimant's race or religion at all. Indeed the comment was utterly relevant to the race and religion of the claimant. It was a comment which was made in general conversation and was not a comment which related in any way either to the race or to the religious beliefs of either the claimant or anyone else.

3. On that basis the Tribunal was fully satisfied that the claimant would be unable to satisfy any of the requirements of the statutory wording of section 13 of the Equality Act 2010. On that basis the claim had no reasonable prospects of success. It was therefore struck out on that basis and will proceed no further.

Employment Judge Whittaker

Date: 17th November 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

22 November 2021

FOR THE TRIBUNAL OFFICE

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