



# EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*Respondents*

Dr M Ali

AND

(1) Engineering and Physical Sciences  
Research Council (EPSRC)  
(2) UK SBS Ltd  
(3) Ms Liz Mather

## PUBLIC PRELIMINARY HEARING

Heard at: North Shields

On: 7 November 2017

Before: Employment Judge Shepherd

### *Appearances*

The Claimant: In person  
For the Respondents: Mr A Rees

## JUDGMENT

1. The claims against the second and third respondent are dismissed.
2. The claims of discrimination in respect of the protected characteristics of race, religion or belief and age against the first respondent are not struck out as having no prospect of success.
3. I consider that the claimant's allegations that the first respondent discriminated against him on grounds of his age, race and/or religious belief by failing to select him for appointment or interview for the post of Research Portfolio Manager have little reasonable prospect of success. The claimant is ordered to pay a deposit of £250 not later than 28 days from the date this order is sent as a condition of being permitted to continue to advance those claims. I have had regard to information provided by the claimant as to his ability to comply with the order in determining the amount of the deposit.

## REASONS

1 By a claim form, presented on 25 June 2017, the claimant describing 3 protected characteristics as recognised by the Equality Act 2010, namely age, race, religion or belief alleges that he was the victim of discrimination in a recruitment exercise.

2 The respondents made the following applications

(a) whether the second and third respondents should be dismissed from these proceedings – they allege that no decisions regarding the claimant's application were taken by either the second or third respondents and that, as such, the claimant can have no legitimate grounds of claim against them.

(b) whether any of the claims of discrimination in respect of any of the protected characteristics has little or no reasonable prospect of success.

3 Following a Private Preliminary Hearing on 4 September 2017 the claims brought by the claimant was set out by Employment Judge Reed as follows: –

(a) with his application for appointment as a Research Portfolio Manager with the first respondent, he filed a curriculum vitae. In it he set out all relevant information.

(b) in relation to the protected characteristic of age the claimant acknowledges that he did not give any date of birth. He did, however, describe the date of his graduation and is satisfied that the respondents would have no difficulty in working out his age or his approximate age.

(c) in relation to race, he says that in his application for appointment he showed he graduated in Egypt and that he worked in the Sudan, coming to England on 10 December 1986. Additionally, and although it is not a matter on which he places great reliance, he says that he was asked by the third respondent to indicate whether he had the right to work in the United Kingdom.

(d) in relation to his religion or belief, he says that it is obvious, simply from his name, that he is a Muslim.

At that Preliminary Hearing it was indicated that the claimant could write to correct or add to the record in that regard.

4. The claimant wrote to the Tribunal on 18 September 2017 setting out that : –

“...I would like to reaffirm that I have been a victim of discrimination by the Engineering and Physical Sciences Council (the respondent) and others, during the recruitment process for the Research Portfolio Manager post. I was victimised on base of my Race, Religion and Age, which, according to the Equality Act 2010 are protected characteristics.

There is no doubt that the respondents knew of my three protected characteristics. These characteristics are easy to know of from the information included in my Curriculum Vitae(CV) which I have submitted with my job application to the respondent. Please, find attached herewith a copy of my CV for your perusal. From information included in my CV it is very clear that:

1. I'm a black person. This was evident from my name "Mohamed Ali". It was also more evident from the fact that: a) at a young age after leaving school, I have gone to study and later graduated from an Egyptian University. b) I have worked for some Sudanese Universities (2006 – 2016); noting that, since the Sudan independence from Great Britain in 1956, no British citizen worked as a full-time lecturer for any of the Sudanese Universities except those like me, who were of a Sudanese origin.

2. I'm a Muslim. This is evident from being named after the Prophet of Islam "Mohamed (saws)".

3. I'm close to the retirement age. This can easily be calculated by adding my approximate age at the year of graduation in 1982 which was in the range of 24 to 26 years to the 34 years passed since my graduation."

5. The role of the second respondent was limited to an administrative function within the recruitment process and the role of the third respondent was limited to the sending of an email to the claimant seeking confirmation of his right to work in the UK. Similar requests were made to all other candidates where their right to work in the UK had not been previously confirmed. I am satisfied that the claimant has not shown any legitimate cause of action against the second and third respondent and those claims are struck out as having no reasonable prospect of success.

6. I have considered the claims against the first respondent. I have not set out any findings of fact as, should the claim against the first respondent proceed, I do not wish to bind or influence the Tribunal hearing the substantive claim. I have dealt with this application upon the submissions made by the parties.

7. The claimant said that the respondent would be aware of his three protected characteristics and that it was unthinkable that a candidate of his calibre with his academic record, background and experience should not be asked to attend an interview.

8. I refer to the cases of Madarassy v Nomura International plc 2007 ICR 867 and Bahl v Law Society 2004 IRLR 799 together with the recent case of Efobi v Royal Mail Group Limited UKEAT/0203/16/DA.

9. From the submissions I heard, it is unlikely to be found that there was anything other than the claimant having the three relevant protected characteristics and not being asked to attend an interview. The claimant said he believed that the exercise was unreasonable and unreliable and he believed his non-selection was because of his three protected characteristics. However, nothing was submitted by the claimant to suggest that a Tribunal could conclude that there was an inference of

discrimination. I have considered the submissions in respect of the explanation of the recruitment process.

10. I do not consider it appropriate to strike out the claim against the first respondent as having no reasonable prospect of success. However, the claimant must appreciate that his claim has little prospect of success and I order the claimant to pay a deposit as a condition of proceeding with the claims of discrimination against the first respondent. I heard evidence of the claimants means. He informed me that he is in receipt of universal credit and is in debt. I order the claimant to pay a deposit of £250.

11. Rule 39 (5) provides

“If the Tribunal at any stage following the making of a deposit order decide the specific allegation or argument against the paying party for substantially the reasons given in the deposit order –

(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and

(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as a tribunal orders),

otherwise the deposit shall be refunded.”

12. In the circumstances, the claimant must give careful consideration to the consequences of proceeding with his claim and I do not consider it appropriate to make further case management orders at this stage as the claimant may not proceed with his claims. If the claimant does decide to continue, further directions will be given by the Tribunal after the payment of the deposit and it may be that a further Telephone Preliminary Hearing should take place if that occurs.

Employment Judge Shepherd

**7 November 2017**

**Sent to the parties on:  
7 November 2017**

**For the Tribunal:**

**Julie Davies**