EMPLOYMENT APPEAL TRIBUNAL

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Our Reference: UKEATPA/0383/08/LA

Dr R Benveniste

24 April 2008

Dear Madam

Dr R Benveniste v Kingston University

I am writing with reference to your Notice of Appeal in the above case from the Decision of an Employment Tribunal sitting at London South and promulgated on 11 February 2008.

Under Section 21 of the Employment Tribunals Act 1996, this Appeal Tribunal only has jurisdiction to hear appeals from Employment Tribunal Decisions on questions of law, i.e. where it is argued that the Tribunal made some mistake in its interpretation or application of the law in reaching its decision. This means that it is not the function of this Appeal Tribunal to re-hear the facts of a case or to review an Employment Tribunal's decision on those facts.

The appeal has been referred to The Honourable Mr Justice Elias (President) in accordance with Rule 3(7) of the Employment Appeal Tribunal Rules (amended) 2004 and in his opinion part of your Notice of Appeal discloses no reasonable grounds for bringing the appeal. He states:

Rule 3 in respect of all, save Ground 4.

The appeal against the finding of unlawful dismissal and victimisation have no prospect of success. Here was a deliberate and considerate refusal to obey a reasonable order against a background of non-co-operation and a confrontational attitude. The claimant was given every opportunity to comply with the order, and gave no good reason why she should not do so. The Tribunal found that it was an order which the employers could properly make and did not involve a breach of contract. I believe the County Court came to the same conclusion. In any event, it was plainly a conclusion which the Tribunal was entitled to reach.

The grounds of appeal are, in my view, hopeless in respect of these matters notwithstanding that they are extremely detailed and indeed significantly longer than the decision itself. In particular, I would make the following observations:

1. The essential facts which justified this dismissal are within a very small compass. The claimant seeks to re-open virtually every fact which the Tribunal has reached. The Tribunal heard evidence over 9 days, including an extremely detailed witness statement from the claimant which she read out to them. There was plainly evidence, and plenty of evidence, from which they could reach the conclusion that

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there was a lawful order which she had deliberately and continually chosen to ignore.

2. It is quite hopeless to contend that there was a conspiracy to dismiss the claimant or that the findings of the Tribunal were perverse. As to the former, the Tribunal saw the witnesses and heard the evidence. They were obviously impressed by some of the witnesses from the University. They did not consider that there was a deliberate conspiracy designed to get rid of the claimant and to trump up an offence. That was the claimant's contention and the Tribunal rejected it. There was plenty of evidence to justify their so doing.

3. There is no legitimate complaint against the procedures adopted by the University. The claimant was given every opportunity to attend the disciplinary hearing. She chose not to do so. She can hardly complain now.

4. The victimisation claim has no merit. Again, the issue was why the claimant had been treated as she had. The Tribunal accepted that it was for the reason advanced by the employer and that had nothing to do with the fact that she had previously lodged a claim for race or sex discrimination. Again, that was a decision the Tribunal was plainly entitled to reach on the evidence before it.

5. The Tribunal gave careful consideration to the two comparators who were allowed to work from home and they explained in some detail why the claimant's case was quite different to theirs. Again, there is no error of law in their analysis.

6. Concerning the deduction, the Tribunal gave reasons why they were not satisfied that the University had been in error. I see no legal error in their analysis.

For the above reasons the learned Judge considers that this aspect of the Appeal has no reasonable prospect of success and that, in accordance with Rule 3(7), no further action will be taken on it.

An Order has been made by the learned Judge in respect of that part of your appeal that does identify a question of law and accompanies this letter

Your attention is drawn to Rules 3(8) and 3(10) of the EAT Rules. **[A copy of Rule 3 is enclosed with this letter.]**

Yours faithfully

pp Ms J Johnson
Deputy Registrar

CC: **Messrs Charles Russell LLP Solicitors for the Respondent (Ref: PXP/JXO/PXP/025584/00011)**
London South Employment Tribunal (ref: 2305328/04)