



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Ms Deborah Pennington MBE

Respondent: Home Office

Heard at: in public by CVP

On: 21, 24, 25 February 2025

Before: Employment Judge Adkin
Dr J Holgate
Ms S Campbell

Appearances

For the claimant: in person
For the respondent: Mr S Tibbitts, Counsel

REASONS

Tribunal judgment

1. In an decision delivered orally on 25 February 2025 and confirmed in a written judgment on the same date the Tribunal decided that the complaint of direct disability discrimination pursuant to sections 13 & 39 of the Equality Act 2010 was not well founded and was dismissed.
2. The Claimant requested written reasons.

Overview

3. This Claimant is and remains an employee of the Respondent.
4. This claim is about alleged direct disability discrimination during the period October 2022 to September 2023 during which the Claimant had applied and met the required standard for a SCO grade but did not get put forward for

variety of roles. She complains about the way that the Respondent's Home Office Resourcing Centre ("HORC") operates.

Evidence

5. The Tribunal had the benefit of a 530 page agreed bundle.
6. We received witness statements from the Claimant and from the Respondent's two witnesses David Barnes, manager of the Recruitment Policy and Compliance team within the Home Office Resourcing Centre (HORC) and Janina Cieciora, Head of Governance and Portfolio.
7. Each witness gave oral evidence.

Employment history with the Respondent

8. In September 1992 the Claimant commenced working as an Administrative Assistant at HMP Wandsworth.
9. She achieved promotions from that grade to Administrative Officer then Executive Officer. In 2003 the Claimant achieved a promotion to substantive HEO (Higher Executive Officer) grade.
10. In 2019 Claimant obtained Developed Vetting clearance which is a higher level of security clearance.

Dyslexia

11. In 2013 the Claimant received a diagnosis of dyslexia (and dyspraxia).
12. In mid-January 2015 that Home Office began the process of investigating medically retiring the Claimant for dyslexia, which the Claimant discovered in an Occupational Health appointment on 17 March 2015. The Tribunal understands the degree of surprise expressed by the Consultant Occupational Physician at being asked to consider ill health retirement for someone with dyslexia.
13. That was plainly an unpleasant surprise for the Claimant, which has left her with a residual unease and concern about the attitude of the Respondent to her dyslexia.
14. It is not in dispute that from March 2015 and at all times material to the present claim the Respondent had knowledge of disability which in the case of the Claimant amounts to a disability.

Role changes

15. Happily the Claimant was not medically retired.
16. Subsequent to those events the Claimant has had several changes of role and in different teams with different managers. In short therefore she is not working in the same team or for the same management as she was in early 2015.

17. Despite those various changes the Claimant has continued to believe that she has been “blacklisted” and that the view that because of dyslexia she is experiencing difficulties in the future progression of her career.
18. On 31 August 2022 the Claimant posted to Crime Overseas Production Orders programme as a Stakeholder Engagement Lead HEO.

Claimant’s complaint about “acting up”

19. The Claimant explains that within her current department she has been acting above her substantive grade and yet has not been found a role at SEO grade. What she infers from that is that she is competent, yet she feels that she is being blocked from advancement which has led her to the conclusion that she has been blacklisted. She has been paid £700 in recognition of her effort. This is however below what she would receive if she obtained a substantive promotion.

Application to SEO role in September 2022

20. In approximately September 2022 the Claimant applied for a role campaign number 221152 - Borders and Enforcement - Interventions and Sanctions Directorate - Immigration Enforcement SEO Health and Wellbeing Lead
21. That is the for the SEO grade, which represented a promotion from her then substantive grade.
22. The Claimant received an email confirming the outcome of that application on 2 October 2022 from the Home Office Recruitment Team which read as follows:

“You have reached the required standard, but we are unable to offer you a job immediately. We have placed you on a reserve list from which future appointments may be made.

The reserve list for Borders and Enforcement - Interventions and Sanctions Directorate - Immigration Enforcement SEO Health and Wellbeing Lead will expire on 2 October 2023 and if we are able to offer you a role before this date we will contact you again.”
23. The Claimant had met the minimum standard for the job, but was not the highest ranked and another candidate scored higher.

Claimant’s perspective

24. In the Claimant’s disability impact statement she explains what happened from her perspective since then:

“During that time I have applied for at least 13 posts within the Home Office via Civil Service Jobs (CSJ’s), 2 posts withdrawn and at least 5 internal Expressions of Interests (EOI’s) but have not got further than the application stage and have not been invited to interview. At the same time whilst I was on the waiting list, I was meant to have been put forward for any suitable jobs that arose

by Home Office Resourcing Centre ("HORC"). I was not informed that I had been put forward for any suitable roles during the 12-month waiting list period, nor am I able to obtain this information."

