



EMPLOYMENT TRIBUNALS

Claimant: Martine Roberts

Respondent: Woven Solutions Ltd

Heard at: Bristol (video hearing) **On:** 21 and 22 March 2023

Before: Employment Judge Housego
Tribunal Member I Ley
Tribunal Member K Sleeth

Representation

Claimant: In person

Respondent: Smaira Younis, consultant of Peninsula UK Ltd

JUDGMENT

The claim is dismissed.

REASONS

Basis of claim and defence

1. The Claimant describes herself as of Afro-Caribbean heritage. The Respondent is a service company. The Respondent's clients outsource customer advice helplines to it. The Claimant applied for a role, home based, as a customer services adviser for a national cinema chain. She was accepted but then the offer was withdrawn. The Respondent told her that she had not provided adequate evidence of her right to work in the UK. She had provided a redacted photocopy of her passport. She says this was race discrimination. The Respondent says race had nothing to do with it, and it was simply that she did not provide mandatory human resources information required by law.

Law

2. Race is a characteristic protected by the Equality Act 2010¹. The Claimant

¹ S11 Equality Act 2010

asserted that the treatment she received was direct race discrimination².

3. The test for a claim that the Claimant has suffered unlawful discrimination is whether or not the Tribunal is satisfied that in no sense whatsoever was there less favourable treatment (compared to someone else) which was tainted by race discrimination. It is for the Claimant to show reason why there might be discrimination, and if she does so then it is for the Respondent to show there was none. The Tribunal has applied the relevant case law³, and has fully borne in mind, and applied, S136 of the Equality Act 2010. Discrimination may be conscious or unconscious, the latter being hard to establish and by definition unintentional. It is the result of stereotypical assumptions or prejudice.

Evidence

4. The Tribunal heard oral evidence from the Claimant.
5. For the Respondent the Tribunal heard oral evidence from Claire Scott. She was the person handling the Claimant's application to work for the Respondent.
6. There was a bundle of documents of 114 pages.

Issues

7. It is common ground that the Claimant provided the Respondent with a photocopy of her British passport, with some parts blacked out, and that she said she did not have the original. The parts redacted were part of the passport number, the place of issue and part of the code embossed on the main page. She said the original was lost so that she could not provide another copy. The photograph of her on that page was so blurred as to be unrecognisable, to the extent that it gives no idea of the racial heritage of the individual whose passport it was. The Respondent then asked for a copy of the Claimant's full birth certificate, which she was unable to provide. They then decided that this did not meet the requirements necessary to ensure that they stayed within the law about employing only people with the right to work in the UK and rescinded the offer on the day (08 November 2021) the Claimant was due to start employment.
8. The issue is whether this was a decision in any way tainted by race discrimination.
9. In deciding that issue, the Claimant has to find someone to compare herself with. She does not have anyone particular in mind and says that if she was white this would not have happened to her.

The hearing

10. I made a full typed record of proceedings which records the evidence fully.

Submissions

² S13 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.

³ The law is comprehensively set out in Royal Mail Group Ltd v Efofi [2021] UKSC 33 (23 July 2021)

11. The submissions can be read in my record of proceedings by a higher Court if required. The main thrust of the submissions is below.
12. The Claimant says that she had bad experiences with data breaches in the past and had checked with the passport office about what she could redact from copies of the passport when giving proof of right to work in the UK. She says she did no more than that. She also provided a current DBS check, national insurance number and utility bills. She says that she has suffered race discrimination in the past, and that while she can't be sure that was what it was here, she thinks that it doesn't add up, so that race is likely to have played a factor. In particular, she says that she was told that all was fine on the Friday afternoon but on Monday that was reversed. The Claimant says is all too mysterious for her to think it is above board. They knew she was not white, because Claire Scott had video Teams meetings with her.
13. The Respondent says that it is meticulous about complying with the law about checking that people they employ have the right to work in the UK. There is a fine of £20,000 a person if they get it wrong. They say that they have a set of requirements which they apply to every applicant. They say that the Claimant did not meet those requirements. She said that she did not have her original passport, and the photocopy she provided was black and white and with parts blacked out, and with an unrecognisable photo. Whether it was genuine or not, her right to work documents did not meet requirements that were universal. The request for a full birth certificate was an attempt to be helpful. The Claimant was asked to reapply when her new passport was issued, which they said was strong evidence that the withdrawal of the offer was not motivated by considerations of race. The Claimant had withdrawn her application, saying that she had another job offer.

Facts found

14. The background is set out above, and forms part of the Tribunal's findings of fact.
15. The Claimant is a British citizen of Afro-Caribbean heritage. She lost her passport. She had a copy of the main page of it. She supplied the Respondent with a scanned copy, and the photograph of her was so poor that the Respondent's later observation that the picture looked like a ghost is not misplaced. It is clearly someone's head, but it is not possible from it to draw any conclusion as to the age, gender or race of the person whose passport it is.
16. The Claimant lives in the Northeast of England. She applied to the Respondent, based in Bristol, for a role as a customer service adviser with a national cinema chain. That cinema chain outsources some of its customer services work to the Respondent.
17. The process of application involved an online test, to check command of English, and a Teams interview that was voice only. There was then a video (Teams) meeting with Claire Scott. The Claimant was successful and so her application moved to meeting other requirements, including demonstrating the right to work in the UK.

