

THE INDUSTRIAL TRIBUNALS

CASE REF: 7122/19

CLAIMANT: William Haire

RESPONDENT: Industrial Temps Limited

JUDGMENT

The decision of the tribunal is that the claimant's claim of victimisation pursuant to the Employment Equality (Age) Regulations (Northern Ireland) 2006 is dismissed.

Constitution of Tribunal:

Employment Judge: Employment Judge Wimpres

Members: Mr McKnight
Mr Walls

Appearances:

The claimant represented himself.

The respondent was represented by Mr Peter Bloch of EEF.

SOURCES OF EVIDENCE

1. The tribunal received witness statements from the claimant, Mr Keith Love, Ms Roisin Thompson and Ms Nicola Waide and heard oral evidence from them by way of cross-examination. A well prepared bundle of relevant documents was provided to the tribunal.

THE CLAIM AND THE RESPONSE

2. The claimant lodged a claim form on 6 March 2019 in which he indicated in section 7 that he was discriminated against on the grounds of age and race. In the same section he also raised a complaint of victimisation and stated that he had cause to complain about the respondent in 2013/14. The claim was originally registered against Ms Thompson as a second named respondent but as a result of the proceedings subsequently being confined to age discrimination the claim against her as a separate respondent fell away.

3. At paragraph 7.4 of the claim form the claimant described his claim in the following terms:-

“On 16/17 Jan 2019 I responded to an online ad placed by Ind Temps Belfast for ‘Packers’ at a meat plant. I emailed them and they replied that I should ring “Irma” at P’ Down branch which I did. I told them I was in work FT but wanted a change. They invited me to attend next day. When I enquired where Irma refused to tell me where to come to on several occasions. She then said she would email or text me address. She did neither. I believe this was obstacle number one designed to put my application off. She then told me bring P60, my NI details, driver’s license, passport lapsed or not and birth cert. I told her I had all to hand except for birth cert (which I would have some days later). She immediately told me I cannot apply for a job without birth cert and as I didn’t have it next day could not apply. This was evidenced by her failure to text or email details of where to come to for the interview etc.

I told her I did not think it was fatal to my application and that I was British National etc.

I complained to Ind Temps Belfast by email. They did nothing. I then rang them and they asked me to meet Roisin Thompson HR Manager. I did so and she further exacerbated the situation by alleging that I’d spoken to someone other than Irma in the first instance. This is not true. Irma the only person I spoke to and I would like for records they came [from] to be made available.”

In section 8 of the form the claimant provided the following further information:

“There is a perception in NI that Ind Temps favours foreign nationals for their meat plant jobs. That is general perception and not mine alone.

I suspect Irma being aware I was local refused to tell me where to come to after inviting me for interview etc was to dissuade me and to place obstacle. She then unfairly decided to debar me from applying simply because I didn’t have Birth Cert for next day. I don’t think this ought to have been fatal to my application.

I don’t think Irma about wanted my application and I think the above bears that out.

I think the HR of Ind Temps then attempted to introduce fake evidence/accusation.

I think they have compounded the issue.

They told me they were aware I had made complaints about them in 2013/14.”

4. In a detailed response dated 30 April 2019 the respondent denied discriminating against the claimant on the grounds of age and race. The response set out a

factual history of the matter from its perspective. This included the contention that the claimant shouted and vented his displeasure when Ms Katke asked him to provide his long form birth certificate and that the telephone call was witnessed by Ms Martina O'Hare who could hear the shouting and asked for the call to be transferred to her. Ms O'Hare then attempted to speak to the claimant who continued to shout and complain before hanging up. The response also addressed the claimant's contention that he emailed a complaint to the respondent on 16 January 2019. According to the response there was no record of such an email being sent or received. The claimant, when asked, could not recall the address that he sent the complaint to but indicated that it was through the respondent's website and there was no feature on its website for such an email to be sent. The respondent also denied victimising the claimant.

THE ISSUES

5. These proceedings have been extensively case managed. In addition, a review hearing took place on 5 September 2019 at which the claimant maintained that his original ET1 included a claim of age discrimination. The Vice President did not accept this contention and rejected any application to amend the tribunal's decision to register this claim to include a claim of age discrimination. The Vice President commented that the reference to victimisation was less than clear but was sufficient to include in the original ET1. The Vice President also made clear that there was no claim against Ms Katke as an individual respondent. At paragraph 10 of the decision the Vice President stated as follows:

"Therefore the claim is now registered as a claim of alleged race discrimination against the first and second named respondents and as a claim of unlawful victimisation on the grounds of an earlier claim of age discrimination to this tribunal against the first named respondent only."

