



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Shafqat

**Respondent:** (1) BGC Technology International Ltd  
(2) HW Technology Solutions Ltd

**By CVP**  
**On:** 10 June 2022

**Before:** Employment Judge Martin

**Representation**  
**Claimant:** In person  
**Respondent:** Mr Purnell – Counsel (R1)  
No attendance (R2)

## RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's claim of discrimination on the grounds of disability is not well founded and is dismissed.

## RESERVED REASONS

1. The Claimant presented a claim to the Tribunal on 25th September 2019 complaining that he had been discriminated on the grounds of disability in relation to his application for employment with the first Respondent. He was introduced to the first Respondent by the second Respondent which is a recruitment agency. The Respondents defended the claim.
2. The procedural history is well set out in previous case management orders and is therefore not repeated here. It is sufficient to say that there have been several preliminary hearings one of which resulted in a deposit order being made in the sum of £750.
3. The impairment which the Claimant relies on if is scoliosis which the first Respondent accepts is a disability as defined in the Equality Act 2010. No

admissions were made by the second Respondent.

### **The hearing**

4. The Tribunal heard from the Claimant on his own behalf and for the first Respondent from Mr Harrison Braxton (Recruitment Consultant) and Mr Benjamin Jones (Chief Technology Officer). It had written witness statements from all witnesses and an agreed bundle comprising 191 pages.
5. The hearing had been arranged to be heard by CVP. The Claimant had written to the Tribunal on 8 June 2022 to ask if it could be heard in person as he was anxious. This was not referred to an employment judge. It was only referred to Employment Judge Martin at 9.30 on the morning of the hearing. Judge Martin discussed this with the Claimant informing him that it could not be held in person as one member was in South Yorkshire. If it were to be postponed in order to be heard in person this would result in a substantial delay. Judge Martin reassured the Claimant that he could take breaks as he needed to and ask of one was required. She explained how she could assist the Claimant if she needed to. Judge Martin on more than one occasion decided that there should be breaks to assist the Claimant.

### **The issues**

6. There are two issues which were agreed at the preliminary hearing on 26 November 2021. They are:
  - a. Did the second Respondent directly discriminate against the Claimant because of disability by Harrison Braxton asking him in a telephone call on 30th July 2019 about his disability and informing him that the first Respondent would not consider him for the role he had applied for.
  - b. Did the first Respondent directly discriminate against the Claimant because of disability by failing to arrange a technical test at home and failing to conduct an interview at a cafe or its office in Canary Wharf in the period 30th July 2019 to 23rd August 2019.

### **The law**

7. Equality Act 2010

#### 13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

#### 136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.  
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) an employment tribunal;

(b) – (f) . . . .

8. In considering the claim of direct discrimination, the first task of the Tribunal is to decide whether on the primary facts as proved by the Claimant, and any appropriate inferences which can be drawn, there is sufficient evidence from which the Tribunal could (but not necessarily would) reasonably conclude that there had been unlawful discrimination. If the Claimant can prove such facts, then the burden of proof passes to the Respondent to show that what occurred to the Claimant was not to any extent because of the relevant protected characteristic as set out in the Equality Act 2010. In each case, the matter is to be determined on a balance of probabilities. The fact that a claimant has a protected characteristic and that there has been a difference in treatment by comparison with another person who does not have that characteristic will not necessarily be sufficient to establish unlawful discrimination. In all cases the task of the Tribunal is to ascertain the reasons for the treatment in question and whether it was because of the protected characteristic. The provisions of section 136 of course apply to any proceedings under the Act, and not only to claims of direct discrimination.

