



EMPLOYMENT TRIBUNALS

Claimant: Oneil Curtis

Respondent: Star Residential Home Ltd.

Heard at: Bury St Edmunds

On: 7 and 8 November 2023

Before: Employment Judge Freshwater
Tribunal Member S Morgan
Tribunal Member K Mizon

Representation

Claimant: in person

Respondent: Miss L Hatch (counsel)

RESERVED JUDGMENT

1. The complaint of direct race discrimination is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant is Mr Oneil Curtis. The respondent is Star Residential Home Limited.
2. Mr Curtis applied to the respondent for a job as the Wellbeing Lead at the Star Residential Home. He was successful at interview and offered the job subject to confirmation of his right to work in the UK and other compliance checks. Mr Curtis never worked for the respondent.
3. This is Mr Curtis's claim for direct race discrimination, which arises out of the interactions he had with staff at the respondent following the job offer.

Hearing and procedure

4. The hearing took place over 2 days.

5. The tribunal was referred to a bundle of 173 pages. This included the bundle that was originally submitted for the final hearing, and additional pages added at the start of this hearing.
6. The tribunal heard oral evidence and submissions from Mr Curtis.
7. The tribunal heard oral evidence from the following witnesses on behalf of the respondent: Ms Ducure (Recruitment Administrator), Ms Rusiecka (Recruitment Administrator), Mrs Ahktar (HR Administrator) and Mr Khoyrutty (HR Director). Ms Latch provided written submissions which she expanded upon orally.
8. Judgment was reserved.

Claim and issues

9. The issues in the case relate to whether or not the claimant was subjected to less favourable treatment because of his race. The claimant is of Jamaican national origin.
10. The claimant says that the following less favourable treatment occurred:
 - 10.1 That the respondent's staff asked the claimant for a Home Office "share code" when offering him a job, with respect to his right to work in the UK, even when he had informed them he had no share code and did not need one;
 - 10.2 That Ms Roseicka reiterated the request for the share code on 7 November 2022 and said words to the effect of "You are a foreigner, I'm from Europe and I need a share code, so you'll definitely need one.";
 - 10.3 That Mr Khoyrutty treated the claimant with a lack of respect, made no apology and spoke down to the claimant in a phone call on 1 December 2022 when he rang to renew a job offer.
11. The respondent accepts that a share code was requested but denies that this amounts to less favourable treatment.
12. The respondent denies that the remainder of the allegations in 10.2 and 10.3 occurred at all.

The law

13. Section 13(1) (a) of the Equality Act 2010 states that:

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

Findings of fact

14. On 13 October 2022 Mr Curtis applied for a job with the respondent. The role was Wellbeing Lead. On 2 November, he was telephoned by Ms Ducure and an interview was arranged for 3 November. That interview took place.
15. During the interview, copies of Mr Curtis's identity documents were taken. These included his Jamaican passport which contained his certificate of entitlement (right of abode). The documents were stamped as seen by one of the people conducting the interview.
16. The interview notes and certified copies were emailed to Ms Rosiecka, but this appears to have been a mistake as the email was addressed to Ms Ducure. Ms Rosiecka forwarded the email to Ms Ducure. We accept the evidence of Ms Rosiecka that she did not open any of the attachments. She therefore did not see that Mr Curtis held a Jamaican Passport.
17. Ms Rosiecka telephoned Mr Curtis on 3 November to inform him that he was successful at the interview and was being offered the job subject to identity verification, Right to Work, and compliance checks. Mr Curtis was told he would need to upload his documents online including a share code.
18. Mr Curtis sent an email to an inbox referred to as the 'Careers Inbox' which is monitored but was not picked up until after Mr Curtis had called Ms Ducure on 7 November (see page 75 in the bundle.)
19. On 7 November Mr Curtis called Ms Ducure to tell her that he didn't have a share code. Ms Ducure transferred the call to Ms Rosiecka because the issue was to do with compliance checks.
20. Ms Rosiecka spoke to Mr Curtis. It is during this conversation that Mr Curtis asserts that he was called a "foreigner." This was denied by Ms Rosiecka. We are not satisfied on the balance of probabilities that did she say those words. One side of the conversation was overheard by Ms Ducure who said that she did not hear the words used. We found Ms Ducure in particular to be a very credible witness. This is because she was clear and concise in what she told us. We do think that Ms Ducure and Ms Rosiecka collaborated in their evidence. They are colleagues at work but do not, for example, socialise outside work. We note that this was not an allegation mentioned in the claim form, which was submitted much closer to the alleged conversation. We accept that Mr Curtis genuinely believes the words were said but we think it more likely this is an impression he formed after the event.
21. Mr Curtis told Ms Rosiecka he was unable to get a share code. She accepted in her evidence that she suggested he could apply for settled status. Mr Curtis could not afford to apply for a British passport. We believe that he felt upset at the suggestion. In his words, it made him feel "less than." This is understandable as he had documents that entitled him to work. He did not need to obtain anything else.

