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THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE ZUKE

MEMBERS: Mrs P M Woods
Mr G Bluestone

BETWEEN:

Mr H Muhammed

Claimant

AND

The Leprosy Mission International

Respondent

ON: 26 October 2009

APPEARANCES:

For the Claimant: In person

For the Respondent: Ms L McLynn, Solicitor

REASONS

1. These reasons for the judgment of the Tribunal sent to the parties on 30 October are provided at the request of the Respondent.
2. In his claim form presented to the Tribunal on 20 July 2009, the Claimant made a complaint that he had been discriminated against on the ground of religion contrary to regulations 3 and 6 (1)(c) Employment Equality (Religion or Belief) Regulations 2003 ("the Regulations"), when he unsuccessfully applied for employment with the Respondent as a Finance Administrator.

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3. In its response the Respondent submitted that being of a particular religion is a genuine occupational requirement for employment with the Respondent within the meaning of regulation 7(3). Further and in the alternative, the Respondent submitted that even if the Claimant had been of that particular religion, he would not have been selected for employment because he was among the lower scoring candidates in relation to the selection criteria for employment.
4. Evidence on behalf of the Respondent was given by Mrs J Moncada, Head of Human Resources, and Mr N Pires, Human Resources Administrator. The Tribunal also heard evidence from the Claimant, and considered documents presented by the parties. There was very little dispute about the primary facts. Having considered the evidence the Tribunal made the following material findings of fact.

The Facts

5. The Respondent is a Christian Mission founded in 1874. Its object is to minister to sufferers of leprosy throughout the world in the name of Jesus Christ. Its global vision and core values statement includes the following:-

"The Leprosy Mission (TLM) is a leading international non-denominational Christian organisation with over 130 years of experience ... God has equipped us with the means and methods to reach our goal of healing, restoring and empowering the lives of people affected by leprosy. ...

Mission Statement – to minister in the name of Jesus Christ to the physical, mental, social and spiritual needs of individuals and communities disadvantaged by leprosy; working with them to uphold human dignity and eradicate leprosy."

Christian Ethos – we are motivated to minister to people affected by leprosy in the name of Jesus Christ, because we believe that his love and compassion will give them hope for the future. ... our motivation and our relationships are rooted in our faith in Jesus Christ and his love, compelling us to serve others, putting their needs first. This love flows from the Christian's relationship with God as described in the New Testament. ... So, the love of Christ which is worked out in the organisation, building relationships and creating a relational ethos, is the same love with which the activities of the organisation is delivered to those whom we seek to serve... TLM believes that its mission and purpose – to minister to people affected by leprosy in the name of Jesus Christ – cannot be separated from our internal support services at the International Office. The values, which we espouse as a mission, should be matched by those that we practice in our fieldwork and in our offices. The link between who we are and what we do cannot be broken. "

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6. The Respondent's values and ethos are based on the biblical accounts of Jesus healing people affected with leprosy. The members of the Respondent, including their staff, believe that in ministering to people affected with leprosy they are continuing the specific work that Jesus did, for the greater glory of God. Collective worship and prayer is a key expression of this faith. The members and employees believe that God answers prayers offered in the name of Jesus, and that this will enable them to achieve their vision of a world without leprosy.
7. The Leprosy Mission operates in a number of different countries, providing medical and practical help to leprosy sufferers of all faiths, and educating people about the causes and effects of leprosy. The branches of the Mission outside the United Kingdom are all independent, usually with their own board of trustees. The Respondent works in partnership with these branches of the Mission abroad, and co-ordinates field activity. All the branches of the Mission abroad subscribe and adhere to the Respondent's mission and values.
8. The country leader of each branch is always a Christian. Where possible, the Mission prefers to employ Christians to carry out its work abroad. However, it acknowledges that it may be difficult to do so in countries where Christianity is a minority faith, for example India. In these circumstances non-Christians are employed to carry out fieldwork.
9. The Respondent is based in Brentford. It employs approximately 24 people, all of whom are Christians. It is a fundamental part of the Respondent's role to support the Mission worldwide by acts of collective and individual worship to Jesus Christ for the success of the Mission.
10. Every working day begins with at least half an hour's collective prayer, gospel reading, and shared reflections on the work of Jesus Christ. All members of staff actively participate in this shared time, offering prayers for specific or general aspects of the Mission's success. Members of staff take it in turns to lead the act of collective worship.
11. It is common for the Respondent to receive requests for prayers from its partners. Every staff member responds individually to these requests by offering personal prayers. In the event of a particularly demanding situation, for example, a natural disaster, there will be an act of collective worship. In addition during the year, there are two prayer and fasting days when the staff gather in small groups to pray to Jesus for specific needs.
12. Formal meetings begin and end with prayers. Prayer is used to help resolve any disputes that occur within the workplace. Once a year all members of staff attend an awayday which is wholly devoted to reflection on the Bible; and individual and group Christian prayers.
13. In the early part of this year, the Respondent advertised for a Finance Administrator. The closing date for applications was 30 March 2009. The job