The Vice President also determined that there would be a Deposit Order Pre-Hearing Review to determine whether all or part of the claims made by the claimant have little reasonable prospect of success. Following on from the Vice President's decision the respondent's representative lodged a further response dated 16 September 2019 denying discrimination on any grounds and specifically denying any victimisation arising from the complaint made by the claimant in and around 2013/14.

6. On 10 October 2019 the pre hearing review took place. The hearing focussed on whether a Deposit Order should be made on the basis of whether the claimant's contentions had little prospect of success. During the course of the hearing the claimant accepted that he was subject to a requirement to produce identity documents which was imposed on all job applicants, irrespective of their race or whether they had brought previous tribunal proceedings. He also accepted that he was not treated differently than anyone else and stated – "I accept that I was not treated differently than anyone else." On this basis the Employment Judge deduced that the claimant was not pursuing any allegation that someone of a different race or someone who had not brought previous tribunal proceedings would have been permitted to pursue their application without producing a birth certificate and as it was clear that the claimant's contentions did not include any allegation of less

favourable treatment his claims had little reasonable prospect of success. Accordingly, the tribunal decided that it was appropriate to make a Deposit Order.

7. On 20 January 2020 a Case Management Discussion took place. After discussion with the claimant he confirmed that the issues to be determined by the tribunal were as follows:-

“Was the claimant directly discriminated against by the respondent pursuant to the Race Relations (Northern Ireland) Order 1997 and victimised pursuant to the Employment Equality (Age) Regulations (Northern Ireland) 2006 in relation to each of the following acts/omissions:-

- (i) the failure of the respondent to inform him of where to attend to provide the requisite documentation to register;
- (ii) alleged failure of the respondent to provide an alternative date or time for the claimant to provide the requisite documentation for registration;
- (iii) failure of the respondent to provide an explanation for not providing an alternative date or time to provide the requisite documentation.

The protected act relied upon by the claimant is his claim of victimisation in previous proceedings he issued against the respondent in 2013/2014.”

The claimant also confirmed that was not bringing a claim for discrimination on either ground in relation to the respondent’s request that he provide a copy of his birth certificate.

8. By letter of 16 March 2020 the claimant withdrew his complaint of race discrimination. This was recorded in a judgment given by Employment Judge Orr on 22 July 2020 dismissing this aspect of the claim and stating that the remaining claim of age discrimination would proceed to hearing.

9. At a preliminary hearing on 2 November 2020 the claimant confirmed that his claim was solely of age discrimination and victimisation in relation to an allegation of age discrimination.

10. As a result of the withdrawal of the race discrimination complaint the issues that the tribunal has to address are now as follows:-

“Was the claimant victimised pursuant to the Employment Equality (Age) Regulations (Northern Ireland) 2006 in relation to each of the following acts/omissions:-

- (i) the failure of the respondent to inform him of where to attend to provide the requisite documentation to register;
- (ii) alleged failure of the respondent to provide an alternative date or time for the claimant to provide the requisite documentation for registration;

- (iii) failure of the respondent to provide an explanation for not providing an alternative date or time to provide the requisite documentation.

The protected act relied upon by the claimant is his claim of victimisation in previous proceedings he issued against the respondent in 2013/2014.”

Accordingly, the net issue before the tribunal is whether the claimant was victimised pursuant to the Employment Equality (Age) Regulations (Northern Ireland) 2006.

THE FACTS

- 11. The parties’ evidence diverged considerably on the main factual issues. The claimant gave a first-hand account of what occurred whereas the respondent sought to rely on second hand accounts given by Ms Katke and Ms O’Hare to Ms Thompson. For this reason the evidence is set out in more detail than would otherwise be necessary.

Claimant’s Evidence

- 12. In his witness statement and evidence to the tribunal the claimant set out an account of his treatment by the respondent. It is clear that his main issue was with his treatment by Ms Katke. She did not provide a witness statement or attend and give evidence as she had subsequently moved to Spain. It was also part of the respondent’s case that Ms O’Hare had also spoken with the claimant but she did not provide a witness statement or attend and give evidence. There was no suggestion that she would not have been able to do so. Instead the respondent placed reliance on the accounts that Ms Katke and Ms O’Hare gave to the respondent’s HR Manager, Ms Thompson when she was looking into the claimant’s complaints. As a result it was not possible for the claimant to directly challenge the contentions made by either Ms Katke or Ms O’Hare. It also made it difficult for the tribunal to assess the evidence.
- 13. In his witness statement the claimant stated that in 2013 he took a case against the Lisburn branch of the respondent business and received £2,000. In the course of the claimant’s evidence it emerged that he had not received any compensation from the respondent but rather that the solicitors instructed by him had made this payment to him due to their failure to lodge his claim form within time. As a result the claimant withdrew his age discrimination claim and it was dismissed.
- 14. On 14 of January 2019 the claimant was given the telephone number of a meat plant looking full-time dayshift workers. At that time the claimant was working long hours on nightshifts. He had recently been diagnosed with a medical condition which he believed long hours and nightshifts may have been worsened.
- 15. On the morning of 15 January 2019 the claimant contacted the respondent’s Belfast branch. The claimant was asked whether he was registered with them and he replied that he had been in the past. The claimant was asked for all his details and was told that they would check. After a short delay the claimant was told him that he could not apply by phone but had to apply online.