18. The Claimant provided the black and white photocopy of her passport, with some details obscured with black marker. The copy received by Claire Scott is so poor that the photograph of the Claimant is not recognisable as any person.
19. Claire Scott saw the Claimant on video with the photocopy, which the Claimant scanned and sent to Claire Scott. It may be that it was this process which caused the degradation of the picture quality, but if so it was not appreciated at the time.
20. Claire Scott said that she would pass this to her manager, Nonku (other name not known to the Tribunal, as Claire Scott knew her only by that name), to see if it was acceptable.
21. Nonku WhatsApp'd Claire Scott to ask if she could confirm that it was the Claimant's face on the passport, and Claire Scott replied that she had seen the Claimant on a Teams meeting. Nonku approved the Claimant's application for work, and Claire Scott told the Claimant of this. This was on Friday 05 November 2021.
22. Then Claire Scott sent the passport document to Nonku, who sent everything to the human resources department, known as "*Woven People*". They told her the quality was not acceptable, and the redaction was not acceptable either.
23. On Sunday 07 November 2021 Claire Scott asked the Claimant if she had a full copy of her birth certificate. (Quite why this would help is unclear, as a birth certificate is not evidence of identity.) The Claimant was unable to provide this, as it was with her mother, who had mislaid it. (There is nothing relevant about Claire Scott's recollection that the Claimant said that she had fallen out with her mother – the Claimant says not, and the Tribunal accepted that evidence – because the reason the certificate was not provided is not relevant. What is relevant is that the Respondent was trying to help the Claimant clear this hurdle by asking for it.)
24. When the Claimant emailed Claire Scott on Sunday 07 November 2021, she said that if the passport was an issue for the Respondent "*I am happy to withdraw my application*". She said that she had another job offer which she would accept instead. (In the event this did not occur, and the Claimant was out of work for a while.)
25. Having tried unsuccessfully to circumvent the issue of the photocopy passport, Claire Scott then told the Claimant that the offer of work was withdrawn. This was on Monday 08 November 2021, the very day the Claimant was to start training.
26. In the exchanges between Claire Scott and the Claimant which followed this, Claire Scott invited the Claimant to reapply once she received the passport for which she had applied. That passport was received by the Claimant in February 2022, by which time the Claimant had another job.

Conclusions

27. It is important for the Claimant to appreciate that the Tribunal is not deciding whether what happened was fair or unfair, or whether the Respondent's

approach to checking the right to work of applicants was correct or not.

28. What the Tribunal is deciding is whether the Claimant suffered less favourable treatment than another, and if so whether the reason for that less favourable treatment was, in some part, her race.
29. It is most unfortunate that past experience, coupled with poor presentation of the Respondent's case, leads her to feel that she has been subject to race discrimination.
30. There is no evidence that could lead a Tribunal to find that considerations of race played any part in the decisions made by the Respondent. Accordingly, the Tribunal finds that the burden of proof does not pass to the Respondent.
31. More technically, the Tribunal does not find that the Claimant suffered less favourable treatment than a hypothetical comparator by reason of race. There was, in short, no less favourable treatment, because there is no evidence that anyone else (of whatever racial background) who produced the same documents would have been treated any differently.
32. The reasons for this are as follows:
 - 32.1. The requirements of the Respondent which were applied to the Claimant were applied to every applicant, whatever their race or nationality, gender, sexual orientation and every other protected characteristic. There was no less favourable treatment.
 - 32.2. The Claimant herself accepted, in answer to Tribunal questions, that had she provided a clear unredacted copy of her lost passport she would have been allowed to work for the Respondent. That she was unable to do so is not to the point. The point is that the reason for withdrawing the offer is not to do with race at all.
 - 32.3. Claire Scott was asked if she could confirm that it was the Claimant's photograph on the passport. She replied that she had seen the Claimant on Teams. The answer was not to the question that was intended to be asked. The answer was that Claire Scott had seen someone with the name Martine Roberts, while the question was whether the passport photograph had been compared with the person on the call. This is usually done by the candidate appearing on video and then holding the passport photo to the camera so that it can be seen that the passport is the candidate's passport. Claire Scott was not trying to be obstructive to the Claimant but helpful. This was not a suspicious change of approach by the Respondent, but a misunderstanding by Claire Scott of what Nonku was asking her, as the subsequent messages demonstrate.
 - 32.4. Claire Scott was trying to get the Claimant past the hurdle of the need to prove that she had the right to work in the UK:
 - 32.4.1. The interview was with Claire Scott, who marked the Claimant as successful. Were she minded to discriminate, Claire Scott could have failed the Claimant at this point.

