



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Ramos  
**Respondent:** Layka Recruitment  
**Heard at:** Reading **On: 27 April and 10 May 2023**  
**Before:** Employment Judge Gumbiti-Zimuto  
Tribunal Members: Mr J Appleton and Mr C Juden

**Appearances**  
**For the Claimant:** In person  
**For the Respondent:** Mrs C High

## JUDGMENT

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

## REASONS

1. In a claim form presented on the 8 July 2021 the claimant made a complaint of age discrimination. The respondent is a recruitment business.
2. The advert that provoked the complaint is for a Trainee Freight Operations Clerk" (p49) posted on the 29 January 2021. The salary offered was £16,000- £20,000. The wording of the advert read as follows:

“Our client is looking to virtually meet young professionals who are looking for a Trainee role within an exciting and busy environment!

You will need customer service experience within retail as a minimum and be able to use a computer confidently.

The role is based on communication skills therefore it is vital that you are confident when speaking with customers.

Full training will be given for the Trainee.

You will need to be a college leaver or at the entry stage into your working career to qualify. You will also need to have at least 3 GCSE's of A\*-C or Level 4-9.

The position is open to candidates that have good communication skills, strong IT skills including Excel, Word and a real drive to build an excellent career!

If you are looking for a brilliant trainee opportunity and somewhere to build a career, then look no further!  
We want to see your CV. We will be in touch!"

3. The claimant's complaint is about direct age discrimination.
4. The claimant also makes a complaint of indirect age discrimination, *"because the respondent imposes a requirement to be a "school leaver at our entry stage into our working career" which people of a particular group, i.e. older people are less likely to be able to meet than other people, and this places them at disadvantage."*
5. The claimant states that the advertisement is the first stage of the respondent's recruitment process.
6. The claimant has not applied for the position.
7. He explains his position as follows:
  - 7.1 "I do not apply for a position when I do not have any chance to be given the position because I do not meet all the criteria because each time I provide my CV to a third party there is a risk that the employer misuses the confidential information about me, which is in my CV, by passing it to third parties without my permission or for ID fraud. As a consequence, I can take this risk only if I have a chance to be successful because I meet all the criteria including being a "young professionals" and a "school leaver at my entry stage into our working career".
  - 7.2 Furthermore, it will not be fair that on addition of having been discriminated by the respondent I have also to pass to it confidential information about me, which is in my CV, unnecessarily because I had no chance to be given this position because I was not a "young professional" and a "school leaver at my entry stage into a working career".
  - 7.3 We have to take into account also that time is money and I cannot afford to waste time replying to discriminatory adverts for positions for which I have no chance to be successful because I do not meet the criteria because I am not a "young professionals" and a "school-leaver at my entry stage into our working career.
  - 7.4 It is well known that fake adverts are published to get confidential personal data from the people for marketing purpose or for ID fraud. Hence, if something is wrong in an advert, like its discriminatory contents, I do not apply to it because it could be fake."
8. The claimant states that he has suffered a detriment because he has been deterred from applying for this position by the discriminatory contents of the respondent's advert.

9. The respondent states that the claimant has not applied for the job advertised and was never interested in the role, he has simply closed in on the advertisement because he considers that it is prima facie discriminatory because of the references cited.
10. The Tribunal heard the claimant's evidence and also noted that the claimant has brought complaints about many jobs which appear to have a discriminatory content in their advertisements. The jobs are varied and follow no particular pattern, a short list of roles that the claimant has applied for include: Letting Agent administrator, Trainee Import and Exports, café employee, Driving an ice cream van, Home parent in a public school, Female Finance Admin Worker, Customer Relations person, Female Trainee Broker, Cleaning Job, Shop Assistant and in this case Trainee Freight Operations.
11. In his evidence the claimant said that he was interested in the role of Trainee Freight Operations. He gave no evidence of previous involvement in this industry and had not worked in the 6 months before and after the advertisement was posted. The Tribunal do not accept this evidence from the claimant we are certain that the claimant had no interest whatsoever in his role his interest was in the fact that the advert was apparently discriminatory and so he honed in on the respondent for the purposes of bringing these proceedings with the explicit purpose of seeking a monetary award by way of compensation for injury to feelings.
12. The conclusion of the Tribunal is that claimant has not been subjected to a detriment and has not suffered any injury to his feelings.
13. The claimant also relies on section 39 Equality Act 2010, this provides that an employer (A) must not discriminate against a person (B) in the arrangements A makes for deciding to whom to offer employment; as to the terms on which A offers B employment; by not offering B employment.
14. The claimant has stated that his claim is made pursuant to section 13 Equality Act 2010, this provides that 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. If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
15. The claimant also seeks to make a complaint based on section 19 Equality Act 2010, this provides that a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. A provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if A applies, or would apply, it to persons with whom B does not share the characteristic, it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, it puts, or would put, B at that disadvantage,