16. On 16 January 2019 the claimant submitted the relevant online application. Again the claimant was asked whether he was registered and he said that he had been but was unsure when he submitted the application.
17. Sometime later he received a reply telling him to ring Irma (Katke) at the Portadown branch. Ms Irma Katke was employed as a recruitment coordinator by the respondent at the material time.
18. On 16 January 2019 at 4:30 pm the claimant rang Ms Katke. Again he was asked if he was registered. The claimant replied that he had been but that he was unsure if he was still registered. Ms Katke asked him for all his details. She then told him to come in at 10.00 the next morning to register. In his witness statement the claimant commented that this was hastily arranged. The claimant thanked her and asked her where to come to. Ms Katke told him she could not tell him the address of the office. The claimant thought that she had misheard and repeated the question. Again Ms Katke said she that she could give him the address. The claimant asked how he was meant to meet her at 10.00. Ms Katke said she would email or text him the address later. The claimant asked why she would not simply give him the address and again she refused. The claimant never received the address by any method. The claimant then agreed to this not aware that, as he put it, he had been deceived.
19. Ms Katke then asked the claimant to bring a number of documents to the office to register the next morning - his national insurance details, P60, driver's license, passport lapsed or not and his birth certificate. The claimant told Ms Katke that he had all to hand except for his birth certificate which he could get from the Registry Office in days or hours if required. The claimant also told Ms Katke that he had his travel pass and SIA Security license from the Home Office. Ms Katke told him at once that she could not let him apply as he had no birth certificate. The claimant told her that he did not say that he had no birth certificate merely that it was not to hand temporarily but he could produce it in days/hours. Again she insisted that the claimant had no birth certificate. The claimant asked Ms Katke under what circumstances would he as a British citizen not have a birth certificate. The claimant told her that he did not think it was fatal to his attempt to register with her office at this stage given she was fully aware of who he was and his status. Again Ms Katke insisted that he had no birth certificate. The claimant told her that he thought she was being oddly unreasonable and that he wanted to make a complaint. Ms Katke then hung up. The claimant also asked her to change the time/date of the appointment which she refused. When asked by Mr Bloch whether Ms Katke knew to expect his call the claimant stated that he was not of that view immediately but it seemed obvious that that she was expecting the call because of her hasty reaction. In relation to the requirement to produce his birth certificate the claimant was also asked why Ms Katke picked on him and he replied that on reflection it was either because she knew his age or knew about his previous complaint. When probed as to how she would know the claimant replied that Ms Katke could have been contacted by the Belfast office or could have gleaned this information from his online application. The claimant went on to state that because of his age Ms Katke did not give him the address of the Portadown office. It was put to the claimant that in order for his claim to succeed the tribunal would have to draw an inference that Ms Katke knew about the 2014 claim and he replied stated that it was a strong possibility despite what Ms Thompson said in her statement and went on to suggest

that this was because he had told the Ms Katke that he had registered with the respondent in 2014 although he now accepted that he wasn't registered. Mr Bloch also challenged the claimant about the allegation that the respondent had paid him £2,000 in settlement of his 2013/14 claim and pointed out that that claim was recorded by the tribunal as simply having been withdrawn and was therefore dismissed.