22. Ms Rosiecka said that she would speak to her manager about the points raised by Mr Curtis. Her manager – Ricardo – advised that a share code was still required.
23. Mr Curtis forwarded his email to Ms Rosiecka including a home office telephone number at 12.06 pm. Mr Curtis wanted the respondent to contact the home office to seek advice about his right to work. This was not done.
24. At 12.07 pm, Ms Rosiecka emailed Mr Curtis to advise him that a share code was still required. Mr Curtis withdrew his application at 12.33 pm.
25. Mr Curtis contacted ACAS on 7 November. At some stage on or before 17 November, Mrs Akhtar was instructed by Chris Graham (National Operations Director) to obtain witness statements from those involved.
26. On 17 November, Ms Rusiecka emailed a statement to Mrs Akhtar. Surprisingly, nobody else involved was asked to provide a statement at the time.
27. The respondent's HR Director was Mr Khoyrutty. He was on annual leave from 1 November until 28 November 2023. He was therefore not involved until his return when he was informed by Mrs Akhtar that ACAS had been in touch.
28. Mr Khoyrutty sought advice from an immigration solicitor. In his evidence, he told us that he did not get the outcome of that request until the morning of 1 November. However, in his written statement (para 7) the implication is that he already had that advice before he called Mr Curtis on 30 November.
29. On 30 November, Mr Khoyrutty telephoned Mr Curtis. This call was not pre-arranged, as Mr Curtis had thought it would be. In any event, the call only lasted one minute. During that minute, Mr Khoyruty informed the opinion that Mr Curtis was hostile. This was said to be due to the tone and manner of Mr Curtis, as well as the fact that Mr Curtis said that he would still consider accepting the offer of employment under certain terms and conditions.
30. Mr Curtis asked Mr Khoyrutty to call again the next day (1 December) at 10 am. This call took place, though Mr Khoyrutty called at around 10.20 instead of 10.00 am which was upsetting to Mr Curtis.
31. Mrs Akhtar was asked by Mr Khoyrutty to take minutes of the telephone meeting on 1 December. The call was placed on speaker phone. Mr Curtis was not told that she was present. He did not know the minutes were being taken. During that conversation, what was said was largely agreed between the parties. The issue was rather how what was said should be interpreted.
32. Mrs Akhtar's notes were taken at the time of the conversation. The note clearly references that an apology was made for the mistake made by administrative staff (see page 78 in the bundle). Mrs Akhtar did not form the view that Mr Khoyrutty was disrespectful to Mr Curtis.

33. The note demonstrates that the conversation escalated, and Mr Curtis said that he was being threatened. This was denied in the conversation by Mr Khoyrutty. We find there was clearly tension between the parties.

Conclusions

34. We have found, as a matter of fact, that Ms Roseicka did not say words to the effect of "You are a foreigner, I'm from Europe and I need a share code, so you'll definitely need one."

35. It is accepted between the parties that Mr Curtis was asked for a share code, and that manual check of his documents were not undertaken. The issue for the tribunal is, essentially, why this happened.

36. We find that the hypothetical comparator in this case is a person who is a non-British passport holder, had been given a conditional offer of employment who had a right of abode in the UK. Mr Curtis said that he felt that if he was from a different commonwealth country, such as Australia, that he would have been listened to. However, there is not evidence of this. The evidence in the bundle is that all other non-British passport holders were asked for share code.

37. We note that on 7 November, the chain of events leading to these proceedings happened very quickly. There was no evidence of any detailed consideration by the respondent of Mr Curtis's circumstances. By this we mean that Ms Rosiecka had, by 12.01 pm, written a file note of her conversation with Mr Curtis. Between 12.01 pm and 12.07 pm, she must have spoken to her manager (Ricardo) to take advice on the need for a share code. This would have been an opportunity to reflect in slower time.

38. As we have said, although there was some tension between Mr Khoyrutty and Mr Curtis during the telephone meeting on 1 November it was not discriminatory. This is because it was based on the general frustration both had about the situation, it did not stem from less favourable treatment due to Mr Curtis's race.

39. There was clearly a lack of sufficient training for staff as although this situation was, as Mr Curtis described it, unique, that ought to have prompted someone to look at the policy. This was not done by Ricardo, who was the experienced manager advising a junior member of staff. We are unclear why nobody thought to check the policy which had been circulated to all staff.

40. Any bad treatment that Mr Curtis received was down to error and incompetence, and defensiveness about that. It was not less favorable treatment due to his Jamaican nationality.

41. In conclusion, we think that Mr Curtis was treated unprofessionally and inconsiderately. That does not mean that the treatment was unlawful, but we think it is important to note this point.

Employment Judge Freshwater

Date 23 December 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

28 December 2023

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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