



EMPLOYMENT TRIBUNALS

Claimant: Mr D Hughes

Respondent: Aardvark Clear Mine Limited

Heard at: Birmingham (hybrid)

On: 9, 10, 11, 12 & 13
September 2024

Before: Employment Judge Maxwell
Ms Stewart
Ms Ellis

Appearances

For the claimant: in person

For the respondent: Miss Cho, Litigation Consultant

REASONS

These written reasons are provided in response to the Claimant's request.

Introduction

Issues

1. The issues in the case are set out in the order of EJ Kenward following a preliminary hearing on 6 October 2023.

Evidence and Submissions

2. We were provided with two document bundles the Respondent had prepared:
 - 2.1 the first running to numbered page 348;
 - 2.2 the second as attached to the Respondent's skeleton argument.
3. We heard live evidence and received witness statements from:

- 3.1 David Llewellyn Baldwin Hughes, the Claimant;
 - 3.2 Kate Lawlor, the Respondent's Operations Manager;
 - 3.3 Ashley St John-Claire, the Respondent's Quality Safety Health and Environment Director;
 - 3.4 David St John-Claire, the Respondent's CEO;
 - 3.5 Harry Parsons, Recruitment Consultant with Holt Engineering Recruitment;
 - 3.6 Paul Sowden, the Respondent's Quality Assurance Manager.
4. We admitted into evidence additional documents produced by the parties as the hearing went on:
- 4.1 Interview and score sheets produced by the Respondent;
 - 4.2 A screenshot of a job advertisement produced by the Claimant.
5. We received written and oral closing submissions from both parties.

Applications

6. The Tribunal file contains a huge volume of correspondence, most of which came from the Claimant, in which he sought strike out or made other applications. There were also emails from the Respondent objecting to the Claimant's conduct and making their own applications. The Respondent's earlier strike out application had been considered and rejected by EJ Childe. We decided not to deal with any of these applications (to the extent they had not already been determined) as preliminary matters but instead invited the parties to make representations relating to strike out in the course of their closing submissions.

Facts

Witness Evidence

7. We found the Claimant to be an unreliable and incredible witness. His account of the events surrounding his unsuccessful application for employment with the Respondent has changed and developed over time. Importantly, what he tells us now about disputed matters is inconsistent with contemporaneous documentary evidence.
8. The Claimant is prone to using excessive, aggressive and inflammatory language. The volume of his correspondence is also disproportionate. Indeed an order was made by EJ Kenward on 6 October 2023 in the following terms:

In the circumstances, I ordered that Claimant shall immediately desist from using inflammatory or abusive comments in correspondence with the Respondent's Solicitors, shall correspond respectfully and politely

with the Respondent's Solicitors and shall restrict the volume of e-mails he sends to those reasonably required to progress the litigation.

9. Despite this order, there has been no reduction in either the volume or tone of the Claimant's correspondence.
10. The Claimant can also be calculating in what he says. We note that in much correspondence with the Respondent, the Claimant had described himself as a "lawyer". The Claimant is not a barrister, solicitor or legal executive. He does not have a law degree or any other legal qualification. In the course of answering the question whether he was a lawyer, the Claimant said he had worked as a paralegal and the term "lawyer" was not reserved to those with professional legal qualifications. The Claimant then volunteered that he was "half-way through enrolling in CILEX".
11. The Claimant has used the name David Casqueiro previously and did so when appealing against a wasted costs order made against him when he had been acting as a party's representative; see **Casqueiro and Barclays Bank UKEAT/0085/12/MAA**. Notably, the Claimant had been using the name Baldwin in the Tribunal but had changed this to Casqueiro by the time the matter reached the EAT and the findings at first instance included:

"...he tells me he is to take the Institute of Legal Executives qualification"

12. We do not accept the Claimant's evidence about enrolment in CILEX. He gave substantially the same explanation to a Judge 12 or more years ago and yet is no further forward. Our conclusion is that the Claimant wrote to Ms Lawlor, Mr St John-Claire and others saying he was a lawyer, intending that they would believe him to be a legally qualified professional, thereby lending more weight to his threats of legal action that would bring dire consequences, financial and otherwise.
13. The Claimant was cross-examined as to the job history in his CV, as whilst this recorded seamless employment with different employers in engineering, auditing and quality roles since July 2008, that appeared inconsistent with the two-year custodial sentence he received in April 2008. We were referred to press reports recording his conviction and sentencing under the name David Casqueiro (the Claimant admits this was him) for blackmail, attempting to pervert the course of justice and attempting to obtain a pecuniary advantage by deception, following various demands for payment made of employers with the threat of unjustified legal action.
14. The Claimant told us he had previously been employed as a paralegal by a firm of solicitors. We were referred to an order made by the Solicitors Regulation Authority ("SRA") in the following terms:

David Casqueiro

Prohibited

This person is not a solicitor. They are in this register because we have prohibited law firms we regulate from employing them.

Prohibited From 01/07/2010.