20. The claimant gave evidence that he sent his complaint to an online facility which had given him Ms Katke's number.
21. As there have been no reply by the following Monday the claimant rang the Belfast Branch Head Office and was told that they had not received his complaint. According to the claimant's witness statement and his evidence to the tribunal he then wrote to the respondent outlining his complaint. No such letter has been produced. Ms Thompson's evidence was that the respondent was first contacted by the claimant on 5 February 2019. This was passed to Ms Thompson who made contact with the claimant on the same day and invited him to meet with her on 8 February 2019 to address his complaint. The only letter that the tribunal has seen from the claimant is one dated 14 February 2019 which was some days after the meeting took place.
22. The claimant met with Ms Thompson on 8 February 2019 as requested and asked her why Ms Katke refused on numerous occasions to give him the address to attend the hastily arranged appointment. Ms Thompson's reply to that specific question was "That's standard practice". The claimant asked why Ms Katke insisted four times that he had no birth certificate and barred him from applying due to that assertion. Ms Thompson replied that "These are the rules of the client".
23. Ms Thompson told the claimant that she was aware that he had made a complaint earlier. The claimant asked whether this had influenced Ms Katke's bizarre behaviour. Ms Thompson replied "No". Ms Thompson then said that the claimant spoke with someone else other than Ms Katke. The claimant denied this and asserted that nor the call taken over by anyone else.
24. As the claimant had no satisfaction of the handling of the matter by Ms Thompson he left and said that he would seek advice.
25. After there was no further contact from the respondent the claimant sent a complaint to the tribunal and the Equality Commission on 6 March 2019.
26. The claimant was then asked to meet the respondent's Senior Operations Manager, Ms Waide, on 14 March 2019 to further discuss the issues.
27. The meeting took place as arranged on 14 March 2019. The claimant brought Mr Alan Love to the meeting with him. According to the claimant Ms Waide apologised for the behaviour of Ms Katke and her refusal to give him the address to attend registration and her insistence that the claimant did not have a birth certificate and using this to prevent him applying. The claimant thanked her for her frankness and decent consideration. She then offered him the job. The claimant politely declined and she accepted his reasons for doing so. Ms Waide then asked the claimant how they could resolve this and the claimant told her that his complaint was now with the

tribunal and only two options of resolution were offered to him. The claimant told her that he has taken the case in the public interest i.e. the protection of all jobseekers and a particular those over 50 years old. Ms Waide then asked the claimant what kind of figure he had to mind and he told her he would leave it to her to make any suggestion and that he would give careful thought to any proposal she put forward. The claimant then left confident that the respondent would wish to end this matter at this stage.

28. Mr Love's witness statement dealt entirely with the meeting with Ms Waide on 14 March 2019. Mr Love understood that this was to be a follow-up meeting with the claimant and according to Mr Love it was conducted in a cordial and constructive manner by all parties concerned. Mr Love's understanding was that the claimant on applying by phone for the position was asked to phone Irma (Katke) at the Portadown office of the respondent. The claimant explained to Ms Waide that when he subsequently did this Ms Katke invited him to an interview the following day at 10.00 am. When the claimant requested the address at which to attend Ms Katke refused to divulge this and saying that she would either email or text the address to him. According to the claimant she did neither. The claimant went on to relate that Ms Katke she requested a set of documents be presented at the interview. The claimant said he had told Ms Katke that he could immediately produce all of the requested documents with the exception of his birth certificate a copy of which he could obtain from the Registry Office a few hours later. He told Ms Waide that Ms Katke then said that he would need to have all documentation by 10.00 am. Ms Waide stated that Ms Katke should neither have withheld the address to which the claimant was to report for interview nor refused to allow reasonable time for the claimant to obtain a copy of his birth certificate. Following some discussion Ms Waide then offered the job to the claimant who declined on the grounds that he felt he would be working in an unfriendly atmosphere following recent events. Ms Waide then asked what the claimant would like them to do to make amends to which the claimant replied that he would leave that to the respondent to suggest. After some more discussion the meeting concluded cordially. It was Mr Love's impression that Ms Waide in her capacity as the respondent's Operations Manager had acknowledged that the claimant had not received proper treatment in his application for the post. Mr Love expected that the respondent would probably subsequently contact the claimant and suggest how they could make amends for this. Clearly Mr Love's account of the complaint was based on what the claimant told him as he was not privy to the telephone call with Ms Katke.
29. Ms Thompson gave evidence that the claimant contacted the Belfast office in writing on 5 February 2019 in order to make a complaint that he was barred from registration at the Portadown branch because he did not have his birth certificate or P60 and or other relevant documents and that he would be proceeding with a claim as an email he sent on 16th of January 2019 was not appropriately addressed. This was passed to Ms Thompson who contacted the claimant on the same date requesting to meet with him in the Portadown office to address his complaint. The meeting was scheduled for 8 February 2019.
30. To prepare for this meeting Ms Thompson spoke with Ms Katke, the respondent's recruitment coordinator at Portadown, who have initially taken the telephone query from the claimant In January 2019 when the claimant was responding to advertisement for a position with Linden Foods.

