



Appeal No. EAT/1106/98

**EMPLOYMENT APPEAL TRIBUNAL**  
58 VICTORIA EMBANKMENT, LONDON EC4Y 0DS

At the Tribunal  
On 3 March 1999

Before

**HIS HONOUR JUDGE PETER CLARK**

**MR T C THOMAS CBE**

**MRS E HART**

---

MR C SIKPI

APPELLANT

CATFORD CENTRE FOR THE UNEMPLOYED & OTHERS

RESPONDENTS

---

Transcript of Proceedings

JUDGMENT

**PRELIMINARY HEARING**

Revised

---

**APPEARANCES**

NO APPEARANCE BY OR ON BEHALF OF THE  
APPELLANT

For the Respondent:

MISS WILLMOTT  
(of Counsel)

**JUDGE PETER CLARK:** This appeal was brought out of time. However, at a directions hearing held on 13 November 1998 before the President, Morison J, he granted an extension of time for appealing and directed that the case be listed for preliminary hearing before a full division of this Tribunal. The Respondent appeared on that occasion and was represented. We are told that no application was made to the President for costs. The case now comes before us to determine whether or not the appeal raises any arguable point of law to go to a full appeal hearing.

By his Originating Application to the Employment Tribunal presented n 18 March 1998, the Appellant complained of unlawful racial discrimination against the Chair of the Management Committee of Catford Centre for the Unemployed, Mr Djondo, and against the Trustees of the Centre. He had applied for the post of Business Development Manager with the Centre, had been shortlisted and attended for interview on 12 December 1997, but was unsuccessful in his application. The post was filled by a female black Afro-Caribbean candidate; the Appellant is black African.

His complaint came before the London (South) Employment Tribunal on 22 June 1998. Following a meeting in Chambers on 23 June, by a decision with Extended Reasons dated 8 July 1998, the claim was dismissed.

Four candidates were interviewed on 12 December 1997 by Mr Djondo and Mr Lansdown, the Treasurer of the Centre. The Employment Tribunal identified six complaints made by the Appellant about the selection process. They are to be found at paragraph 8 of the reasons.

Thereafter the Tribunal went on to consider those individual complaints and found that in each case the Applicant had failed to make out less favourable treatment and that in two incidences, relating to the fact of his non-appointment to the job and the differences in scores at the interview itself, the Tribunal was satisfied with the explanation put forward by the Respondents and in those circumstances, found that there was no unlawful discrimination on racial grounds. The complaint was dismissed.

The Appellant has failed to attend this hearing today without explanation, either to this Tribunal or indeed to the Respondents. In those circumstances, we have considered the written grounds of appeal attached to his notice. We can say simply, that the matters there raised are essentially questions of fact; no question of law is raised and accordingly we shall dismiss the appeal at this preliminary hearing stage.

Miss Willmott of Counsel has attended today on behalf of the Respondent. She makes an application for the costs in the appeal, save for the costs of today's hearing, because she tells us she has appeared without fee.

The purpose of the current practice of listing all appeals for preliminary hearing is to save the Respondent the expense of attending at a preliminary hearing. We observe that in the past, under the practice direction issued by the then President, Waite J, reported at 1985 ICR 684, there was a time when preliminary hearings were listed for both parties to attend and indeed it was said by Popplewell J, in Ravelin v Bournemouth Borough Council Times, 19

July 1986, that in principle it was open to the Appeal Tribunal to award costs to the successful Respondent, following the dismissal of an appeal at such a preliminary hearing.

The position today is different, because preliminary hearings are ex parte. Respondents have the right to attend and observe and will only, very rarely, be called upon to make any submissions, and certainly not submissions as to the merits of the appeal. In those circumstances, it is difficult to imagine circumstances in which this Tribunal would award costs in a case where the appeal was dismissed at the preliminary hearing stage. The main substance of the application for costs before us is that costs should be awarded in respect of the Respondent's attendance and representation at the directions hearing held before the President on 13 November. As to that, we are quite satisfied that the time for making the application was at the end of that hearing. We are not prepared to entertain it now.

As to the general costs of taking advice and preparing a PHD form, we think it is inconsistent with the present practice to make any award of costs and accordingly that application is dismissed.