



# EMPLOYMENT TRIBUNALS

## BETWEEN

<b>Claimant</b>	Mr Nelson Oshodi
<b>Respondent</b>	Shared Services Connected Limited
<b>Held:</b>	Video (CVP)
<b>On:</b>	14 December 2022
<b>Before:</b>	Employment Judge R Brace (sitting alone)
<b>Representation</b>	
For the Claimant:	Did not attend
For the Respondent:	Ms C Ibbotson (Counsel)

## JUDGMENT

The Claimant was not an employee or potential employee of the Respondent within the meaning of section 83 Equality Act 2010.

The Claimant's claim of race discrimination against the Respondent is struck out on the grounds that it has no reasonable prospects of success as the Respondent was not the Claimant's employer or potential employer.

### Written Reasons

1. The hearing did not commence at the listed time of 10.00am as the Claimant did not join the CVP hearing. The hearing was postponed to 10.15am whilst the clerks attempted to make contact with the Claimant by telephone (using the number provided by the Claimant on his ET1 form) and by email.
2. No response was received from the Claimant and as a result the hearing proceeded in his absence and commenced at 10.20am.
3. It was noted that:

- a. the Claimant had been informed by Judge Jenkins at the case management preliminary hearing on 17 August 2022 that the preliminary hearing on the strike out application would be heard on 14 December 2022;
  - b. the case management order of 17 August 2022 confirmed that this preliminary hearing would be heard on 14 December 2022 to consider the following '*Was the Claimant an employee or potential employee of the Respondent within the meaning of section 83 Equality Act 2010?*'; and
  - c. a copy of the Notice of Hearing had been sent on 22 August 2022 to all parties.
4. The hearing proceeded in the Claimant's absence and was listed to consider:

*'Whether or not to strike out the claim, pursuant to Rule 37 Employment Tribunal rules of Procedure, on the basis that the Respondent was not, and was not intended to be, an employer of the Claimant and therefore could not be liable for the claim'.*

5. The Tribunal was provided with a copy of the Claimant's witness statement and the witness statement of Amanda Lewis (Head of Government Resourcing) for the Respondent. Both statements were taken as read and no additional questions were asked of Amanda Lewis.
6. The Tribunal also had before it a copy of the Bundle which had been uploaded to the Tribunal which consisted of 94 pages and any references to documents in the bundle in these written reasons are denoted by [].
7. Written submissions were also provided by the Respondent's representative and are incorporated by reference in these written reasons.

#### **Findings of fact**

8. The Respondent is a limited company, a joint venture between UK Cabinet Office and a digital transformation business, responsible for providing recruitment services to the Ministry of Justice ("MoJ") and Her Majesty's Prison and Probation Services ("HMPPS").
9. The Respondent's Government Resourcing department, acting as an administrator, executes MoJ's instructions relating to its recruitment services, including job vacancies, vetting and employment contract generation in line with highly prescribed processes. It has no authority in

making decisions as to which candidates make it through the sift for interview, how candidates are scored or the outcome of any interview.

10. The Claimant had worked for the MoJ in HMPPS within its National Probation Service Reading office from 9 August to 30 Sept 2021 and, prior to that employment, had gone through a vetting process administered by the Respondent. The Claimant made a further application for employment as Case Administrator in Pontypridd in October 2021 [38] and was subsequently made a conditional offer of employment [53]. The email confirmed the offer was subject to vetting and the Claimant was asked to fill out a pre-employment check, which he undertook which set out personal details including address and employment history [44]. The Claimant was thanked for having submitted form and told that vetting would commence [93].
11. Copies of the internal electronic messaging between the MoJ and Respondent from 24 February 2022 indicate that the MoJ informed the Respondent that the Claimant had not declared previous MoJ employment, even though some data on their system suggested that the Claimant was employed by MoJ [92]; that the Respondent seek an employment reference from the National Probation Service in Reading and that the Claimant was asked to provide further information on reasons for taking legal proceedings. On the following day the Respondent confirmed to the MoJ that they had emailed the Claimant and the Respondent requested references [91].
12. On the 5 April 2022, the MoJ confirmed to the Respondent that it had reviewed the Claimant's application. A screen shot of the internal system records that the Claimant had failed the vetting procedure on the basis of 'Adverse References'. The evidence of Amanda Lewis (§17 ALWS), which I accepted, was that Sarah Sweeny was the decision-maker and was an employee of MoJ and not the Respondent [94].

### **The Law**

13. S. 39 Equality Act ("EqA") 2010 sets out that employers and potential employers must not discriminate against or victimise employees and job applicants:
  - (1) An employer (A) must not discriminate against a person (B)—
    - (a) in the arrangements A makes for deciding to whom to offer employment;
    - (b) as to the terms on which A offers B employment;
    - (c) by not offering B employment.
  - (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.
- (3) An employer (A) must not victimise a person (B)—
- (a) in the arrangements A makes for deciding to whom to offer employment;
  - (b) as to the terms on which A offers B employment;
  - (c) by not offering B employment.
- (4) An employer (A) must not victimise 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 any other benefit, facility or service;
  - (c) by dismissing B;
  - (d) by subjecting B to any other detriment.

18. S. 83(2) EqA 2010 defines “*employment*” under Part 5 EqA 2010:

- (2) “*Employment*” means—
- (a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;
  - (b) Crown employment;
  - (c) employment as a relevant member of the House of Commons staff;
  - (d) employment as a relevant member of the House of Lords staff.

### **Conclusion**

19. Whilst Tribunals should be slow to strike out a claim brought by a litigant in person on the basis that it has no reasonable prospect of success:
- a. there had already been a more than reasonable attempt by Judge Jenkins to identify the complaints being brought by the Claimant, as reflected in the Record of Preliminary Hearing of 17 August 2022, in particular the Case Summary setting out the complaints and issues that the Tribunal was to decide; and
  - b. from that case management order and my own review of the ET1 of the Claimant I was satisfied that the claims brought by the Claimant were against the Respondent as ‘employer’ or ‘potential employer’ under s.39 Equality act 2010.

20. There was no indication that the Claimant was asserting a claim against the Respondent under the provisions of s.110 Equality Act 2010.
21. I was satisfied on the evidence before me that the Claimant was not an employee or potential employee of the Respondent within the meaning of section 83 Equality Act 2010. The documented evidence and the evidence from Amanda Lewis, which I accepted in its entirety, indicated that at no time was it intended that the Claimant was to enter into 'employment' with this Respondent as defined by s.83(2) Equality Act 2010. Rather the evidence before me indicated that the Claimant was to enter into 'employment' with the MoJ as the 'potential employer'.
22. There had been no offer from the Respondent to the Claimant for the Claimant to enter into with the Respondent:
- a. a contract of employment;
  - b. a contract of apprenticeship; or
  - c. indeed a contract personally to do work.
23. Rather, I concluded that the Respondent was acting solely as administrator for MoJ as the 'potential employer'.
24. As a result I was satisfied that the Respondent was not the Claimant's 'employer' or 'potential employer' for the purposes of bringing a claim under s.39 Equality Act 2010 and on that basis concluded that there were grounds under rule 37(1)(b) Employment Tribunal Rules 2013 for striking out the claim against the Respondent on the basis that had no reasonable prospect of success.

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**Employment Judge Brace**  
**14 December 2022**

Judgment and reasons sent to Parties on 15 December 2022

For the Tribunal Officer Mr N Roche