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advertisement included the following:-

"The Leprosy Mission (TLM) is a leading international Christian charity, active in over 50 countries, working towards the eradication of the causes and consequences of leprosy. The Leprosy Mission is built on Christian core values that are reflected in its ethos and culture ... the ability to work within a Christian framework and be sensitive to its various expressions across cultures and denominations is essential."

The advertisement included details of the role of Finance Administrator, and the professional qualities and experience required.

14. The job description for the role of Finance Administrator included the following:-

"The International Office of The Leprosy Mission supports the work of our projects based in 28 countries overseas and our 23 fundraising councils. We work together to achieve our purpose of ministering in the name of Jesus Christ to the physical, mental, social and spiritual needs of individuals of communities disadvantaged by leprosy, working with them to uphold human dignity and eradicate leprosy."

15. Among the principal responsibilities for the post were:-

"To represent TLM's Christian ethos throughout their work activities by applying a Christian mind and attitude.

To spiritually support the work of the mission through Christian prayer and fellowship, daily at the International Office and at various meetings throughout the year."

16. The Claimant is a Muslim. He applied for the post of Finance Administrator. He did not retain a copy of his application form. Mr Pires has been unable to find his application form, so that the Tribunal did not have a copy of the form.
17. There were seven applicants for the role, including the Claimant. The person specification for the role set out 11 criteria. 10 of those criteria related to educational qualifications, and experience in aspects of finance administration. The other criterion was

"Be a practising Christian committed to the objectives and the values of the Leprosy Mission and able to work in an interdenominational environment."

18. Mr Pires marked the seven application forms according to the criteria. The score for each criterion was three if the criterion was met, two if it was partly met, and one if it was not met.
19. On his application form, the Claimant had stated that he was not a Christian. Nevertheless, Mr Pires decided to award all candidates the maximum score of

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three for the criterion of being a Christian. In effect, this neutralised the requirement to be a Christian. Mr Pires took that step because he did not regard it as his role at the short-listing stage to exclude a candidate solely on the basis of their religious belief. He took the view that there may be issues between candidates about the extent or commitment of their belief. He decided that this was a matter that could more properly be explored at the interview stage, with the short-listed candidates.

20. Three candidates scored 26 points. One scored 24, and three including the Claimant scored 23. On his short-listing summary form Mr Pires noted that the Claimant was non-Christian.
21. Mr Pires' short-listing exercise was considered by Mrs Moncada together with the Head of Finance. They decided to invite three out of the four highest scoring candidates for interview. The remaining lower scoring candidates, including the Claimant, were informed that their applications were unsuccessful.
22. The Claimant did not produce any evidence to show that Mr Pires' scores were unreasonable or unfair. He submitted that we should conclude that Mr Pires' scoring was inaccurate because he awarded the Claimant a maximum score for religious belief, even though he knew that the Claimant was not a Christian. The Tribunal did not accept that submission. In our view Mr Pires provided an entirely satisfactory explanation for his decision to neutralise the religious belief requirement at the short-listing stage. That decision was to the Claimant's advantage. It does not provide any rational basis for an inference that the remainder of Mr Pires' scores were inaccurate.
23. Following his rejection, the Claimant sent the Respondent a questionnaire under Regulation 33, to which the Respondent replied. The replies are consistent with the evidence presented to the Tribunal by the Respondent.

Conclusions

24. The Tribunal considered the submissions made by Ms McLynn and the Claimant.
25. The material parts of regulations 3 and 6 are as follows:-

"3. - (1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if -

(a) on the grounds of the religion or belief of B ... A treats B less favourably than he treats or would treat other persons;

6. - (1) It is unlawful for an employer, in relation to employment by him at an establishment in Great Britain, to discriminate against a person -

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...

(c) by refusing to offer, or deliberately not offering, him employment."