25. Unfortunately the Claimant's expectation of what due to happen in this period i.e. a proactive job search on her behalf seems to have been far higher than the practical reality of the way that the HORC operates.

No appointment

26. What did **not** happen at any stage in the year following was that she was offered or contacted about an alternative appointment. The anniversary of the letter lapsed with no outcome.
27. The Claimant's evidence for her part is that her communication with recruiting managers (Respondent describes them as vacancy holders – we use those terms interchangeably to mean managers who are seeking to fill a vacancy) is that they are told by HORC that when she spoke to a recruiting manager, I had been informed that HORC had informed them that no-one was on the waiting list. Although this is hearsay evidence and the Claimant has not identified the particular individual, we have no reason not to accept this evidence in general terms.
28. From the Claimant's point of view she had concluded based on the total absence of any action or communication is being blacklisted for her disability.

Respondent's case

29. The Respondent's case [**AGOR 27.2**] is that the roles identified in this case were not put forward to the Claimant because the Respondent's business areas did not use the reserve list during its recruitment campaign and/or an exact match or close match was not identified.
30. The Respondent has presented evidence, which the Claimant would not have seen contemporaneously that she was ranked second of three candidates who had met the standard but were not offered the role. None of these three candidates received an appointment during the material year. Even the first ranked candidate did not receive a role during the course of the year.

Wider context

31. At the time of Ms Pennington being placed on the reserve list, there were 128 active reserve lists at the SEO grade which containing a total of 218 individual candidates.

Respondent's reserve list process

32. Janina Cieciora's unchallenged evidence, which was accepted by the Tribunal was as follows:

« Reserve list

23. when a vacancy becomes available, a member of the Home Office Recruitment Centre look at the skills and behaviours in relation to a reserve list and search for any campaigns at the same grade of the role advertised which are “closely matching”. The Home Office Recruitment Centre undertakes such a task, rather than the recruiting manager.

24 The recruiting manager does not have any details regarding the individuals on the reserve list until a reserve list is “matched” and it is possible to make contact with those on it. At that point, you are compelled to contact the individuals in question, in merit order, until such time that someone accepts the role. There is therefore no room for diverting from the reserve list. As such, I find it difficult to see how Ms Pennington would be “blacklisted” despite what she has alleged in her claim, because personal details are unknown.

25 Further, there is not always a closely matching reserve list to the campaign in question at the time.”

33. According to David Barnes who manages the Recruitment Policy and compliance Team within HORC, the team employs over a figure which scales up and down with demand, currently very approximately 160 people and has been operating for over 4 years. The idea is that it is a better use of recruiting effort to identify candidates who meet minimum standards and who can be slotted into other roles which are at least 75% matching.
34. It has become clear in oral evidence from David Barnes that the majority of home office roles which are open for recruitment are not placed through the HORC system at all. Mr Barnes did not have precise figures but explained that up to 50% of roles in some business areas are filled using this matching scheme. It follows from that estimate that other business areas do not achieve 50% through HORC and also that overall most vacancies are not matched using the HORC system. He explained that the trend is toward increasing use of this matching scheme. We are grateful to Mr Barnes for providing these estimates. We have not taken these to be precise figures but they give us an useful impression as to the overall picture in Home Office recruitment.
35. The Tribunal infers based on Ms Cieciora’s evidence that some vacancy holders may be reluctant some instances to use a system which compels them to take a particular candidate (i.e. the highest ranking candidate) from a matched list. We can well see that for some roles that might represents an unattractive constraint on flexibility in recruitment. The recruiting manager loses the ability to exercise their personal judgment.

HORC Desk Note

36. We have considered the HORC Desk Note published May 2021 “Reserve Lists Role Matching - HORC Desk Note” which was written by Mr Barnes.

37. This explains the seven step process to matching reserve lists to recruitment campaigns. Policy makes clear that comparing campaigns to reserve lists:

75% or more of the criteria need to match.

☐ the lead criteria should match (as this is deemed important to the role).

38. There is Q&A section which follows on from this.

Disability confident

39. The above desk note prominently displays the “disability confident leader” logo on front page [347]. The Claimant made the point in cross examination of Mr Barnes that the desk note does not deal with disability at all. Mr Barnes defends this policy on the basis that the HORC system, with the focus on lists rather than individuals is “blind” to disabilities and that this means that they cannot be unconscious bias, since vacancy holders will be unable to see what disabilities individuals on the matched reserve lists have. That feature of the policy is relied upon as part of the Respondent’s defence to this claim of direct discrimination.
40. The Claimant also explored with Mr Barnes her concern that this policy does not reflect a “level playing field” as far as disabled people are concerned. We understand the concern she is articulating, although it does not help her as part of her claim for direct discrimination. This document appears to be silent on Respondent’s duties to make reasonable adjustments for disabled people and its public sector equality duties. To the extent to which disabled people may need additional support, it is unclear to us how that is achieved through the HORC process.

