

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

BETWEEN:

MS MAYA FORSTATER

Claimant

-v-

CGD EUROPE

Respondent

GROUND OF RESISTANCE

1. The Respondent contends that the tribunal has no jurisdiction to hear the Claimant's claims because they do not fall within the territorial scope of the Equality Act 2010 and/or the territorial reach of the tribunal.
2. The Respondent contends that it is not the correct respondent to the Claimant's claims. Conduct relied on by the Claimant as acts of discrimination, harassment and victimisation were allegedly committed not by the Respondent but by a separate entity, Center for Global Development based in Washington DC ("CGD") and/or individuals employed or engaged by CGD.
3. The Respondent denies that it is liable for the alleged conduct of CGD as its agent or otherwise. The Respondent denies that it is vicariously liable for the alleged conduct of individuals employed or engaged by CGD.
4. The Respondent contends that the tribunal has no jurisdiction to hear the Claimant's claims because the Claimant was not employed within the meaning of the Equality Act 2010.
5. The Respondent further denies that the Claimant is entitled to protection as a jobseeker within the meaning of section 39 of the Equality Act 2010.
6. The Respondent contends that the Claimant's alleged belief is not a "belief" within the meaning of section 10 of the Equality Act 2010 because it:
 - a. is not a belief, but simply an opinion or viewpoint;
 - b. is not a belief as to a weighty and substantial aspect of human life and behaviour;
 - c. does not attain the necessary level of cogency, seriousness, cohesion and importance;
 - d. is not worthy of respect in a democratic society, is not compatible with human dignity and conflicts with the fundamental rights of others; and
 - e. does not have a similar status or cogency to a religious belief.

7. The Respondent further contends that the Claimant's alleged lack of belief is not protected under section 10 of the Equality Act 2010.
8. The Respondent does not admit that all of the acts or omissions complained of constitute conduct extending over a continuous period within the meaning of section 123(3)(a) of the Equality Act 2010. The Respondent contends that it would not be just and equitable for the tribunal to extend time for submission of any part of the claims which have been presented outside the time limit.

Direct Discrimination

9. The Respondent denies that it discriminated against the Claimant directly because of belief, as alleged in the ET1 or at all.
10. The Respondent does not admit that the alleged acts or omissions set out in paragraphs 72 of the claim occurred. Further or alternatively, the Respondent does not admit that the alleged acts or omissions amounted to less favourable treatment. Further or alternatively, the Respondent denies that the alleged acts or omissions were because of belief.
11. The Respondent contends that the Claimant has not identified an appropriate comparator for direct discrimination purposes.

Harassment

12. The Respondent further denies that it subjected the Claimant to harassment related to belief, as alleged in the ET1 or at all.
13. The Respondent does not admit that the alleged conduct referred to in paragraph 72 of the claim occurred. Further or alternatively, the Respondent denies that the alleged conduct amounted to harassment related to belief within the meaning of section 26 of the Equality Act 2010.
14. The Respondent denies that the alleged conduct had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for her and contends it was not reasonable for the Claimant to regard the conduct as having that effect.

Indirect discrimination

15. The Respondent further denies that it discriminated against the Claimant indirectly, as alleged in the ET1 or at all.
16. The Respondent denies that it applied the provision, criterion or practice identified by the Claimant in paragraph 75 of the claim.
17. Further or alternatively, the Respondent denies that the alleged provision, criterion or practice put the Claimant and persons who share her belief at a particular disadvantage.

18. Further, the Respondent denies that the alleged provision, criterion or practice put the Claimant and persons of the same sex at a particular disadvantage.
19. Further or alternatively, the Respondent contends that the provision, criterion or practice identified was a proportionate means of achieving a legitimate aim; namely the protection of human dignity and the fundamental rights of others, including but not limited to those with the protected characteristic of gender reassignment and/or those identifying as transgender.

Victimisation

20. The Respondent further denies that the Claimant was subjected to victimisation as alleged in the ET1 or at all.
21. The Respondent does not admit that the Claimant identified or did a protected act within the meaning of section 27(2) of the Equality Act 2010. The Respondent asserts that the alleged protected acts were false and made in bad faith and therefore cannot be relied on for the purposes of a victimisation claim.
22. Further or alternatively, the Respondent does not admit that the alleged acts or omissions occurred or amounted to a detriment.
23. Further or alternatively, the Respondent denies that the alleged acts or omissions were because of a protected act.