ID number 551160

15. Notwithstanding the Claimant does not admit this order applies to him, we are satisfied it does. The name David Casquero is not especially common. The making of an order in these terms by the SRA would be consistent with the offences of which the Claimant was convicted, as such a person would not be suitable for employment by a firm of solicitors. The order would have come into effect not long after his release from prison. It is more likely than not the Claimant is the prohibited person.
16. The Respondent's witnesses were clear, concise and credible. They gave a wholly plausible account of events and this was, frequently, corroborated by documents created at the time.

Background

17. The Respondent business is concerned with the design, development and manufacture of land mine clearance vehicles and associated counter explosive ordnance clearance technology.
18. The Claimant gives his date of birth as 17 May 1954 and on that basis, would have been 69 years of age at the beginning of 2023.
19. In January 2023, the Respondent decided to recruit to a number of new positions, one of which was a Quality Assurance Manager. Tim Smith, the Respondent's Project Director, supported colleagues in drawing-up an appropriate job description, which included:

Quality Assurance Manager / Integrated System Manager

QSHE Professional with demonstratable experience of leading improvements across an IMS to ISO9001/14001/45001. Will be able to demonstrate systems development, auditing and coaching experience, ideally in Defence, Military Automotive or Aerospace manufacturing, with a positive approach and keen eye for detail. Likely to hold Chartered status with organisations such as IEMA, IOSH or CQI, or be working towards one or more.

An experienced Quality Assurance Manager is required to lead and manage a multi-disciplinary team across the business and strategic partnerships in our supply chain; developing relationships to give clarity, whilst developing digital platform for Quality Assurance, Compliance and Control of our innovative products and services.

Responsibilities:

- **Nominally projects involve defence and security products, with a majority involving specialist vehicles.**
 - **Working closely with Senior Engineers, Project staff and Strategic Partners to ensure quality decisions support operations.**
 - **Ensuring conformance to appropriate standards of production, testing and compliance requirements.**
 - **Engaging directly at a management level with internal and client teams to shape and maintain budgets and forecast expenditure.**
 - **Devise and implement auditing and inspection requirements in a digital space to enable real time oversight of products in build.**
 - **To lead the quality team, management reviews, investigations and present data to stakeholders.**
 - **They will be subject matter expert on OSH, Environmental and Quality systems, taking a lead on Sustainability, GHG, Life Cycle and Carbon Capture.**
 - **Examine and test existing contracts and support supplier audits in line with our IMS.**
 - **Track and report key functional metrics to reduce expense, improve effectiveness, minimise non-conformances and thereby reduce the overall costs of Quality.**
 - **Collaborate with key persons to ensure clarity of the specifications and expectations of the company.**
 - **To be the BSI Point of Contact for Third Party Audits.**
20. A list of questions to be asked of candidates at an initial interview was devised and incorporated in a document with space to record the answers given. The intention was to have a consistent, recorded process.
21. The documents containing these questions and notes of the answers given by the Claimant and Mr Sowden (the successful candidate) were disclosed late in the proceedings. When Ms Lawlor was giving evidence, the Judge asked her whether and how the questions, answers and scores were recorded at the initial interviews. She explained this information had been incorporated into documents but they had not been disclosed and were not in the hearing bundle. The Judge expressed surprise that such obviously relevant documents had not been produced. The Respondent's representative, who had been recently instructed (the Company had previously been represented by its CEO) said she would take instructions.
22. Over the lunch break following Ms Lawlor's evidence, the Respondent sent an email to the Tribunal and Claimant attaching additional documents in this regard. On resuming at 2pm, the Judge asked the Claimant whether he agreed these new documents should be admitted into evidence. He did not. The Judge said

that rather than losing time at this stage on a contested application to admit the new evidence, the Claimant would be given time to consider his position and we would deal with the point at the start of the following day. During the afternoon, however, the Claimant sought to cross-examine Ashley St John-Claire on the new documents. The Judge intervened and explained that the documents were not before the Tribunal at that stage and if he wished to ask questions of the witness about the content of the documents, it would be necessary to admit them. At that stage the Claimant agreed the new documents could be admitted. We took a short pause to obtain the documents and read them before cross-examination continued. The Claimant says the documents are recent forgeries, prepared quickly following the Judge's observations. We do not agree. It is more likely and we find these are genuine documents. The time available to complete the exercise the Claimant suggests was insufficient. Furthermore, the

documents have the appearance of genuine interview notes, not least because they are somewhat sketchy in parts. The meaning of some notes and whether they record answers or the interviewers' views, is not always clear. This is, however, consistent with what often happens when interviewers are trying to ask questions, think about the answers being given and record them, all during a live and time-limited process (there were back to back 30-minute interviews). Furthermore, if the Respondent had gone about fabricating evidence, it would have been a simple matter for it to record more clearly in the documents further examples of the matters the witnesses say counted against the Claimant.