### **The Tribunal's findings of fact**

9. The following findings of fact are made on the balance of probabilities having heard the evidence, read the documents referred to and considered the parties submissions. Not all evidence is recorded as these findings are confined to those that are relevant to the issues and necessary to explain the decision reached. All evidence was considered.
10. The first Respondent has offices in Woking, this is where the vacancy which the Claimant was applying for was. The offices are on the first floor. There is not a lift to that floor. The Respondent has premises in Canary Wharf which does have lifts. The Claimant's disability means he has mobility problems. He uses crutches and cannot climb stairs.
11. There was no record of the Claimant having any disability within the second Respondent organisation. It was accepted by the Claimant that neither the first nor second Respondent knew he had a disability when he arrived for an interview in Woking on 29th July 2019. The Claimant had not mentioned his disability or that he had any difficulties in climbing stairs before he went to the Woking offices of the first Respondent. He did not call to check access to the offices before the interview despite him saying he had had this issue before.
12. When the Claimant arrived, he saw that he would not be able to go upstairs as there was no lift. He therefore contacted the second Respondent who sent an e-mail to the first Respondent. Mr Jones and another colleague immediately went down to speak to the Claimant. The Claimant had his mobile phone in his hand and recorded this conversation. When he was asked why he did this during the hearing, he said that he had previously had difficulties with other employers and therefore wanted a record of the conversation. He alleged that it was not a covert recording as he had his phone in his hand, but at the same time agreed that he did not tell Mr Jones or his colleague that they were being recorded.
13. The transcript of the conversation shows that Mr. Jones and his colleagues were very concerned about the situation. Mr Jones explained it was an old building that is rented and that they were not able to accommodate the Claimant if he could not get upstairs. There was further discussion, and it was suggested he could do the first part of the interview, which comprised a technical test, at home and do the interview in a coffee shop or elsewhere. The interview was due to start at 09.30.
14. Mr Jones emailed Mr Augustine on 29 July 2019 at 10.01 saying *"Joao and I spoke to Ahsan who was waiting at the bottom of the stairs. Unfortunately we were unable*

*to resolve the situation today, as the building doesn't have step-free access. If he would like to rearrange, we could conduct the interview and technical test in one of our London offices which does have a lift. Please reiterate my apologies to Ahsan.*" At 10.29 the same day Mr Augustine wrote to Mr Jones saying: *"It seems Ahsan will need to work in an office that has step-free access. As such I'm now not sure the Woking office would work for him"*. Mr Jones took this to mean that the Claimant was no longer pursuing employment with the first Respondent and assumed that there had been a conversation between the Claimant and Mr Augustine.

15. On 30 July 2019, Mr Braxton had a brief telephone conversation with the Claimant, only lasting a few minutes. There are no contemporaneous notes of this conversation. The only document is an email sent shortly after. It is therefore one person's word against the other about what was said. The Claimant says that Mr Braxton asked him if his disability was long term or short term, and that the first Respondent did not want to employ him because of his disability. Mr Braxton denied saying this. He said the conversation was very short only lasting a couple of minutes and was about what other arrangements could be made for the interview. The Claimant emailed after asking Mr Braxton to confirm what was discussed on the telephone to which Mr Braxton immediately responded: *"Just waiting to hear back from them with regards to the confirmation."* That was the last conversation the Claimant had with Mr Braxton. The Claimant did not attempt to contact the first Respondent directly.
16. On 31 July 2019, the Claimant contacted ACAS. He says he was told to raise a grievance. The Claimant sent a letter and posted it to the Respondent on 9 August 2019. In this letter he said he was lodging a grievance about discrimination in him not being able to access the offices for the interview. He referred to the conversation he said he had with Mr Braxton on the telephone, and that he had not heard about the interview. He said: *"To make things right, I would like you to compensate me and pay £100,000"*. Mr Jones was surprised to receive this letter as he had thought the Claimant was not pursuing his application further. He immediately passed the letter to Ms O'Dea from the HR department to deal with. The Claimant was offered an interview in the London offices, as the interview process had not yet concluded. There was another candidate who the first Respondent was going to offer employment to, but this was put on hold so the Claimant could be interviewed. There is a shortage of suitably qualified people for the role being recruited into.
17. The Claimant did not respond to the offer of an interview and when chased on 27 August 2019 replied that he had secured a job and was not interested in an interview with the first Respondent. He reiterated what he alleges Mr Braxton said during the telephone conversation. He referred to the first Respondent talking about discussions with Mr Augustine whereas he only dealt with Mr Braxton. Mr Braxton explained that he dealt with the candidates and Mr Augustine his line manager, dealt with the corporate clients.
18. There is an internal email in the bundle in which Mr Jones says that he did not think Mr Augustine had dealt with matters well. The Claimant relies on this as meaning that Mr Augustine discriminated against him. The Tribunal does not agree with the Claimant's interpretation and finds on balance that it means what it says namely that Mr Augustine did not communicate clearly with the first Respondent. The first Respondent had wanted to interview the Claimant.
19. Both parties provided written submissions which are not repeated here.