Irrelevant roles

41. The list of issues contains 13 roles which have been identified by the parties during the litigation and form part of the list of issues but which the Claimant has stated during the hearing are irrelevant to her claim. The roles fall in the period March-September 2023 which comprise the following:
- 41.1. 16.3.23 Closing date for first role 272097 Homeland Security Group - Training Products Lead (closing date 16 March 2023);
- 41.2. There are a list of a further 11 roles;
- 41.3. 24.9.23 Closing date for Last roles 312531 EOI: SEO Strategy and Projects (closing date 24 September 2023) – 13th in the list of issues.

Claim

42. On 15 January 2024 the claim form presented, which contained detail of her claim in box 8.2:

I am concerned about the current recruitment internal process at the Home Office and that I am being treated unfairly. I passed an

interview and was put on a waiting list for 12 months which according to the internal procedures means that should a suitable role, that matched the behaviours I was successful on my interview, then I would be offered a post.

The waiting list is only available to one business area and it is up to HO Resourcing Centre, if they take people off the list or if the recruiting manager wants to take someone. The waiting list that I was on, there have been positions advertised for the behaviours and skill set that I was successful on interview, but I have not been offered a role nor a conversation with the recruiting manager which is in breach of internal recruitment procedures.

I have dyslexia and I and where that the Home Office have previously indicated an intention to medically retire be because of it. I am concerned that I have been blacklisted and that this is the reason reason why I have not been offered the roles that have matched my skill set as I am not aware of any other reason why I would not have been offered suitable roles that have risen internally and my career progression at the Home Office is therefore being blocked. This has resulted in a financial loss to me as I have missed out on promotions and the ability to move upgrades and therefore pay scales.

43. In summary, the Claimant gives the Background of the intention to medically retire her for dyslexia and the concern about blacklisting. She has a concern that there have been positions advertised for the behaviours and skill set she was successful on at interview, but not offered a role or conversation with the recruiting manager, which she believes is a breach of internal recruitment.

CPH

44. On 24 March 2024 there was a case management hearing heard by Employment Judge Emery. He identified a complaint of **direct disability discrimination** under section 13 EqA and listed the present hearing and included under Further Information [53] that by 31.5.24

“The claimant must write to the Tribunal and the other side by 31 May 2024 with the following information: paragraph 7.1 Roles within the Home Office, based on her experience and skills, she contends would have been suitable roles in a redeployment exercise”

45. The word “redemption” may slightly mischaracterise the situation. Referring back to the terms of the claim and the email which the Claimant received in October 2022 – this was a request for the role to which she might be **deployed** as an SEO.

Disclosure

46. A dispute of sorts has arisen between the parties as to whether the Claimant requested disclosure of roles for which matching exercise was carried out.
47. On 11 September 2024 the Claimant wrote to the Respondent's solicitor:
- “Can you ensure that you include any roles that I was put forward for in your documentation, as to date despite asking for these they have not been sent to me.”
48. On 13 September 2024 when the Claimant was asked for clarity she said
- “The items that I consider outstanding are the list of roles if any, I was put forward for whilst on the waiting list if I was and the reasons why I was not offered these roles”
49. The same day the Respondent replied
- “The Respondent does not hold the category of documents that you are requesting, as your reserve list was not identified as a closely suitable match to vacancies during the period on which you were on the reserve list.
- It is the Respondent's position that the reserve list that you were on was not found to be a closely suitable match for vacancies that were available at the time. It is not the case that the Respondent seeks suitable vacancy for those on the reserve list. Instead, the process involves identifying closely suitable reserve lists for vacancies if the recruiting manager decides to recruit via reserve lists. There is no guarantee that a reserve list will be utilised.”

Detail of the recruitment system

50. David Barnes gave detailed evidence on the way that the system is operated by the 12 recruitment consultants in the HORC team.
51. Crucially for the Tribunal's purposes he is not able to say whether any closely matching lists were considered because this data is not recorded on the database. He has retrospectively analysed the essential criteria from the reserve list which Ms Pennington was on against the essential criteria for the campaigns she raises. Based on that analysis none of the roles would be deemed closely matching in accordance with the terms set out within the guidance developed with the CSC (Civil Service Commission).
52. The Claimant does not dispute that the roles identified did not match but still maintains there were “other roles” which would have matched.

Absence of suitable roles which Respondent failed to match

53. What the Claimant has not done is identify either a specific role which she says was an obvious match for the reserve list that she was on or alternatively identify an individual vacancy holder (the terminology used for a manager who is recruiting) by calling them to give evidence or even say what their name was and relate the precise content of the conversation she had.