23. A number of agencies were approached to identify potential candidates. Holt Engineering Recruitment ("Holt") put forward several candidates for this role, including the Claimant, Mr Hughes.
24. Mr Hughes' CV disclosed relevant experience and qualifications, including ISO 9001:2015/IATF 16949:2016 Lead Auditor Training Course, which he completed in 2017. The Claimant is very proud of this qualification and characterises it as being the highest in the UK. The Claimant also listed various other qualifications in his CV:

Quality Management Systems, Lead Auditor, Quality Assurance, Regulatory Affairs, QA/RA, IVDD IVDR, ISO 9001, ISO 45001, ISO 14001, ISO 5001, AS 9100 Rev D, IATF 16949, ISO 13485 MEDICAL DEVICES, MDD - MDR, CE MARKING, COVID 19, GENOMIC DNA MAPPING, PHARMA, REAGENTS, BIOCHEMICALS, FDA CFR 21 Part 820, GMP, GDP, Reagents, Biochemicals, QA/RA, CAPAs, TECHNICAL FILES, DHF DESIGN HISTORY FILES, MEDICAL DEVICE FILES, ISO17025, ISO14971, VALIDATION 10 OP PQ

25. The Respondent received circa 20 applications and from these it invited 8 candidates, each of whom appeared on paper to be appropriately qualified and competent, to attend an initial interview, conducted by Teams. The Claimant was invited to such an interview.
26. Ms Lawlor, the Respondent's Operations Manager who was coordinating the various recruitment exercises, began to receive correspondence direct from the

Claimant about his application. This was unexpected, as candidates did not usually approach the Respondent in this way prior to their interview. Furthermore, the Claimant having been referred by Holt, communication was expected to be channelled through the agency.

27. On 29 January 2023, the Claimant wrote to Ms Lawlor, attaching a certificate for his ISO9001 qualification and saying:

1 I wish to apply for the advertised role of Quality Assurance Manager Warwick

2 I live in Coventry and am Lead Auditor by BSI ISO9001 2015, Lead Auditor ISO 14001 and Lead Auditor ISO45001

3 I believe I have been put forward by the Agency but for now I am simply presenting my BSI Lead Auditor Certificate Special Charter

[...]

6 I can deliver to Aardvark their ISO9001 2015 Certification Accreditation in 6 months average time line

[...]

8 Because you have evolving design - design is a heavy component in ISO9001 2015 Certification Accreditation

28. The Claimant had, of course, already applied and been invited to interview. Ms Lawlor replied, thanking the Claimant for his certificate, reminding him of the time and date of his interview and saying she look forward to speaking with him then. Five minutes later, Claimant wrote to her:

I wish to reiterate my interest in Aardvark and the potential is enormous

Also I can deliver ISO9001 2015 Quality Management Certification Accreditation which for a company designing de mining vehicles is still quite complex

I am Lead Auditor by BSI meaning I can satisfy your requirements of a BSI Lead Auditor

29. The Claimant wrote again on 5 February 2023 in the early hours of the morning, saying that he wished to discuss ISO9001 2015 accreditation and setting out the various steps he proposed to obtain this for the Respondent.
30. Ms Lawlor, not unreasonably, considered it was inappropriate for the Claimant to be writing to her in this way.
31. Rather than engaging in further correspondence with the Claimant at this stage, Ms Lawlor contacted Holt and requested they ask him to direct any further communication through the agency. One of the recruitment consultants, Harry Parsons, got in touch with the Claimant and delivered this message.

Interview

32. The Claimant's interview took place by Teams on 7 February 2023.
33. Whilst the Claimant said there were either four or five members of the Respondent's panel, his evidence in this regard was unreliable. He did not give names or descriptions of them and appeared uncertain. Much of his correspondence appeared to state or at least imply that the CEO was present but we noted he did not challenge the witness evidence of David St John Claire, which included that he was not present and took no part in scoring or assessing the Claimant. We accepted the evidence of the Respondent's witnesses in this regard. The panel comprised Ms Lawlor, Mr Smith and Ashley St John-Claire. They welcomed the Claimant and proceeded to ask the questions set out in the interview documents we admitted into evidence. We also accept that all of the candidates were asked the same questions and given the same 30-minute opportunity to answer and put themselves forward to best effect.
34. Whilst we accept the document recording the Claimant's answers is genuine, as we have already observed, some of the notes made of the answers are sketchy and it is not always clear whether the words written are those used by the Claimant or the Respondent's characterisation of his answer.
35. We also accepted the evidence of Ms Lawlor and Ashley St John-Claire as to the answers given by the Claimant and the way he presented himself more generally. He sat in such a way as to not being facing his video camera but instead presenting a side-on view, which the panel found un-engaging.
36. We do not find the Respondent did or said any of the things the Claimant alleges in support of his harassment claim, namely:
 - 36.1 The Respondent would present questions to the Claimant "and then answer those questions himself making fun and mocking the [Claimant] so the Claimant felt diminished and inferiorized";
 - 36.2 The Respondent mocked and ridiculed the Claimants qualifications;
 - 36.3 When the Claimant was asked a question on protecting lives of children in warn torn areas, the interviewing team "laughed, mocked, ridiculed the Claimant to inferiorize him and make him feel worthless".
37. No plausible reason has been advanced for the members of the Respondent's panel to have behaved in this way. Nor could the Claimant identify the person who he said did any of this. When asked by the Tribunal, he simply replied "the youngest person". In his oral evidence the Claimant said that as soon as the panel saw him they looked down at the floor. In his closing submissions he said this action implied that they wondered which care home he had come from. We do not consider this is at all likely. It entirely possible that members of the panel (who were conducting this process remotely) looked down at documents or the computer keyboard in front of them. It had nothing whatsoever to do with the Claimant's age. The Claimant had not given an age or date of birth on his CV,

nor did the agency provide this information. The panel would have nothing other than the most general impression of the Claimant's age, given they were observing him through video conferencing as he sat sideways on to the camera.