and A cannot show it to be a proportionate means of achieving a legitimate aim.

16. To be discriminated against the act complained of must have impacted on the claimant in some way. We do not consider that was not the case here. The claimant was not deterred from applying for the role he had no intention of doing so what he wanted to do was bring proceedings to secure money compensation. The claimant was not placed at any disadvantage.
17. Further the respondent was not the employer for the role. The respondent was a recruitment agency. The provision in section 39 relates to an employer it would not apply to the claimant on the facts of this case. There is no allegation made by the claimant that the respondent was aiding and abetting discrimination or alternatively that the claim is brought against the respondent as an agent for the employer.
18. For the reasons set out above we are of the view that the claimant's complaint is not well founded and is dismissed.

**The claimant's application to postpone the hearing on 10 May 2023.**

19. This case was listed for a final hearing on 27 April 2023, however it was listed before an Employment Judge and no members were available. The parties were asked whether they consent to proceeding without lay members. The claimant refused.
20. The lay members, who had been sitting on another case, became available soon after and the hearing was then able to proceed as a full tribunal on the 27 April 2023. The lay members were only available for part of the day and the proceedings concluded at the point when the parties had given their evidence in the case.
21. The case was relisted for a hearing on 10 May 2023. This was 14 days after the 27 April 2023. Another date so soon after the original date was not available, if this date was not taken the case would have been adjourned for many weeks possibly months before it was possible for the Tribunal to accommodate the case and conclude the hearing. Even if the hearing was abandoned and another Tribunal constituted to hear the case it would have been weeks or months before a new date was available.
22. Unfortunately, one of the Lay Members of the Tribunal were not able to attend in person at the Tribunal. The respondent, Cara High, was also keen not to have to attend the Tribunal to conclude the hearing and preferred the option of attending virtually. The claimant wanted to attend in person.
23. We came to the conclusion that it was in the interests of justice and in accordance with the overriding objective for the resumed hearing on 10 May to be a Hybrid hearing. The parties were given the opportunity to express their views, the claimant objected on the basis that he would be disadvantaged because English is not his first language. We did not accept

that there was any disadvantage to the claimant arising from language if the case was heard in a hybrid manner with Mr Appleton and the respondent attending remotely, but with the Judge, Mr Juden and the claimant in person at the Tribunal. While this was not ideal we considered that as the stage at which the proceedings had reached was where the parties are to make submissions and then to be followed by Tribunal deliberations we were of the view that there would be real prejudice to the claimant in this approach being taken. The claimant's English language skills could not be affected and were not affected detrimentally by the hearing in being hybrid rather than with all in person.

24. On 4 May the claimant made an application seeking that the hearing on 10 May be vacated. The application was placed before the Judge on 9 May at about 3.30 pm. It was too late for the Judge to make a decision on the application and so the Tribunal considered the claimant's application at the start of proceedings on 10 May 2023.
25. The claimant made an application for the case to be vacated and for the matter to be relisted with everyone attending in person. There was no new basis for the application and there had been no change in circumstances, the Tribunal having considered the claimant application refused the application and proceeded with the hearing.
26. The parties produced further documents in support of their submissions during the period of adjournment. The Tribunal had not read all the documents before the parties began their submissions. After the parties submissions had been made the Tribunal was able to consider all the documents that the parties produced before reaching our decision in the case.

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Employment Judge Gumbiti-Zimuto  
Date: 23 May 2023

Sent to the parties on: 13/6/2023

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For the Tribunals Office

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