### **The Tribunal's conclusions**

20. Having found the factual matrix above, the Tribunal has come to the following conclusions on the balance of probabilities. The only issues considered were those issues agreed and set out above.

21. *Did the second Respondent directly discriminate against the Claimant because of disability by Harrison Braxton asking him in a telephone call on 30th July 2019 about his disability and informing him that the first Respondent would not consider him for the role he had applied for.*

- a. The Tribunal has set out above the two differing accounts of what was said during the telephone conversation on 30 July 2019. There is no contemporaneous documentation. The Tribunal looked at the emails sent immediately after the conversation took place. It notes that the Claimant did not say in his email what he alleges Mr Braxton said during the conversation. Mr Braxton's response accords with his version of the conversation, namely that he was waiting to hear from the first Respondent about interview arrangements. It was not until his grievance letter that the Claimant first made mention of what he says happened during this conversation.
- b. It is for the Claimant to provide facts from which the Tribunal could conclude that discrimination occurred. Here we have one person's word against another and whilst the Claimant did refer to his version of the conversation later, the Tribunal does not find that to be sufficient to shift the burden of proof. On balance, given the content of Mr Braxton's email to the Claimant immediately after the conversation took place, the Tribunal find that he did not say that the first Respondent did not want to interview the Claimant because of his disability.
- c. Mr Braxton says he did not ask the Claimant about his disability. The Tribunal accept this. However, even if he had said this, it would not without more amount to disability discrimination. If he had asked the Claimant if his disability was long or short term, this was simply a request for information and a reasonable question to ask in the circumstances.

22. *Did the first Respondent directly discriminate against the Claimant because of disability by failing to arrange a technical test at home and failing to conduct an interview at a cafe or its office in Canary Wharf in the period 30th July 2019 to 23rd August 2019.*

- a. The Tribunal finds that the first Respondent believed that the Claimant did not want to continue with his application given the email it received from Mr Augustine. Quite clearly it was intending to interview the Claimant, the emails it sent to Mr Augustine clearly record this. Once it realised that the Claimant had wanted to continue with the application, it suspended its recruitment process so it could happen and planned an interview at an alternative location. It was the Claimant who brought the process to an end saying he did not want to be interviewed as he had another job. There was therefore no less favourable treatment because of disability. At most there was a misunderstanding.

23. Much was made about the credibility of the Claimant's evidence during the first Respondent's submissions. Whilst the Tribunal has some concerns about why the Claimant recorded the initial conversation with Mr Jones when he spoke to him on the morning of the interview (the Tribunal finds this was a covert recording) and has reservations about the tone of the grievance letter and the request for money,

it has not found it necessary to make specific findings on this. The Tribunal found that the conversation with Mr Jones was not as the Claimant said, and that the facts show that the Respondent did want to interview the Claimant.

24. The Claimant complained that Mr Braxton did not write his own witness statement. Mr Jones said it was his words. The background to Mr Braxton's witness statement being created is that the second Respondent said it would not be participating in the hearing and the first Respondent therefore asked Mr Braxton if he would be a witness on its behalf. Mr Braxton agreed. The first Respondent was represented by Mr Bacon, the inhouse lawyer. Mr Bacon telephoned Mr Braxton and took his statement over the phone which he then had typed up. This is not an unusual way for witness statements to be taken. Lawyers regularly speak to witnesses and take their statement. Mr Braxton took an oath that his statement was true and his own words. There is nothing suspicious about this.
25. The claim against the first Respondent is dismissed. Even though the second Respondent was not represented in this hearing, having heard from Mr Braxton, and having made the findings set out above, the Tribunal finds that the claim against the second respondent is not made out and is dismissed.

Employment Judge Martin  
Date: 13 June 2022