38. Each of the Respondent's witnesses struck us as serious professional person and even if they had formed a negative view of the Claimant, we do not believe they would have behaved in such a way as to convey this impression let alone done any of the outrageous things the Claimant now suggests. There was no question asked of the Claimant about protecting the lives of children in war-torn areas. One of his answers to another question did, however, include him saying that he would wish to ensure the safety of those in areas that had been demined. We do not believe it is at all likely that the panel would have laughed at this. The Respondent is in the business of making mined conflict zones safe once more. It is no laughing matter and we are satisfied the Respondent's witnesses and other personnel take it very seriously. There is no real scope to for the Claimant to have mistakenly misconstrued what was said and done. Unfortunately, we are driven to the conclusion that the Claimant has fabricated these allegations in order to support his claim.
39. We accepted the evidence of the Respondent's witnesses both as to the content of the Claimant's replies and the manner of his presentation. In particular, we find that the Claimant told the panel several times that he could get them ISO9001 accreditation. This is consistent with the unsolicited email correspondence he sent before the interview and the note recorded on his interview sheet:

ISO9001 – cannot understand we have it already

40. In repeatedly asserting his ability to obtain ISO9001 accreditation for the Respondent, the Claimant undermined his own prospects. The Respondent already had this accreditation and did not need a new recruit to obtain it for them. The Claimant could have discovered this information for himself (by looking at the company website) and it gave the panel the impression he had not done adequate research about the Respondent in preparing his application. Furthermore, the panel had to tell the Claimant several times that they already had ISO9001 accreditation and the need for repetition suggested the Claimant was not listening to or could not take on board the information being given to him. The Claimant also described how he would only operate as he sees correct and did not appear open to the possibility of alternate working methods that colleagues might suggest. Overall, the panel concluded the Claimant was a weak candidate. He was scored 2 out of 5 and did not proceed to the next stage. The Respondent's scoring guide provided:

2 Less than satisfactory

More negative ability indicators evident

41. The Claimant appears unable to accept that he could be scored in this way because of his ISO9001 qualification, which he says the Respondent needed. The Respondent's explanation is a simple one. All of the candidates invited to

interview had the paper qualifications and experience to indicate they were competent. The selection process was intended to identifying the best of them from the answers they gave and how they presented themselves during interview. The Respondent wanted the person who could satisfy all the criteria in the job description to the fullest extent. The role was about more than ISO9001 accreditation, which the Respondent already had. Broad duties encompassing, quality, health, safety and the environment were included. During his evidence at the Tribunal, the Judge asked the Claimant whether he could see how telling the Respondent repeatedly that he could get them something they told him they already had might be unhelpful to his application. The Claimant replied that he had been telling them how he would retain their accreditation. This was a recent change in his evidence and we do not accept it is true.

7 February 2023

42. The Claimant wrote to Mr Parsons shortly following his interview on 7 February 2023, in the following terms:

Went very well - so you have in Aardvark a highly successful and complex operation

I was able to read through their You Tube videos and study their de mining vehicles so the interview became quite profound discussing the demining and assurance that a parcel of land had been demined successfully so no mines left and the area is clear

They are ISO9001 so we talked about the GEN2 and they asked me and I reiterated that they are concerned on the protection of the operator (they use autonomous vehicles so the operator is not present or in the vehicle) but I still submitted that the critical area is still assuring that an area once cleared had in fact been cleared

We then discuss salary £55000 and finally my notice period and distance from Warwick

So there were no embarrassing moments and it all flowed well and I think I was able to put across that I was excited at the prospect of joining the company I think they will give you feedback tomorrow for a Stage Two interview I presume onsite in Warwick so if successful I would be invited to a second stage interview on site

43. We are reinforced in our view that the interview was conducted properly by the terms in which the Claimant wrote shortly thereafter. In cross-examination, the Claimant denied any inconsistency between the email he wrote to Mr Parsons and what he now alleges was said and done during the interview. He also said that he would not have raised any concerns because he was hoping to obtain this job (i.e. he did not want to criticise the Respondent and jeopardise his chances). We do not accept the Claimant's evidence of this. The Claimant's email is not merely silent with respect to the matters he now relies upon for age discrimination and harassment, rather he wrote to Mr Parsons in glowing terms. He was very positive on the process and enthusiastic about the prospect of joining the Respondent. We do not believe he would have written in this way if

the interview had unfolded as he now alleges. On the contrary, it is far more likely the Claimant, who undoubtedly has a very high opinion of his own qualifications and presentational ability, left this interview believing it had gone well and he would proceed to the next stage. His words to Mr Parsons reflected that belief.