31. Ms Katke advised Ms Thompson that she invited the claimant to attend registration in the Portadown office and took him through the process and the right to work documents that he would need to bring with him to the registration. Ms Katke informed Ms Thompson that as the claimant did not have an up-to-date passport he was advised that he could still come in to register but that he would need to bring a long birth certificate in the absence of a current passport. According to Ms Katke the claimant took exception to be asked to bring in his long birth certificate to prove his right to work in the UK and with a raised voice shouted at Ms Katke that he had paid taxes all his life in this country and was not a foreigner but yet he couldn't get a job. Ms Katke tried to explain to the claimant that this was a requirement for all workers wishing to register but the claimant refused to listen and kept repeating over and over that he was not a foreigner but was British.
32. According to Ms Thompson a work colleague, Ms Martina O'Hare who was sitting directly behind Ms Katke could overhear the claimant shouting on the phone and as it was clear to her that this was causing this Katke distress she asked for the call to be transferred to her. The call was transferred and Ms O'Hare attempted to speak to the claimant about the requirement for registration and why right to work documents were required but the claimant continued to shout stating that he was a local person and not a foreigner who had paid taxes all his life. The claimant continued to shout at her in a very irate manner and then hung up.
33. Ms Thompson met with the claimant as planned at the Industrial Temps Portadown office on 8 February 2019. A typed note of the meeting was made by Ms Thompson. Ms Thompson commenced the meeting by explaining its purpose namely that she had requested it to address the complaint made by the claimant on 5 February 2019 to the Belfast office and to also understand when and to whom he had sent an email on 16 January 2019 with a comment made on an advertisement for Linden Foods on the Industrial Temps Facebook page as the respondent was not aware of its existence.
34. Ms Thompson asked the claimant to explain in his own words the events resulting in his complaint. The claimant stated that he came across the Linden advertisement and telephoned the Portadown branch and spoke Ms Katke and expressed interest in the position. Ms Katke advised the claimant that he would need to come into the Portadown office to register and the claimant stated that when he asked Ms Katke what the address was she told him she wouldn't tell him over the phone but instead would text it to him which she did not.
35. The claimant continued that Miss Katke advised what documents he would need to bring for registration to which the claimant stated that he did not have an updated passport and Ms Katke replied that he would need his long birth certificate.
36. Ms Thompson was able to confirm with the claimant that it was her understanding that Linden Foods did not accept an out of date passport and in its absence would only accept a valid passport and he would need his long birth certificate and the respondent would be required to follow this due to its own internal and external audit requirements for right to work purposes.

37. The claimant replied that he had never heard anything like this as he had worked for Stormont security before with Martin McGuinness and Arlene Foster and never needed to produce such documents as the respondent had requested. Ms Thompson advised the claimant that this was a requirement of the respondent's client Linden Foods whom he had expressed interest in and that they were also in a very heavily regulated sector. The claimant refused to acknowledge this.
38. Ms Thompson asked the claimant about his conversation with Ms Katke. The claimant responded that he was told he couldn't register and was asked for his passport. The claimant continued that he had worked in meat factories all over Ireland and asked why would we require a birth certificate to put the meat into a box. Again Ms Thompson tried to explain but again the claimant made it very clear that he did not want to listen but continued to state that he paid his tax and the government knew that he did. Ms Thompson explained again that this was not just the respondent who required this but the Home Office, their sector regulators and their clients and he had been treated no differently to anyone else. Again the claimant did not want to listen.
39. The claimant then stated that if you mention the Industrial Temps name to anyone they say they are "a pile of f...kers".
40. After this remark Ms Thompson attempted to bring the conversation back to the issue with registration and the Facebook comments. She asked the claimant what email was referring to that he said he had sent it to the respondent on 16 January 2019. The claimant replied that he could not recall and so Ms Thompson showed him a printout of the Linden Facebook advertisement and drew his attention to his Facebook comments that he had made under the Linden advertisement. These included a reference by the claimant to the email that he claimed to have sent to the respondent on 16 January 2019. Ms Thompson advised that the respondent was not in receipt of any email from the claimant on that date. The claimant did not provide the tribunal with a copy of the email to the tribunal.
41. The claimant then made reference to the image of three workers on the assembly line on the Linden Facebook advertisement and said "Look at them they are even foreigners." Ms Thompson explained to the claimant that this was a stock image that the respondent had purchased from a marketing site and was not of actual workers in Linden Foods. Ms Thompson stated that the respondent did not know the nationality of the individuals portrayed in the image and asked the claimant why he would he think or say that to which he replied "You know by the look of them". Ms Thompson replied that this was ridiculous comment to make or to assume.
42. Ms Thompson then asked the claimant what his desired outcome of the meeting was and the claimant replied that she invited him here. Ms Thompson agreed and said that it was to find out what his account was and enquire about the email that he alleges was not responded to and to determine if he still wanted to be considered for other assignments with the respondent. The claimant did not comment.
43. Ms Thompson stated that she appreciated that he may have felt that he was not treated fairly but she was trying to resolve the issues by explaining why they had such processes in place that require certain right to work documents. The claimant

would not accept that and stated that he was not a foreigner and shouldn't have to produce the same documents that foreigners needed to.