Application to amend

54. On 5 February 2025 Employment Judge Plowright refused an application to amend to bring an additional complaint of failure to make reasonable adjustments.

CONCLUSIONS

Time points

55. Given that in this case there is potentially a continuing discriminatory act, the Tribunal dealt with the claim on its substantive merits.

Claimant's case

56. The Claimant invites the Tribunal to draw an inference of direct disability discrimination from -the circumstances of the which include the following:
- 56.1. her historic promotions;
 - 56.2. her strong CV, experience and skills evidenced by being asked to act up to roles higher than her substantive grade and her DV clearance;
 - 56.3. the history of the unfortunate occupational health referral in 2015;
 - 56.4. anecdotal feedback from recruiting managers that they've been told that there are no matches;
57. Her feeling that there are roles that she ought to match to through the system, although she is not identify what they are.

Burden of proof

58. In *Hewage v Grampian Health Board* [2012] ICR 1054, Lord Hope endorsed the following guidance given by Underhill P in *Martin v Devonshires Solicitors* 2011 ICR 352, EAT:

“the burden of proof provisions in discrimination cases... 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... 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'.

59. We are in a position to make a positive finding that the system operated in a non-discriminatory way, given the following.
60. The HORC system matches roles with reserve lists from previous campaigns, NOT with individuals. The reserve list might have several individuals on it. In the case of the Claimant she was on a reserve list with three candidates on it. She was ranked number two.
61. The recruiting consultants and vacancy holders would be unaware of her disability, a fact explicitly confirmed by David Barnes in his oral evidence.
62. The Claimant has been unable to name a person or group of people that have blacklisted her. She accepts that her manager in 2015 is no longer involved with her management. That unfortunate episode is now significantly far in the past and there have been changes of role and team and manager since then.
63. The Claimant concedes that the 13 roles identified in the list of issues are irrelevant. She considers that she had the appropriate skills to apply, but fairly accepts that she was not on an reserve list which was automatically matched to these roles.
64. She has been unable to identify roles that her reserve list should have been matched to. She said that she'd seen some but did not take any note of them, which is surprising since this would be an important way she could prove her claim. The Respondent has not been able to identify any matching roles from the relevant period.
65. The consequence is that the Tribunal cannot make a factual finding of a particular role that ought to have been offered to the Claimant.
66. The first ranking candidate on the same reserve list as the Claimant was also not offered a role. In other words there is no one in the same situation as the Claimant that she has been treated less favourably than.

Inference from absence of disclosure

67. It is perhaps slightly unsatisfactory that the Respondent has failed to provide disclosure of the recruitment campaigns for the period October 2022 – October 2023. That was the period that the Claimant was on a reserve list and had some expectation that she was being considered for roles. As noted above her expectations may not have reflected the reality of the way the system operated.

68. The Claimant reasonably asked as part of disclosure for data on those roles that were being matched. The Respondent, it seems to us ought to have provided disclosure of those roles so that the Claimant could scrutinise that herself. The Tribunal does recognise that given the size of the Home Office and the figures involved that that might have generated a very long list of roles.
69. Is that failure enough to draw an inference that the Respondent has deliberately failed to provide disclosure of evidence that would point toward disability discrimination?
70. We have concluded that it is not enough to draw an inference for the following reason. The basic mechanism of the way that the HORC operates, i.e. which is that HORC look for a match between a role they are seeking to recruit to and a *reserve list* by reference to various attributes. In other words they are not seeking to match individuals, but rather a match to a list. The data that the Claimant is disabled is not visible to HORC as part of that process. Given this, we cannot see how the Claimant's disability could influence whether or not she was offered a role.

Conclusion

71. While the tribunal can identify some unsatisfactory aspects about the way that the HORC system works, we do not find that the Claimant's disability of dyslexia is a reason why she has not received a role through the reserve list process.

Comment

72. The Tribunal is conscious of the fact that in this case there is an ongoing employment relationship. In that spirit we make some observations:
- 72.1. we note the points made by the Claimant about "level playing field". Though the blind reserve list system stops unconscious bias, it raises a question mark about whether anything is being done to satisfy a positive duty to assist disabled applicants.
- 72.2. The Claimant in her claim form complains about absence of communication with recruiting managers. It strikes the tribunal that good management at the very least would suggest that the Claimant ought to be given support in a potentially rather opaque recruitment process, which with her disability she might find more difficult to navigate than others.

Employment Judge Adkin

Date 2 May 2025

JUDGMENT SENT TO THE PARTIES ON

8 May 2025

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FOR THE TRIBUNAL OFFICE