8 February 2023

44. Notwithstanding the Claimant having been reminded to route any correspondence through Holt, he wrote to Ms Lawlor direct again on 8 February 2023. He began by saying “I was extremely impressed yesterday with the Team”, before going on to set out various reasons why he should be appointed to the role and “I am very keen to be considered for this role as I truly believe in your team...” The Claimant did not refer to any of the comments or behaviour he now alleges.
45. Ms Lawlor contacted Mr Parsons to advise that the Respondent would not be taking the Claimant's application forward. She wrote:

Please tell David that while we appreciate that he is qualified and competent, his approach is too direct and specific. Other candidates have proved a better fit with Aardvark by laying emphasis on how they work and collaborate with the team, and we did not feel that this would be David's approach.

We had to confirm more than once during interview that we are already ISO9001 certified and in fact in our third year of recertification.

We wish David well for his next position.

46. Mr Parsons got in touch with the Claimant by telephone to let him know the outcome. He explained the Respondent's reasons consistently with what he had been told by Ms Lawlor. In response to this unwelcome news, the Claimant's enthusiasm quickly dissipated and he said “Aardvark and you can fuck off”, before hanging up. We do not accept that Mr Parsons told the Claimant he had not been selected because of his age. Ms Lawlor had said no such thing to Mr Parsons and there would be no reason for him speak in these terms. Furthermore, if Mr Parsons had made such an astonishing declaration, it would have been the first thing the Claimant complained about in his subsequent emails and it was not.
47. Shortly thereafter, the Claimant began to send emails to Mr Parsons in the terms set out below:

10.24am

All submissions have been made to Aardvark

I had not been totally presented perhaps because we missed out something

The demining vehicles are in fact automotive so I am Lead Auditor by BSI in Automotive as well which is IATF16949 2016 for which I also have special extended training

This is important because Aardvark have to sort out critical spares for the customer and maintenance of the vehicle

So I had not made my presentation on a spare parts and maintenance level

Aardvark gave me a buzz to be honest and like their Team and they could be very successful and could see an order of million of vehicles especially in Ukraine

So great journey really enjoyed

They need a guy with ISO at BSI Level then they also need a guy with Automotive which is my case

11.10am

Just to clarify Aardvark after they gave you the exclusivity they gave the recruitment to another Agency

There is no doubt these are de mining vehicles and they posed to be critical quality assurance considerations yesterday in the interview which I felt I had not totally replied to

For instance it was essential that once demined an area there were no hidden mines that could explode after the vehicle cleared an area

The quality assurance implications are huge for a vehicle that acts to explode mines and I think they are window shopping and have no intention of seriously discussing the role - for instance we did not discuss spare parts for the customer or maintenance and servicing and training which all fall under the remit of quality assurance

So yes Aardvark had engaged another Agency and I don't think they are seriously trying to engage anyone

Maintenance of the vehicles and deciding on spare parts seems to me to be essential

I don't think they have other candidates - that is just an excuse and in my view not true at all

The other aspect is that for the MOD everyone has to have SC Security Clearance including the suppliers

So they are not serious in their search for a Quality Assurance figure

I am extremely experienced and qualified and competent

11.34am

As you can see Aardvark brought in another Agency and in my view far inferior to you

So Aardvark are not serious and are only window shopping

I see this behaviour constantly by companies

The fact is that after they gave you exclusivity for the role they brought in another Agency far inferior to your performances and candidates

I don't know how you punish this level of dishonesty or even if you should - but this really upset me

12.11 pm

Harry as closure

I have been shortlisted as Quality and Assurance Manager for Estee Lauder and am attending a Teams tomorrow

I am world class so in the future you may contact me for Quality Manager Quality Assurance Manager

For Aardvark I think I should have been allowed a second stage interview on site so I think they are just bloody rude

I invested a lot of training in my Certificates for BSI and they are searching for a BSI Lead Auditor so Aardvark is a company that shows a shell of competence but inside they are hot air and a bluff which is a common place unfortunately

So let's forget about Aardvark and wish them all the best

21.23pm

Tomorrow I am interviewed as Quality Assurance Manager for the giant Estee Lauder in cosmetics

This raises the question that I am truly at the 1% best in the world and really know my stuff

I take an interest watch you tube videos and prepare

Companies interview me and sometimes they have obscure reasons for making me fail

I really liked Aardvark and your performance was impeccable and there was no reason why I was not allowed a Stage Two interview on site

I was a perfect match to their own job description

I have decided in future to measure companies by their adherence to their own requirements detailed in their job description

Aardvark wanted a BSI liaison which I could be

So it was not about me failing but they not wanting to engage me but rather maliciously

They did not want me to succeed

So as closure you may put me forward to positions that require a Quality Manager with a very strong experience in zero defects but the company must be very determined for zero defects as deliverable

Also I am very good but exceptionally good in ISOs

Estee Lauder puts me at best in the world - so yes Aardvark did not want me to succeed and when I saw them putting up a second advertisement after you had done very good work and deserved to continue I should have withdrawn in protest and in future that is what I will do

You deserved in seeing your candidate placed and earning the commission because you are also working

Aardvark in my view were dishonest and I should have pulled out when the signals were there they were bringing another Agency in

Finally this was strange and odd - the MOD Ministry of Defence requires always SC Security Clearance and they never raised Security Clearance suggesting that the MOD is not one of their clients

SC Security Clearance acts for me normally as a catalyst as I am SC Cleared by Rolls Royce and my decision is simply Aardvark did not want me to succeed in getting the job

48. Notably at this stage, despite making wide-ranging complaints about the Respondent's approach, the Claimant still said nothing about age and nor did he raise the other matters he now alleges. This would have been the first thing he referred to if the interview had unfolded as he now alleges or indeed, if Mr Parsons had told him that age was the reason for his rejection. His explanation for not referring to the harassment he says occurred during interview, namely that he was hoping to get the job did not want to put the Respondent off, could not apply to these emails following his rejection.