26. The material part of Regulation 7 is as follows:-

"7. - (1) In relation to discrimination falling within regulation 3 (discrimination on grounds of religion or belief) -

(a) regulation 6 ... (c) does not apply to any employment;

...

where paragraph ... (3) applies.

...

(3) This paragraph applies where an employer has an ethos based on religion or belief and, having regard to that ethos and to the nature of the employment or the context in which it is carried out -

(a) being of a particular religion or belief is a genuine occupational requirement for the job;

(b) it is proportionate to apply that requirement in the particular case; and

(c) either -

(i) the person to whom that requirement is applied does not meet it, or

(ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it. "

27. Ms Mc Lynn referred to *Glasgow City Council v McNab* [2007] IRLR476 and the decision of an Employment Tribunal in *Sheridan v Prospects for People with Learning Disabilities* (unreported) as decisions that included consideration of regulation 7(3). In our view, the burden of proof is on the Respondent to show that regulation 7(3) applies.

28. The Tribunal first considered whether the Respondent has an ethos based on religion or belief. We are satisfied that it does. It is clear to us that the Respondent's Christian belief, and in particular belief in Jesus Christ and the power of Christian prayer to achieve its goals, is central to its work and activities. This ethos based on the Christian religion permeates the

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Respondent's work, and daily life and activities in the workplace.

29. We next considered whether having regard to that ethos and to the nature of the employment, or the context in which it is carried out, being of the Christian religion is a genuine occupational requirement for the job. As Ms McLynn pointed out, "the nature of the employment" or "the context in which it is carried out" are disjunctive requirements.
30. We did not accept Ms McLynn's submission that being of the Christian religion was a genuine occupational requirement with regard to the nature of the employment. The core requirements of the job of Finance Administrator are finance and administrative matters which do not have any connection to Christian belief. In our view the reference in the list of principal responsibilities to a Christian ethos and Christian prayer, are more properly assigned to the context of the employment, rather than the nature of the employment.
31. We next considered whether being a Christian is a genuine occupational requirement for the job, having regard to the context in which is carried out. We are satisfied that it is. A Christian belief, and in particular a belief in the biblical account of Jesus healing lepers, and a belief in the power of Christian prayer to achieve the Respondent's goals are at the core of its work and activities. Among other matters, this is manifested by the daily acts of Christian worship in which all members of staff participate, and acts of prayer in response to requests for Christian prayers from abroad.
32. It is common ground that the Claimant does not meet the requirement because he is a Muslim. We next considered whether it is proportionate to apply the requirement in this particular case. The jurisprudence about the concept of proportionality in the context of discrimination law is to be found in the decision of the European Court of Justice in *Mangold v Helm* (2006) IRLR 143, and *Hardy's v Hansons plc v Lax* (2005) IRLR 726. In summary, we must decide if the requirement is objectively justified and reasonably necessary, notwithstanding its discriminatory effect. "The principle of proportionality requires the tribunal to take into account the reasonable needs of the business. But it has to make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary" (*Hardy's*)
33. We are satisfied that the requirement is objectively justified, and reasonably necessary. We accept Ms McLynn's submission that employing a non-Christian would have a very significant adverse effect on the maintenance of the Respondent's ethos, and the sense of religious community cohesion in the workplace. In arriving at that conclusion, we weighed the discriminatory effect of the requirement on the Claimant against the needs of the Respondent. In our view the balance lies in favour of the Respondent. The effect on the Claimant is that he could not be employed by the Respondent, but there are countless other employments where he can exercise his skills. On the other hand, the absence of the requirement would undermine the Respondent's

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ethos and activities.

34. Our unanimous judgment is that the Claimant was not discriminated against on the ground of his religion, because regulation 7(3) applies.
35. For the sake of completeness we have considered what the position would be if we had not been satisfied that regulation 7(3) applies. In that event, the claim would have succeeded, and we would have been required to assess the chance that the Claimant would have been employed if he was a Christian. Our conclusion is that there is no chance at all that he would have been employed, because he was among the lower scoring candidates in the short-listing exercise, disregarding entirely the requirement to be a Christian. In other words, if we had found that the Claimant had been discriminated against on the grounds of his religion, we would also have found that he would not have been appointed to the role of Finance Administrator in any event.

Michael Zuke

Employment Judge Zuke

Date: 15 December 2009

Judgment sent to the parties and entered in the Register on: 16 :12 .2009 .

[Signature]

for Secretary of the Tribunals