



# EMPLOYMENT TRIBUNALS

**Claimant** Mr Robert A Baggs

**Respondent** Dr F D A Fudge

**HEARD AT:** Bristol **ON:** 23 March 2005

**CHAIRMAN:** Mr A C Tickle

**PRE-HEARING REVIEW** to determine whether there is any reasonable prospect of establishing that the claimant was discriminated against on grounds of religion or belief given the admitted fact that he was refused a job interview because he was an active member of the British National Party

## JUDGMENT

The claim is dismissed, and the claimant is **ORDERED** to pay costs to the respondent in the sum of £1400 plus VAT.

A handwritten signature in black ink, appearing to read 'A C Tickle', written over a horizontal line.

Chairman

JUDGMENT SENT TO THE PARTIES ON

24 March 2005

Handwritten initials in black ink, possibly 'M D' and 'M H', written over a horizontal line.

FOR THE SECRETARY TO THE TRIBUNALS



# EMPLOYMENT TRIBUNALS

<b>Claimant</b>	Mr R A Baggs
<b>Respondent</b>	Dr P D A Fudge

**JUDGMENT** having been sent to the parties on 24 March 2005 and reasons having been requested in accordance with Rule 30(5) of the Rules of Procedure 2004.

## REASONS

1. I have to decide whether the claim as pleaded comes within the meaning of Regulation 2(1) of the Employment Equality (Religion or Belief) Regulations 2003. I also have to consider the failure of the claimant to comply with the Tribunal's Order of the 18 March 2005.
2. I deal with that first. The claimant's adviser, to whom the document was sent, did not receive it. His mail has been going missing for up to 2 years. If that is so, it is inappropriate and an abrogation of responsibility to represent someone relying on that address for correspondence. No alternative was proposed – e-mail, P.O. box, for example. I am unimpressed. However, the respondent has not pushed the point – it is not prejudiced unduly. Consequently, I do not strike the claim out on this ground.
3. The claimant's representative then claimed that he had very limited time to prepare his arguments – he would have liked to present a 52-page argument (I am not sure how he knew it would amount to 52 pages). He was given the opportunity to apply for an adjournment, but clearly stated that he was prepared to proceed today. He agreed that the core arguments were before the Tribunal, and accepted, at the close of submissions, that "he had had a fair crack of the whip" – a fair opportunity to put his case.

4. The claim is one of direct discrimination. There has been no attempt to amend the claim to include indirect discrimination nor has any such application been made today.

5. The facts relevant to the issue are these. The claimant applied for a job as Practice Manager in a small medical practice. He was rejected because of his active membership of the British National Party. That is clear from the pleadings and is not disputed. The claimant has been in various business posts for much of his working life.

6. Mr Barnett submits – and I agree – that the claim fails because the claimant has failed to show what is (a) his religion, or (b) his religious belief, or (c) a similar philosophical belief. Further, it is admitted that the claimant was not refused an interview because of his religion, his religious belief or similar philosophical belief. It is common ground that he was turned down because of his active membership of the British National Party. That is sufficient for the claim to fail. However, I have gone on to consider whether membership of the BNP can come within the definition of Regulation 2(1).

7. Says the claimant, this is an unusual political party. The extracts from the Party's constitution before me confirm that. Membership is restricted to certain ethnic groups. The Party represents "the collective National, Environmental, Political, Racial, Folkish, Social, Cultural, Religious and Economic interests of the indigenous Anglo-Saxon, Celtic and Norse folk communities of Britain and those we regard as closely related and ethnically assimilated or assimilable aboriginal members of the European race also resident in Britain". Disregarding the racial references the definition includes many of the aspirations of other political parties in the United Kingdom. And that is what the BNP is – a political party. That is clear from its literature. It has political ends. It fields candidates in elections. It may not be typical, but there are other political parties which are hardly typical – the Green Party, for one. The BNP is peculiar because it restricts its membership on ethnic grounds. It does not, however, require members to belong to a particular religion or hold particular religious or similar philosophical beliefs. It has no proven links with religion or religious beliefs.

#### Conclusion

8. Did the respondent's decision relate to the claimant's religion? Answer – No. The respondent was unaware of (as I am) the claimant's religion and did not take it into consideration. Did the decision relate to the claimant's religious belief? Answer – No. There is no evidence as to what that is, and the respondent did not take it into consideration. Did the decision relate to a similar philosophical belief of the claimant? Answer – No. Again, there is no evidence as to what that is, and the respondent did not take it into consideration. The BNP is not a religion, or a set of religious beliefs, or a set of similar (which I take to be similar to religious) philosophical beliefs. It is a political party. The claim does not come within the meaning of Regulation 2(1) and is dismissed.

Costs

9. The respondent asks for costs in the sum of £2,800 plus VAT. The amount is reasonable. It is not suggested that the claim was brought vexatiously. Rather, says the respondent, the claim had no reasonable prospect of success – it was misconceived. I agree. It is nonetheless a matter of discretion as to whether I award costs. Mr Barnett refers to the failure to comply with the Order and inadequate reasons therefor. He says that BNP funds are likely to be behind the claimant. He produced a letter dated 7 February putting the claimant on notice of this application.

10. Mr Barnes says he did not receive various documentation. He refutes any suggestion that the British National Party is supporting the claimant. It is accepted, however, that this claim has been pursued by the claimant and Mr Barnes to test the scope of the Regulations.

11. In my judgment, the claim was doomed to failure from the start for the reasons that I have outlined. This is a political party. No amount of sleight of hand or skilful oratory can transform it into a religious organisation or one that subscribes to particular religious or similar philosophical beliefs. It had no reasonable prospect of success and it is appropriate to consider awarding costs.

12. I have to have regard to the claimant's ability to pay in deciding whether costs should be awarded - Rule 41(2) of the 2004 Rules. The claimant is in employment, earning £1,800 a month or so. His outgoings virtually match his income. He is a householder. I therefore determine that he is somebody who is in a position to pay an award of costs – he has income, he has assets. I then have regard to the ability of the claimant to pay in deciding the amount. On the evidence, awarding the full amount would be unduly burdensome. The appropriate sum, in all the circumstances, is £1,400 plus VAT.



A C Tickle, Chairman

Bristol

REASONS SENT TO THE PARTIES ON

1 April 2005

FOR THE SECRETARY TO THE TRIBUNALS