Successful Candidate

49. Mr Sowden had his first interview on 21 February 2023. He was 43 years old at the time. Mr Sowden had the following qualifications:
- **Chartered Quality Professional, Member of The Chartered Quality Institute. Since 2018**
 - **Engineering Technician, The Institute of Engineering and Technology. Since 2019**
 - **Change Management Practitioner, APMG. 2022**
 - **IOSH Managing Safely. 2012**

- IOSH Risk Assessor. 2012
- Lean Leadership Academy. 2022
- Defence Academy Safety Occurrence Investigator. 2022
- Defence Academy Safety Occurrence Review Group. 2022
- BAe Systems Six Sigma Yellow Belt. 2013
- Defence Academy Continuous Improvement Facilitator. 2012
- Military Specialist Training School Quality Audit Skills ISO 9001 Auditor course. 2011

50. During his interview, Mr Sowden explained that his auditing qualification having been obtained in a military context, he was using the funding available to him on leaving the RAF to obtain the civilian ISO lead auditor qualification, which he would have shortly.
51. The panel were very impressed with Mr Sowden and the answers he gave to the set questions. Their view was that he had evidenced the requirements of the job description fully and they awarded a score of 5. Mr Sowden was invited to a second interview, this time in person, which took place on 27 February 2023. At this stage, candidates were required to prepare a short presentation about project quality. They were also subject to more detailed questioning. Mr Sowden was successful. He was offered the job and accepted this.
52. Mr Sowden received his CQI and IRCAPR328: QMS ISO 9001:2015 Lead Auditor – 18223 accreditation following attendance on the relevant 4-day course between 20 and 24 March 2023. He took up his position with the Respondent on 12 June 2023.

Claimant's Further Correspondence

53. On 12 March 2024, the Claimant wrote to Ms Lawlor alleging age discrimination for the first time:

1 Pursuant to the e mail today to the CEO I have found that you are still advertising for a Quality Assurance Manager and you refuse to engage me for a combination of age and no nonsense attitude

2 I think I was age discriminated at the interview pursuant to the UK Equality Act 2010

3 I hold all the qualifications and experience to succeed in the role as Quality Assurance Manager of Aardvark and you rejected me because of age and a gravitas no nonsense attitude

4 I am even Lead Auditor BSI point of contact

5 I am lawyer and I believe you have discriminated me against other candidates due to age discrimination

6 My observations to you on mine clearing and training and health and safety of operators was superb and you were more interested in window shopping rather than selecting the right candidates

7 In Quality Assurance Manager real for a mine sweeping vehicle the key elements are the design of the vehicle the materials applied how the blasts can penetrate the driver and kill or maim him the quality of the training and life saving procedures and the thoroughness of the testing process

8 All of which you made fun of laughed and mocked

9 I wish to know and sent to this e mail why you did not engage me for this role as Quality Assurance Manager as I am a 100% fit for the role

10 And why it was you reacted angrily when I communicated directly to you - and why you obviously rejected 10 candidates for the role me included

111 have gravitas and a no nonsense attitude so I wish to know explained by you to me why I was not discriminated in the campaign to find a Quality Assurance Manager and why - knowing that you are still looking for a Quality Assurance Manager - you still reject my application and neither have the job or submitted me to a Stage Two interview

12 You told me you had gone with another candidate but the job advertisement for the Quality Assurance Manager is still being advertised on your careers website

13 You have ten days to submit to me a reply less you find yourself in front of a Judge answering for breach of the UK 2010 Equality Act for age discrimination

14 I do not like being played with - you are still advertising for a Quality Assurance Manager on your careers website after you told me you had decided on another candidate

54. Whilst the Claimant had referred to an email of the same day to the CEO, it appears this was sent the following day, 13 March 2023:

1 I am David L B Hughes of Coventry

2 You are advertising for a Quality Assurance Manager on your website

3 I am applying for that role

4 You will consider my Application for the role and you may or not make me a job offer

5 Such job offer is for your offices in USA and Saudi Arabia

6 Within your job specification you require a candidate with huge muscular prowess in ISQ9001 2015 – I am Lead Auditor ISO 9001 2015 and there are only 3 people in the UK with my qualifications