- 32.4.2. The Claimant's oral evidence was that when the issue of the passport first came up with Claire Scott, her reaction was to say that she *"would run this by my boss to see if we can use this"* which was a positive response, when if there had been any negativity this would have been an easy point at which to find difficulty for the Claimant's application.
- 32.4.3. She was asked by Nonku *"Can u confirm that it's her face on the passport"* and replied *"Yes I have sighted over teams"*. She raised no objection herself to the documentation provided by the Claimant.
- 32.4.4. She emailed the Claimant *"We're good to go! Offer will be sent out shortly x"*. Plainly Claire Scott was not obstructing the application.
- 32.4.5. Then when told by Nonku the documentation was not acceptable, she objected *"I thought you said it was ok? [sad face emoji]"* in an internal WhatsApp message. This does not indicate any negativity towards the Claimant, and on the contrary shows that she was wanting the Claimant to succeed.
- 32.4.6. Claire Scott then tried to help by asking for a full copy of the Claimant's birth certificate.
- 32.4.7. And invited the Claimant to reapply when she got her new passport.
- 32.5. There being no reason to think that Claire Scott was other than supportive to the Claimant, it would have to be someone to whom Claire Scott was reporting who was causing the issue. That person was Nonku, about whom nothing is known. Given the name *"Martine Roberts"* and a photograph that revealed nothing, there is no reason to think that Nonku had any idea of the race of the Claimant.
- 32.6. Even if Nonku did know the Claimant's racial heritage the evidence shows that it was not her decision to decline to accept the photocopy redacted passport – in texts sent via WhatsApp on 05 November 2021 Nonku says *"hey Claire, it looks like you uploaded the blocked out passport for Martine"* *"not acceptable"* and *"and woven people [the name for the human resources department] are requesting a clearer version as she looks like a ghost on this one"*. There is no reason to think that the human resources team were motivated by considerations of race.
- 32.7. The Claimant may be right about the Home Office approving the redaction of part of passports when proving the right to work. However, this is very unusual, and there is no reason to think that the Respondent would not have taken the same view to any passport, of whatever nationality, and for a person of any colour or nationality. Many employers would not accept a photocopy at all, unless certified as a true copy by a solicitor. Refusing to accept the copy passport is not evidence of race discrimination.
- 32.8. The Claimant said that her current DBS certificate was evidence of a right to work in the UK. This is not so (as it is also needed for some voluntary work). DBS clearance is not required to work for the Respondent,

and the Claimant did not say to the Respondent that she believed that her DBS certificate was evidence of the right to work in the UK. The utility bills and evidence of a national insurance number provided by the Claimant were also not evidence of the right to work in the UK. The Respondent did not fail to take account of anything provided by the Claimant.

- 32.9. When the issue with the passport was raised on 08 November 2021, the Claimant emailed Claire Scott and said that if this was an issue for the Respondent, she would withdraw her application. There was then no reason for the Respondent to do otherwise than discontinue the Claimant's application.
- 32.10. The Claimant's unhappiness with the issue, then withdrawal, of the offer letter is clearly the result of Nonku thinking that Claire Scott had seen a clear passport photograph of the Claimant produced by the Claimant in a video call in which the Claimant is also present. At 2:38 pm Nonku wrote "good to go", but then at 6:34 pm Nonku has clearly been told by the human resources department (Woven People) that the documentation is not acceptable – this was not Nonku's decision.
- 32.11. There is no reason to think that the person in human resources telling Nonku not to accept this documentation had any thought about the race of the Claimant and had no way of knowing (unless by seeking out a diversity questionnaire, which is highly unlikely) anything about the Claimant's racial heritage.
- 32.12. The Respondent was reasonable to decide that the Claimant had not demonstrated her right to work in the UK in the prescribed way. Plainly the Claimant has the right to work in the UK as a British citizen. That is not the point. The point is that the right to work in the UK has to be demonstrated in every case (including British citizen applicants), to avoid race discrimination against people who are not British citizens.
- 32.13. The fact that other potential employers accepted the documents rejected by the Respondent is not evidence that the Respondent was at fault in doing so or motivated by race.
- 32.14. The requirement to provide a passport (endorsed with the right to work other than British) as evidence of the right to work is reasonable and was applied to all. It cannot be the case that the Claimant was asked because it was noted that she was not white, because white British citizens had to provide their passports too.
33. There were substantial shortcomings in the way this case was presented by the Respondent, and the Tribunal has taken them fully into account:
- 33.1. There was no documentary evidence to support the claim that there were hundreds of applications being processed at this time.
- 33.2. Nor of the ethnicity of the applicants.
- 33.3. The policy as to what documentation was acceptable to show that an applicant has the right to work was not provided.

- 33.4. The copies provided of text messages appears incomplete, subsequent to the one where Claire Scott asked: "*I thought you said it was ok?*"
- 33.5. There was no documentation from "*Woven People*" about the reasons they told Nonku to reject the Claimant's application.
- 33.6. It has to be assumed that the messages are from Nonku, as there is nothing to indicate that this is so.
34. Nevertheless, it is for the Claimant to show that there is evidence from which a Tribunal might find that the decision was tainted by race discrimination, and there is no such evidence here. Accordingly, the claim must be dismissed.

Employment Judge Housego
Date 22 February 2023

Judgment & reasons sent to the Parties on 08 March 2023

For The Tribunal Office