44. Ms Thompson continued that he was not the only one who was upset and that she knew that Ms Katke and Ms O'Hare were annoyed also. The claimant denied ever having spoken to Ms O'Hare.
45. Ms Thompson subsequently questioned Ms Katke about her conversation with the claimant and Ms Katke stated at no time did the claimant ask or enquire about the address as he shouted at her when she requested that he bring the appropriate right to work documents and it never got as far as actually making an appointment for the claimant to attend the office. Ms Thompson explained to the claimant that after a period of time Ms Katke felt that the claimant was shouting at her and not listening. Further, Ms O'Hare overheard the shouting and asked Ms Katke to transfer the call to her so that she could try to explain. The claimant was adamant that he only spoke to Ms Katke.
46. Ms Thompson asked the claimant if he would agree to Ms O'Hare coming into the meeting as she was seated outside in the main office to go over the conversation she had with the claimant but he refused saying "You will not put words in my mouth". At this the claimant got up to leave.
47. The claimant stated that he would be taking this to the UKIP's David McNarry and the Equality Commission. Ms Thompson replied it was unfortunate that they were unable to resolve the issues to his satisfaction but it was his right to do so. The claimant then stated that he has been victimised for a previous complaint that he submitted to the Equality Commission against the respondent years previous. Ms Thompson replied that she was aware of this complaint as it was she had dealt with it at the time but that no one would have been aware of it as a strictly confidential and that the claimant had withdrawn his claim.
48. The claimant stated that he would be speaking to his solicitor. Ms Thompson repeated that it was unfortunate that they were unable to resolve the issues and gave the claimant her business card so he could deal with her directly or if need be he could pass her details onto his contact. The meeting was brought to a close.
49. On 21 February 2019 the respondent received a letter from the claimant dated 14 February 2019 addressed to the Managing Director in which he reiterated his complaint and stated that it was his understanding that the respondent was perceived to only engage foreign nationals and that obstacles were put in the way to debar him from applying for the Linden Foods job. The claimant disputed the date of this letter which he maintained he had sent in January 2019 but it is clear from the contents of the letter which describe his meeting with Ms Thompson on 8 February 2019 that he cannot be correct. In any event as a result of this letter a meeting was subsequently arranged between the respondent's Operations Director Ms Nicola Waide which took place on 14 March 2019.
50. Ms Thompson also stated that on numerous occasions the claimant had claimed that the respondent had paid him £2,000 in relation to a previous claim. Ms Thompson refuted this and stated that this information was completely untrue. In his evidence to the tribunal the claimant conceded that he had not received any

compensation from the respondent in 2013/14 and rather the true position was that his solicitors had made a payment to him owing to their failure to lodge his claim within time. According to Ms Thompson the respondent's requirement to request right to work documents was applied to all applicants for work as a direct result of the Immigration, Asylum and Nationality Act 2006 which requires employers/agencies to check documents to establish an applicant's eligibility to work in the UK and compliance with any restrictions. As an employment agency the respondent had a duty to prevent illegal working in the UK by carrying out document checks on all applicants before assigning them to work to confirm they have the right to work in Northern Ireland. If the respondent only carried out document checks on applicants whom it believed not to be British citizens for example on the basis of their colour or ethnic or national origins this would be discriminatory and that was why the requirement was for all applicants to provide proof of the right to work to registration where a copy will be taken. This ensured that the respondent had a statutory process in place for all prospective workers which would protect it from liability against a civil penalty if an applicant was an illegal worker whilst also demonstrating consistent, transparent and non-discriminatory recruitment practices. Ms Thompson also stressed that the population of the United Kingdom is ethnically diverse and that many people non-British citizens from black and minority ethnic communities are entitled to work here and it should not be assumed that someone from an ethnic minority is an immigrant or that someone from born abroad or who speaks with a particular accent is not allowed to work in the United Kingdom.

