



EMPLOYMENT TRIBUNALS

Claimant: Mr F G Chirila

Respondent: The Ministry of Defence

RECORD OF A PRELIMINARY HEARING

Heard at: Public preliminary hearing by CVP **On:** 4 March 2024

Before: Employment Judge Price

Appearances

For the claimant: In person

For the Respondent: Mr Perry, Counsel

JUDGMENT

1. The claim for race discrimination is struck out pursuant to rule 37 (1) (a).

REASONS FOR DECISION

1. The respondent applied to have the claim struck out in its ET3 response to claim. The tribunal listed this application to be heard today and notice was given to both parties that the hearing would consider the respondent's application to strike this claim out. The tribunal listed the hearing for case management. At the outset of the hearing I asked both parties if they wanted to proceed despite the listing of the case being incorrect. Both parties expressed that they did want the matter to be considered today and their preference was for me to covert the hearing to a public hearing.
2. Given the wishes of the parties, coupled with the overriding objective, and in particular the need for proportionately and consideration of the time and resources of the tribunal, the need to avoid delay and to avoid unnecessary

formality and to seek flexibility I considered that it was reasonable to proceed today. The hearing was therefore conducted in public.

3. I have to decided today an application for strike out or a deposit order under rule 37 (1) of the ET rules.
4. I have had sight of a PDF document bundle from the claimant containing both the original job advert and the email of the 16 March 2023 he received from the respondent refusing his application. I have also had sight of a bundle of 113 pages from the respondent. I have also had sight of a witness statement from Mr Timothy Woodcock from the respondent, however he was not called to give oral evidence.
5. I have carefully considered the nature of a strike out and the fact it bring the claimant's case to an end. However, I agree with Mr Perry submission that this is a case, unusually perhaps, where the reason for the conduct in issue is not in dispute.
6. Most, if not all of the facts are agreed. The claimant applied to Ministry of Defence for a post as Modelling & Simulation Admin support on or around 18 November 2022.
7. The Claimant went through a number of parts of the application process. However, part way through the process the MoD realised that the post should have been advertised as a reserved post as it would required access to 'behind the tubes' at Northwood HQ. Subsequently and consequently the claimant received an email on 16 March 2023 saying that he was not eligible for the role as he was not a British citizen.
8. It is not disputed that the claimant is not a British citizen. He holds settled status in the UK. Nor is it disputed that the job advertisement did not state that applicants had to be British nationals in order to be eligible to apply. Mr Perry submits that this was an error.
9. Paragraph 5 of Schedule 22 of the Equality Act 2010 confirms that a person does not contravene the Equality Act 2010 by implementing rules which are rules restricting persons of a particular birth, nationality, descent or residence in employment in the service of the Crown or by a prescribed public body.
10. The respondent's case is a simple one, it states that the relevant rules for the post to which the claimant applied were the Civil Service Nationality Rules. A copy of which was before the Tribunal.
11. These rules relate to eligibility for employment in the Civil Service and must be followed by 'government departments and other bodies within the Home Civil Service and the Diplomatic Service in their recruitment and appointment procedures'.
12. The cover posts whose 'functions are concerned with access to information which, if disclosed without authority or is otherwise misused, might damage the

interests of national security'. Such posts may be reserved. A reserved post is one which is capable of being reserved for a UK national. The respondent's case is that this post should have been designated a reserved post at the time of the advert and that it was subsequently designated a reserved post.

13. The act that the claimant complains about, is not the advertisement, but the timing or and the ultimate decision to refuse to progress his application once the role was given reserved status. The claimant does not suggest that the rules do not apply, or were incorrectly applied and this should not be a reserved post.

14. Schedule 22, paragraph 5 provides

'5 (1) A person does not contravene this Act—

(a) by making or continuing in force rules mentioned in sub-paragraph (2);

(b) by publishing, displaying or implementing such rules;

(c) by publishing the gist of such rules.

(2) The rules are rules restricting to persons of particular birth, nationality, descent or residence—

(a) employment in the service of the Crown...'

15. I find that schedule 22, para 5 of the Equality Act 2010 does apply to the act complained of.

16. No doubt this was aggrieving and troubling for the claimant, who as he said in submissions to the Tribunal wasted time and effort making an application. However, although it may have been upsetting, this was not and cannot be in my judgement a breach of the Equality Act 2010. The refusal to allow the claimant's application for the post in question to proceed, was an act that implemented rules that restrict employment in the crown by nationality, and therefore falls within schedule 22, paragraph (5) (2) (a) employment in the service of the Crown.

17. For these reasons the claim has no reasonable prospect of success. Given this decision I do not go to consider the application for a deposit order.

EJ Price

4 March 2024

Sent to the parties on:
14 March 2024
T Cadman
For the Tribunal Office:

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