- 7 Your de mining vehicles are part automotive and I am Lead Auditor trained by BSI in IATF16949 2016
- 8 As such I want to be given the job as your Quality Assurance Manager for USA and Saudi Arabia and if you establish base in near Russia or Ukraine
- 9 I have issued proceedings against you at the Employment Tribunal and the ACAS process has started
- 10 ACAS is an entity that intervenes to attempt free no cost mediation conciliation
- 11 Kate Lawlor will see on her a substantial costs order for having acted unreasonably by manipulating agencies and candidates so there was not a stable platform to make a decision on who to make the job offer to
- 12 With reference to me I was at Rolls Royce the middle management trainer on root cause analysis
- 13 When at the Hearing for Directions I am asked to present a schedule of losses although the initial offer was tabled at £55000 annum I would be working with USA and Saudi Arabia and possibly having to travel to Saudi Arabia and other countries so realistically the package should have been £120.000 as a USA Quality Assurance Manager would be on £200.000 a year so I will present the Court two frameworks the £55000 annual salary and the realistic £120.000 annual salary
- 14 Ukraine alone would commission to you in excess of 1000 de mining vehicles each costing between 2 and 10 million
- 15 ACAS will approach you and ask you if you want free no cost mediation conciliation and if you reject their offer we close ACAS and I issue proceedings in Court which realistically will cost you £100.000 to defend
- 16 I intend to describe to the Court how you deceived me tricked me belittled me mocked and ridiculed me and how you flooded the floor with unqualified candidates so we would all fail
- 17 I am ex Rolls Royce and the highest qualified in the UK in ISO 9001 2015 and the highest qualified in the UK in automotive IATF 16949 2016 meaning I operate on International Accredited Certified standards and you have NO right to pull out a bag of tricks so no candidate can make it to the finish line and force him to fail
- 18 And rest assured that I will describe in Court to granular detail to the Judge how I was made to suffer for over three months to try and see a deserved job offer including the wise cracks during my Teams Interview
- 19 As for Kate Lawlor she will not escape a substantial costs order on her not the company for her abhorrent and shameful behaviour

20 I have re applied for the Quality Assurance Manager role which you advertise in current opportunities and would want £120.000 salary as the role is USA and Saudia Arabia if not Ukraine based

21 The Quality Assurance also involves

21.1 Spare parts

21.2 Maintenance and Assistance

21.3 Training and Education

21.4 Continuous Improvement

21.5 Passing the annual surveillance and re Certification Audits

22 I attach again my BSI Lead Auditor Certificate in case Kate Lawlor made sure the CEO would never set eyes on such certificate and be aware of the level of my application

23 You have until 31/03 to advise me if you wish to discuss the problem or go before the Judge because I am sick and tired with the excuses that are invented by you not to make me a job offer in particular Kate Lawlors tactics of manipulation

55. Thereafter and throughout the time since his unsuccessful interview, the Claimant has continued to correspond with the Respondent and it employees (sending over 1,200 emails) not merely alleging age discrimination but also wrongdoing of various other kinds, threatening legal proceedings and warning of dire financial or personal consequences. David St John-Claire the Respondent's CEO has become the Claimant's particular target, notwithstanding he was not present at the Claimant's interview and had no involvement in his scoring.

Law

Direct Discrimination

56. In the employment field and so far as material, section 39 of **the Equality Act 2010** ("EqA") provides:

(2) An employer (A) must not discriminate against an employee of A's (B) -

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

57. As to the meaning of any other detriment, the employee must establish that by reason of the act or acts complained of a reasonable worker might take the view

that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An unjustified sense of grievance cannot amount to a detriment for these purposes; see **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL**.

58. EqA section 13(1) provides:

(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.

59. The Tribunal must consider whether:

59.1 the claimant received less favourable treatment;

59.2 if so, whether that was because of a protected characteristic.

60. The question of whether there was less favourable treatment is answered by comparing the way in which the claimant was treated with the way in which others have been treated, or would have been treated. This exercise may involve looking at the treatment of a real comparator, or how a hypothetical comparator is likely to have been treated. In making this comparison we must be sure to compare like with like and particular to apply EqA section 23(1), which provides:

(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.

61. Evidence of the treatment of an actual comparator who is not close enough to satisfy the statutory definition may nonetheless by of assistance since it may help to inform a finding of how a hypothetical comparator would have been treated.

62. As to whether any less favourable treatment was because of the claimant's protected characteristic:

62.1 direct evidence of discrimination is rare and it will frequently be necessary for employment tribunals to draw inferences from the primary facts;

62.2 if we are satisfied that the claimant's protected characteristic was one of the reasons for the treatment complained of, it will be sufficient if that reason had a significant influence on the outcome, it need not be the sole or principal reason;

63. In the absence of a real comparator and as an alternative to constructing a hypothetical comparator, in an appropriate case it may be sufficient to answer the "reason why" question - why did the claimant receive the treatment complained of.

64. The burden of proof is addressed in EqA section 136, which so far as material provides:

(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 occurred.