51. In her witness statement Ms Waide gave evidence that on 21 February 2019 the respondent's HR Manager Ms Thompson made her aware of a complaint that had been received via registered post marked for the attention of the Managing Director and requested that Ms Waide meet with the complainant. Although Ms Waide was not the respondent's managing director she was more senior to Ms Thompson. Ms Thompson made Ms Waide aware that she had met with the claimant following his initial complaint in the Portadown office on 8 February 2019.
52. Ms Waide duly met with the claimant at the respondent's Lisburn office on 14 March 2019. Ms Waide asked the claimant to explain to her the reason for his complaint in his own words. The claimant stated that he felt that was denied the opportunity to apply for a position in Linden Foods by Ms Katke because he didn't have a birth certificate. The claimant stated that these types of documents should be applicable to EU and not British subjects. The claimant stated that the claim was already submitted and that the ball was in the respondent's court and he didn't have to proceed with the claim. The claimant also confirmed he did not want to job through the respondent. The claimant also said that he found Ms Waide more pleasant to deal with than the HR Manager, Ms Thompson. The claimant went on to state that he had submitted and won a case against the respondent several years previously. Ms Waide advised that she was not aware of this. The meeting was brought to a close and Ms Waide advised the claimant that she would come back to him. Ms Waide did not seek to challenge anything that the claimant said and her approach could best be described as conciliatory.
53. Ms Waide emailed the claimant on 22 March 2019 and stated that it was with regret that his experience with the respondent was an unpleasant one but should should he reconsider his decision not to be considered for temporary contracts to get back in contact. Ms Waide also took the opportunity to apologise for not being fully

briefed on the previous claim that he had submitted that he had mentioned at the meeting on 19 March but that she since understood that the case was dismissed due to his withdrawal. The claimant did not reply to Ms Waide's email and nor did she received any further contact from him.

Submissions

54. The main points made in submissions are set out in the following paragraphs.
55. The claimant submitted that there had been no ample or sufficient evidence that Ms Katke had not been forewarned about his previous claim before she spoke with him and that the tribunal should conclude that she had been forewarned. According to the claimant the evidence for this was Ms Katke's swift refusal to provide him with an address and not to give him additional time to produce the necessary documents. The claimant also drew attention to the failure of Ms Katke and Ms O'Hare to attend the hearing and give first hand evidence. The claimant suggested that his prior claim could have come to light at the outset when he first made contact with the Belfast office. The claimant disputed the account given by Ms Thompson. The claimant also relied on Ms Waide's alleged concession as to the basis of his claim. The claimant denied having any racial motive and said that he was deeply offended by Mr Bloch's comment that he was a bigot. The claimant said that he was aware of the problems that migrants faced; that he had worked with many migrants and played cricket with them when he was living in Turkey and India. The claimant's only issue was with the discriminatory advertisement on Facebook. He accepted from Employment Judge Orr that it was not discriminatory and withdrew his race discrimination claim. The claimant maintained that it was a possibility that Ms Katke was aware of his previous claim and that this had influenced her behaviour.
56. Mr Bloch submitted that the claimant was racially motivated and drew attention to three occasions on which the claimant asserted that he should not have to provide the information requested from him. However, Mr Bloch's primary submission was that the claimant was not victimised. For there to be victimisation it would have to be the case that when the claimant spoke with Ms Katke she would have known about the protected act. It did not matter whether Ms Katke told the truth or lied about what was said – if she didn't know about the protected act the claim could not be made out. Ms Katke was employed by the respondent at the date of the protected act in 2014. Ms Thompson gave evidence that she kept the information about the protected act confidential to herself. Ms Thompson would make enquiries about any particular claim and only if it became necessary would she speak to people who might be witnesses. Mr Bloch drew attention to Ms Waide's evidence that she had no knowledge of the previous claim prior to meeting with the claimant. The claimant accepted that he got annoyed when Ms Katke asked for his birth certificate and thought that he should not have to do that as he was a British national and it would have been pointless to arrange a meeting until he had it. Mr Bloch described the claimant's case as being that in some way Ms Katke was forewarned that the claimant was going to call her. Mr Bloch submitted that the tribunal could not draw a reasonable inference of this from the facts. The system for checking registration was the same for all prospective operatives. In term of credibility Mr Bloch drew attention to discrepancies in the claimant's evidence in relation to the correspondence that he sent to the respondent. The claimant initially gave evidence that he had sent two letters to the respondent but subsequently stated that

he had only sent one letter which he had dated was 14 February 2019 which he now said was sent in January 2019 notwithstanding that it referred to what was said at the meeting between the claimant and Ms Thompson on 8 February 2019. In terms of the burden of proof Mr Bloch submitted that the claimant had not proved primary facts or facts from which the tribunal could draw an inference that the claimant was victimised and thus require an explanation from the respondent.