Background

24. The Respondent is a charitable company limited by guarantee registered in England. It is a distinct legal entity from CGD which is registered in Washington DC. The Respondent and CGD operate as separate organisations with separate boards of trustees. The Strategy and Planning Group (the "SPG") functions in an advisory capacity to the President of CGD.
25. Visiting fellowships are a type of unpaid honorary affiliation offered to academics who wish to contribute to research work being carried out by CGD. Visiting fellowship appointments and renewals are made by the President of CGD. These decisions may be discussed at SPG meetings and/or with input from a CGD steering committee, but they are made at the sole discretion of the President. Visiting fellowships may be renewed on a case by case basis but cannot be held for more than 3 years. It is not the case that renewals are a formality as the Claimant alleges.
26. On 9 November 2016, the Claimant was offered a visiting fellowship with CGD for a one year fixed term. The Claimant's visiting fellowship was renewed for a further one year term until early November 2018. There was no requirement or expectation that the Claimant's visiting fellowship would be renewed for a third year. The Claimant's visiting fellowship was not connected with the Respondent.
27. During the period from 2015-2018 both CGD and the Respondent separately entered into a number of consultancy agreements with the Claimant to deliver specific services in the field of tax policy and research.

28. CGD submitted a proposal dated 29 August 2018 to a foundation seeking funding for a project (the "Proposal"). It is denied that CGD was given a strong indication that the funding would be granted. Another proposal made to the same foundation around the same time was declined.
29. In the Proposal, the Claimant was referred to as a visiting fellow. The document proposed that she would participate in a sub-set of the proposed activities as a consultant under a consultancy agreement for 50% of her time. It is denied that the Claimant was offered or, that a commitment was ever made to her that she would be offered, employment with CGD or the Respondent.
30. On 1 October 2018, a number of staff based in Washington DC raised concerns with CGD's HR department about some of the language being used by the Claimant on Twitter which was making them feel uncomfortable. In addition, one of the Respondent's employees also raised similar concerns.
31. It is correct that on 2 October 2018, Luke Easley, HR Director for CGD emailed the Claimant expressing the concerns which had been raised about some of the language and the tone the Claimant had used in recent discussions on Twitter around gender identity and sex. These discussions were not relevant to the Claimant's field of tax policy and research.
32. The Respondent contends that the Claimant was not using her Twitter account for purely personal purposes. The Claimant stated in her biography on her Twitter account that she was affiliated with CGD and routinely used it to disseminate CGD's and the Respondent's research work, publicise their events and, to engage with professional peers and colleagues. This meant that there was a significant risk that CGD and/or the Respondent would be associated with the views being expressed by the Claimant. Mr Easley therefore asked the Claimant to distinguish her views from the institutional views of CGD and to refrain from making any exclusionary or offensive statements.
33. The Claimant confirmed she had added a disclaimer to her Twitter biography but stated that she would continue to make statements that she acknowledged she had been told were considered offensive and exclusionary including "transwomen are men" and a woman means "adult human female". She confirmed her intention to continue to actively disseminate her views, including by publishing a blogpost on the subject. The Claimant continued to instigate and actively participate in conversations and email correspondence in which she expressed these views to members of staff of CGD and the Respondent. The Claimant also brought materials relevant to the topic to the Respondent's offices and left them on display.
34. The Claimant's second term as a visiting fellow with CGD lapsed in early November 2018. No decision was made at this time whether the Claimant would be appointed to serve a third and final year as a visiting fellow.
35. It is correct that on 21 November 2018, Mark Plant announced that a grant in respect of the Proposal had been agreed. It remained the intention that the Claimant would be engaged as a consultant to assist with the project. Mr Plant confirmed this to the Claimant on several occasions including during a meeting on or about 13 February 2019.

36. The decision not to renew the Claimant's visiting fellowship was made by CGD's President, Mr Masood Ahmed. This was communicated to the Claimant during a telephone conversation on 28 February 2019 and confirmed by email on 5 March 2019. Mr Ahmed confirmed that the offer to engage the Claimant as a consultant to work on the Proposal was unaffected by the decision not to renew her visiting fellowship. The Claimant verbally refused this offer but it was not withdrawn by CGD.
37. It is correct that the Claimant's profile was removed from the website after the decision was made not to renew her visiting fellowship. This is consistent with CGD's policy which is not to retain profiles of individuals on the website once their affiliation has ended.
38. The Claimant's claims of belief discrimination, sex discrimination, harassment and victimisation are denied in their entirety.
39. The Respondent denies that the Claimant is entitled to the remedies sought, or any remedy. Without prejudice to this denial, the Respondent makes no admissions as to any of the matters relied on by the Claimant in relation to remedy. The Respondent denies that the Claimant has suffered financial loss or injury to feelings.

14 June 2019

Bates Wells Braithwaite