65. When considering whether the claimant has satisfied the initial burden of proving facts from which a Tribunal might find discrimination, the Tribunal must consider the entirety of the evidence, whether adduced by the claimant or respondent; **see Laing v Manchester City Council [2006] IRLR 748 EAT.**

66. Furthermore, a simple difference in treatment as between the claimant and his comparators and a difference in protected characteristic will not suffice to shift the burden; see **Madarassy v Nomura [2007] IRLR 246 CA.**

67. The burden of proof provisions will add little in a case where the ET can make clear findings of a fact as to why an act or omission was done or not; see **Martin v Devonshires Solicitors [2011] IRLR 352 EAT**, per Underhill P:

39. This submission betrays a misconception which has become all too common about the role of the burden of proof provisions in discrimination cases. Those provisions are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination generally, that is, facts about the respondent's motivation (in the sense defined above) because of the notorious difficulty of knowing what goes on inside someone else's head "the devil himself knoweth not the mind of man" (per Brian CJ, YB 17 Ed IV f.1, pl. 2). But they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law [...]

Harassment

68. Insofar as material, EqA section 26 provides:

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

[...]

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account— (a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

69. Whilst the unwanted conduct need not be done ‘on the grounds of’ or ‘because of’, in the sense of being causally linked to, a protected characteristic in order to amount to harassment, the need for that conduct be ‘related to’ the protected characteristic does require a “connection or association” with that; see **Regina (Equal Opportunities Commission) v Secretary of State for Trade and Industry [2007] ICR 1234 QBD**. Notwithstanding it was decided under the prior legislation including the formulation “on the grounds of”, the observations made by the EAT in **Nazir v Asim [2010] ICR 1225** may still be of some relevance:

69 We wish to emphasise this last question. The provisions to which we have referred find their place in legislation concerned with equality. It is not the purpose of such legislation to address all forms of bullying or anti-social behaviour in the workplace. The legislation therefore does not prohibit all harassment, still less every argument or dispute in the workplace; it is concerned only with harassment which is related to a characteristic protected by equality law—such as a person’s race and gender.

70. In relation to the proscribed effect, although the Claimant’s perception must be taken into account, the test is not a subjective one satisfied merely because the Claimant thinks it is. The Tribunal must reach a conclusion that the found conduct reasonably brought about the effect; see **Richmond Pharmacology v Dhaliwal [2009] IRLR 336 EAT**.
71. Guidance on the threshold for conduct satisfying the statutory definition was given by the EAT in **Betsi Cadwaladr University Health Board v Hughes [2014] 2 WLUK 991**; per Langstaff P:

10. Next, it was pointed out by Elias LJ in the case of Grant v HM Land Registry [2011] EWCA Civ 769 that the words “violating dignity”, “intimidating, hostile, degrading, humiliating, offensive” are significant words. As he said:

“Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

11. Exactly the same point was made by Underhill P in Richmond Pharmacology at paragraph 22:

“..not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

12. We wholeheartedly agree. The word “violating” is a strong word. Offending against dignity, hurting it, is insufficient. “Violating” may be a word the strength of which is sometimes overlooked. The same might be said of the

words “intimidating” etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.

Conclusion

Direct Discrimination

72. The alleged less favourable treatment occurred, namely following an initial interview on 7 February 2023, the Respondent decided not to progress the Claimant's application for employment. The question then is whether this was because of age.
73. There are no facts from which we could, in the absence of an explanation, find that the Respondent decided not to invite the Claimant to a second interview because of his age. Whilst the Claimant had a relevant ISO 9001 audit qualification, so did other applicants. From an initial pool of more than 20, the Claimant was one of 8 who were invited to an initial interview by Teams. Thereafter, the Claimant made unnecessary contact with the Respondent before performing poorly at interview. When answering questions, he did not face his camera. The Claimant repeatedly told the panel he would obtain an accreditation for the Respondent, which it already held. The Claimant could easily have discovered this existing accreditation for himself by looking at the Company website. His answers suggested he was closed-minded to alternative working methods. The panel scored him as a 2.
74. Mr Sowden would be the correct comparator for the Claimant's complaint. He did not do the things the Claimant had at interview. He gave relevant answers to questions that tended to evidence the matters set out in the Respondent's job description. He was scored a 5. He was invited to a second interview and subsequently offered the job.
75. There are no facts that would allow for a finding that the Claimant's lack of progression in this selection process was to any extent whatsoever because of age. Accordingly, the burden does not shift.
76. Further and separately, we accepted the Respondent's non-discriminatory explanation. The Claimant created a very poor impression on the panel at interview. His presentational style was unengaging. He was determined to talk about obtaining ISO 9001 accreditation despite this not being sought from the successful candidate. His heavy focus on that particular point demonstrated a lack of basic research on the company website and in returning to the same point after having been told of the Respondent's accreditation, the Claimant showed himself unable to listen or take on board what he was being told. The panel felt the answers given did not demonstrate the Claimant was a team player. Mr Sowden on the other hand, performed very well at interview. He had an engaging approach, looking directly at his camera and, therefore, the panel. He gave relevant examples and persuasive answers. None of this had anything whatsoever to do with age.

77. Accordingly, the Claimant's claims of direct age discrimination are not wellfounded and are dismissed.

Harassment

78. The alleged harassment did not occur. This is a fabrication on the Claimant's part.
79. Accordingly, the Claimant's claims of harassment related to age are not wellfounded and are dismissed.

Claims Dismissed

80. The Claimant's claims are dismissed in their entirety, they were totally without merit.

EJ Maxwell
18 September 2024