57. In reply the claimant drew attention to and reiterated his statement at the Pre Hearing Review on 10 October 2019 that he accepted that he was not treated any differently from anyone else. The claimant also cast doubt on what took place in the respondent's office in relation to his previous complainant and suggested that a lapse occurred and that it was quite possible that a lapse occurred in 2014. The claimant also placed reliance on the highly unusual words spoken by Ms Katke in refusing to give him the address and accused her of preventing him from providing his birth certificate.

THE LAW

58. Regulation 6 of the Employment Equality (Age) Regulations (Northern Ireland) 2006 provides as follows:-

“Discrimination by way of victimisation

4.(1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has—

- (a) brought proceedings against A or any other person under these Regulations;*
- (b) given evidence or information in connection with proceedings brought by any person against A or any other person under these Regulations;*
- (c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or*
- (d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations, or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them.*

(2) Paragraph (1) does not apply to treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence or information was false and not made (or, as the case may be, given) in good faith.”

CONCLUSIONS

59. The only issue that the tribunal has to decide is whether the claimant was victimised. There are a number of pointers to where the truth lies. It is apparent from the evidence provided to the tribunal that as originally formulated the main thrust of the claimant's case was that he was subjected to racial discrimination. In section 8 of his claim form the claimant stated that there was a perception that the respondent favoured foreign nationals for meat plant jobs and that he suspected that Ms Katke refused to tell him where to come for interview and placed obstacles in his way because he was local. It is clear that the claimant resented being asked for certain information by Ms Katke and became irate and raised his voice in contrast to the restrained and measured way in which he gave his evidence to the tribunal. We can appreciate that he may have been frustrated and that Ms Katke may not have explained the situation to the claimant as well as one might hope but all of the comments that the claimant made both to Ms Katke and Ms Thompson together with his Facebook comments strongly suggest that he was far from calm and rational about the matter.
60. The claimant also made misleading statements about having been paid £2,000 by the respondent in respect of his previous complaint. In particular, the claimant lied to Ms Waide about bringing a successful claim against the respondent. Ms Waide looked into the matter and subsequently took the opportunity to correct the claimant when she emailed him after their meeting. Further, the claimant gave untruthful evidence about his correspondence with the first named respondent. He implausibly contended that he had sent a letter to the respondent in January 2019 which clearly could not have been written until after his meeting with Ms Thompson on 8 February 2019. Ms Thompson was adamant that she kept the information about the previous claim confidential. The fact that Ms Waide was clearly not aware of the previous claim supports Ms Thompson in this regard. Further, as the previous claim was out of time and withdrawn one can confidently infer that there would be no need for Ms Thompson to discuss it with anyone.
61. In order to succeed in a victimisation claim it is necessary for the claimant to prove that the person against whom the allegation of victimisation was made was aware of his previous complaint. Ms Katke made no reference to it in the claimant's account of his conversation with her and Ms Thompson informed the claimant that she dealt with the previous complaint herself and kept it entirely confidential. However, neither Ms Katke nor Ms O'Hare gave any account of their side of the conversation. In our view the claimant's evidence of prior knowledge of his complaint on the part of Ms Katke was entirely speculative and he was unable to prove any primary facts from which such an inference could be made. We consider it probable that the claimant became irate during his telephone conversation with Ms Katke and was oblivious to the call being passed to Ms O'Hare. While Ms O'Hare did not give evidence it is difficult to understand why she was introduced to the matter by the respondent if the events as described by the respondent did not take place. As to the refusal to provide an address for the claimant to attend it is clear that it would have been pointless to attend for registration without the necessary documentation. However, Ms Katke could probably have handled the call better notwithstanding the claimant's belligerence. The claimant's evidence is also significantly undermined by the matters referred to in paragraph 60 above.

62. Having withdrawn his race discrimination claim all that the claimant was left with was victimisation on the ground of age which he described several times as being a possibility. He provided no concrete evidence in support of this contention. Nor did he prove any facts from which this could be inferred. Hence the burden of proof did not pass to the respondent to prove that they did not discriminate against the claimant by way of victimisation.
63. Even if the tribunal was prepared to accept the claimant's evidence about the phone call with Ms Katke in its entirety and disregard the second hand accounts of it provided by the respondent there is absolutely no evidence either direct or that can be reasonably inferred that Ms Katke was aware of the previous claim. If Ms Katke was not aware of the previous claim the victimisation claim cannot succeed. Again there are insufficient primary facts to pass the burden to the respondent to prove that they did not victimise the claimant.
64. For these reasons the tribunal is not satisfied that the claimant's claim of age discrimination by way of victimisation has been made out and his claim must be dismissed.

Employment Judge:

Date and place of hearing: 1-2 November 2021, Belfast.

Date decision recorded in register and issued to parties: