

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE EQUAL OPPORTUNITY TRIBUNAL**

(Referred pursuant to S. 39(2) of the Equal Opportunity Act 2000 as amended by Act No. 5 of 2001)

E.O.T. No. 0002 of 2014

**BETWEEN**

**KERWIN SIMMONS**

Complainant

**AND**

**THE WATER AND SEWERAGE AUTHORITY TRINIDAD AND TOBAGO**

Respondent

**CORAM:**

His Honour Mr. Rajmanlal Joseph	- Judge/Chairman
Her Honour Ms. Leela Ramdeen	- Lay Assessor
His Honour Mr. Harridath Maharaj	- Lay Assessor

**APPEARANCES:**

**Mr. Colin Selvon** appeared on behalf of the **Complainant**

**Mr. A. Khan instructed by Ms H. Gajadhar** appeared on behalf of the **Respondent**

**Date of Delivery of Judgment: July 28, 2016**



## BACKGROUND

1. This matter pertains to the allegations of the Complainant, an employee of the Respondent since October 1989, that he was discriminated against by the Respondent on the basis of his race, that is, the Complainant self-identified as being of African descent. His complaint of discrimination based on race is grounded on the assertion that he was treated less favourably than another employee of the Respondent, Simon Bahaw, whom he described as being of East Indian descent.
2. He further asserts that he was victimised by the Respondent and that the process of victimisation began shortly after he wrote a memorandum dated November 9, 2006 requesting an investigation be conducted into Mr. Simon Bahaw's qualifications. The Complainant also contended that the victimisation process was accelerated shortly after he lodged a complaint of discrimination with the Equal Opportunity Commission (EOC) in October 30, 2012.
3. The Respondent, on the other hand, asserted that it did not discriminate against the Complainant on any factor, including his race, but chose the candidate Mr. Bahaw, for the promotion to Network Communications Administrator solely on qualifications and suitability based on the candidate's experience in the information technology environment.
4. Further, the Respondent alleged that the Complainant had refused to follow lawful instructions with respect to Access and Control Security Systems of the Authority. In addition, the Respondent further alleged that it lost confidence in the Complainant to discharge his duties in a responsible and effective manner as a result of giving himself full administrative privilege to the Sym Secure Systems without authorisation. Moreover, his continued presence in the MIS was considered a potential security risk, especially as it related to the Respondent's security system.



## THE EVIDENCE

5. In support of their positions hereinabove, the parties submitted the following witness statements:
  - (a) Witness Statement of the Complainant dated August 28, 2015 and filed on August 28, 2015.
  - (b) Witness Statement of Mr. Ronnie Spencer, Senior Manager, Administrative Services of the Respondent dated March 31, 2015 and filed on March 31, 2015.
6. In essence, the evidence of the Complainant is that he became an employee of the Respondent on October 25, 1989 as Clerk I and from that date, until his promotion to the position of information Technology Officer in November 2002, he was engaged in numerous responsible employment activities. However, during the periods August 1, 2005 to October 7, 2005, March 1, 2006 to April 30, 2006 and May 1, 2006 to July 31, 2006 he acted in the position of Network and Telecommunications Administrator (A.N.T.A).
7. The Complainant further asserted that during the periods he was in the A.N.T.A position he performed his duties without any official complaints about his ability or competence.
8. Nonetheless, sometime during the latter of part of 2006, he attended a meeting with the then General Manager, Information Systems of the Respondent and was informed that his acting appointment would be terminated as a result of the memorandum dated June 13, 2006 written by Mr. Simon Bahaw indicating that the Complainant did not have a degree while he, Mr. Bahaw, possessed "numerous certifications including a degree". It was a requirement of the job that the holder must have a B.Sc. degree in Computer Science, Computers and Telecommunication or Electrical and Computer Engineering or equivalent.



9. Further, the Complainant was put back into his substantive position of IT Officer on August 1, 2006 and Mr. Simon Bahaw replaced him as Acting Network Telecommunications Administrator which, at that time was a senior position to that of IT Officer.
10. The Complainant further asserted, that sometime in 2005 Mr. Simon Bahaw contested another employee, one Mr. Francois for the position of Acting Network and Telecommunications Administrator and was not considered, since at that time, he did not have a degree. However, in 2006 he presented an Associate Degree dated 2006 and when informed that it would not suffice, he then presented a Bachelor of Science Degree dated 2004. The Complainant stated that he “became reasonably suspicious” and wrote a memorandum dated November 9, 2006 to the then Manager, Human Resource Administration, requesting that an investigation be done concerning Mr. Bahaw’s qualifications.
11. Moreover, the Complainant received a written response from the then Deputy General Manager indicating “that an officer’s qualification being questionable is a matter for the Human Resource Department”.
12. Thereafter, the Complainant wrote the Accreditation Council of Trinidad and Tobago (ACTT) sometime in late 2011 concerning the status of Canterbury University. By statement of recognition dated December 2, 2011, ACTT indicated that Canterbury university was “NOT Recognised by the Accreditation Council of Trinidad and Tobago”. The Complainant maintained that Mr. Bahaw’s degree was not recognised in this jurisdiction. The Respondent refused to act on the information and removed Mr. Bahaw from the position of Acting Network and Telecommunications Administrator.
13. The Complainant further maintained that he made numerous complaints to the Respondent but there were no positive responses, but insisted he was victimised by the respondent due to the fact that he was transferred out of the MIS Department to the Transport Department where his skills and qualifications in information technology would not be properly



utilised. To be sure, he asserted that he was approached to take voluntary Early Separation Programme (VSEP) which he rejected. He also alleged that the Respondent tried to get rid of him by insinuating that he was mentally ill.

14. The Complainant contended that he was treated unfairly, discriminated against because of his race and that the Respondent began a process of victimisation when he would not abandon his position that Mr. Bahaw should be removed from the position of Acting Network and Telecommunications Administrator, and that he should be put back into the said position. This witness was cross-examined in extensive details and apart from being confused about certain dates, the Tribunal found him to be a reliable witness, who appeared to us to be in reasonably full control of his mental faculties. In short, he was overall a credible witness.
15. The respondent's evidence on the other hand was presented by way of a Witness Statement of Mr. Ronnie Spencer, Senior Manager, Administrative Services of the Respondent dated March 31, 2015 and filed on the said day. He indicated that he started his employment with the Respondent as a Management Trainee on November 1, 1993 and thereafter received a series of promotions culminating in his current position, which he has been holding since April 1, 2013.
16. In his evidence he outlined the Complainant's employment progress within the organisation. He indicated that from the records he examined, the Complainant acted as Network Telecommunications Administrator for the period August 1, 2005 to October 7, 2005 and for the period May 1, 2006 to July 31, 2006. He maintained that there is no record of the Complainant acting for the period March 1, 2006 to April 30, 2006.
17. This witness asserted that acting arrangements within the Respondent are governed by the Collective Agreement and Department Circulars.



18. He further indicated that the Respondent received a memorandum dated June 14, 2006 from Mr. Bahaw questioning the Complainant's qualifications to hold the position of acting Network Telecommunications Administrator, which said position, at a minimum required the holder to have a first degree in computer Science, Computers and Telecommunication or Electrical or Computer Engineering or the equivalent. The Complainant did not possess the appropriate first degree, and Mr. Bahaw was appointed to act as Network Communications Administrator on August 1, 2006. The Complainant was reverted to his substantive position of Acting Information Technology Officer on July 31, 2006.
19. Subsequently, the Complainant wrote a memorandum dated November 9, 2006 requesting that an investigation be conducted into Mr. Bahaw's qualification. Prior to this however, the then Deputy General Manager wrote a memorandum of July 7, 2006 to the General Manager, Human Resources, requesting that the Bachelor Degree Program for which Mr. Bahaw was awarded a certificate be verified as accredited.
20. Just over six (6) months after the aforesaid memorandum was written, the then Manager, Human Resources Administration (Ag.), wrote a memorandum dated January 31, 2007 to Mr. Simon Bahaw requesting that he obtain verification from the Accreditation Council of Trinidad and Tobago regarding the status of his Bachelor of Science Degree in Information Technology from Canterbury University, and to identify the local educational institution in which he was enrolled while pursuing the course of study leading to the award of the said degree. In addition, Mr. Bahaw was required to submit the aforesaid information by February 28, 2007. Failure to so do "will result in the termination of your acting appointment".
21. In response to the memorandum from the Manager, Human Resources Administration, Mr. Bahaw replied by memorandum dated February 26, 2007 indicating that his degree from Canterbury University was covered by the Hague Convention of which Trinidad and



Tobago is a part. The local institution where he was enrolled was the Computer Learning Centre which was no longer in existence as of November 2006.

22. The Witness further stated that the Respondent only became aware that Mr. Bahaw's degree was not accredited when the Complainant produced a document around the latter part of 2011 or the early part of 2012 from the Accreditation Council of Trinidad and Tobago stating that Canterbury University was not recognised by the Accreditation Council of Trinidad and Tobago. He went on to add that during the material time it was not a policy of the Respondent to vet the qualifications presented by current employees but only vet the qualifications of new employees.
23. The witness went on to assert that the Complainant was never in an approved position of Physical Security and SCADA Administration and that he was accused of insubordination by the then Deputy General Manager, Corporate Services (Ag.), by memorandum dated September 9, 2009. In addition, he stated that several meetings were held over a period of several weeks with the Complainant and several senior functionaries of the Respondent, and as a result of these meetings it was mutually agreed that the Complainant would be transferred to the Transport Department, and the Complainant was so informed by memorandum dated October 4, 2009.
24. The witness maintained that the Complainant was not discriminated against by the Respondent by reason of his race or at all, nor was he victimised in any way.
25. This witness was extensively cross-examined by counsel for the Complainant and certain disturbing bits of information came to the Tribunal's attention, these are as follows:
  - (a) Having received information that Mr. Bahaw's degree was not accredited, he conceded that he could not now consider that degree. However, he was not aware of whether the Respondent took a formal position of not regarding the degree.



- (b) That during the period 2006 to 2013 the Respondent, to his knowledge, never made a request of the Accreditation Council to determine the qualifications obtained by Mr. Bahaw from Canterbury University.
- (c) No attempt was made by the Respondent to contact the Ministry of Foreign Affairs with reference to Mr. Bahaw's qualification being covered by the Hague Convention.
- (d) He is aware that there are online degrees being purchased and agreed that if such a degree is presented to the Respondent it would be tantamount to fraud.
- (e) The witness admitted that when the Respondent found out that Mr. Bahaw's degree was not accredited by ACTT he was not demoted.
- (f) It was put to this witness that the Complainant's job appraisals were all excellent. His response was that he did not check that particular information.
- (g) When asked whether he was aware that the Complainant now has a "Certified Accredited Degree" he responded "*I am not sure*" and went on to indicate that when he reviewed the case file it was back for the period 2006. That was the information he would have gone through. Nonetheless, this witness gave extensive information in his witness statement dealing with memorandums in 2007, 2009 and 2010.

As a result the Tribunal found this witness to be a bit less than credible.

## **FINDINGS OF FACT**

26. Based on the evidence presented in this case the Tribunal on a balance of probabilities find the following facts:
- (a) The Complainant was employed by the Respondent initially as a Clerk I on October 25, 1989 and in 1997 became a Technician in the Management Information System Department (MIS Dept.). In 1999 he moved up to the position of Telecommunication



Technician, and in April 2013 he was promoted to Information Technology Officer. During the period August 1, 2005 to October 7, 2005 he acted as Network and Telecommunications Administrator. In addition, he also acted for the period March 1, 2006 to April 30, 2006 and May 1, 2006 to July 31, 2006

- (b) The Complainant's acting as Network and Telecommunications Administrator was terminated based on a complaint made by Mr. Simon Bahaw via memorandum dated June 13, 2006 where he questioned the qualifications of the Complainant to hold the position. Consequently, on July 31, 2006 the Complainant's acting appointment was terminated, and Mr. Bahaw was subsequently appointed as Acting Network and Telecommunications Administrator.
- (c) The Complainant wrote a memorandum dated November 9, 2006 addressed to Manager, Human Resources administration, requesting that they investigate Mr. Bahaw's qualifications.
- (d) Prior to the Complainant's memorandum of November 9, 2006 the then Deputy General Manager, Ms. Annamay Haynes wrote a memo dated July 7, 2006 to the then General Manager, Human Resources, requesting that the Bachelor Degree Program for which Mr. Bahaw was awarded a certificate be verified as **accredited**.
- (e) On January 31, 2007 the then Manager, Human Resources Administration, wrote Mr. Bahaw to clarify the award of his degree.
- (f) Mr. Bahaw responded by way of memorandum dated February 26, 2007 indicating that his Bachelor of Science Degree in Information Technology was obtained from Canterbury University, and that he was enrolled at the Computer Learning Centre located at No. 140 Eastern Main Road, Tunapuna, which no longer existed as at November 2006.
- (g) The Complainant managed the Respondent Physical Security and Supervisory Control and Data Acquisition System (SCADA) for a year beginning October, 2008.



- (h) During the latter part of 2011, the Complainant wrote the Accreditation Council of Trinidad and Tobago regarding the status of Canterbury University. By Statement of Recognition dated December 2, 2011, it determined that Canterbury University was **NOT** recognised by the Accreditation Council of Trinidad and Tobago.
- (i) The Complainant is a person of African descent while the “Comparator” Mr. Simon Bahaw is a person of East Indian Descent.

## ISSUES

- 27. (a) Whether the Complainant was discriminated against by the Respondent on the basis of his race.
- (c) Whether the Complainant was victimised by the Respondent.

## ANALYSIS

- 28. The Equal Opportunity Act, Chap. 22:03 makes unlawful discrimination in certain areas of activity, Section 4 states:

“This Act applies to-

- (a) Discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation, if the discrimination is –
  - (i) discrimination on the grounds of status as defined in Section 5; or
  - (ii) discrimination by victimisation as defined in Section 6;
- (b) offensive behaviour referred to in Section 7.

- 29. Moreover, Section 3 of the Act which deals with the interpretation of certain words, indicated that the word ‘*STATUS*’ in relation to a person, means-

a) *The sex;*



- b) *The race;*
- c) *The ethnicity;*
- d) *The origin, including geographic origin;*
- e) *The religion;*
- f) *The marital status; or*
- g) *Any disability of that person.*

30. In addition, Section 5 of the Act goes on to indicate what the term discrimination encompasses, the Section States as follows:

*“For the purpose of this Act, a person (“the discriminator”) discriminates against another person (“the aggrieved person”) on the grounds of status if, by reason of –*

*(a) The status of the aggrieved person;*

*...*

*The discriminator treats the aggrieved person, in circumstances that are the same or are not materially different, less favourably than the discriminator treats another person of a different status”.*

31. Simply put, the Act is saying that if (as in this case) you fall within the employment relationship, and you are of an appropriate status (race) and your employer in circumstances that are the same or are not materially different, treats you less favourably than he treats another person of a different status; then once you can adduce evidence to prove on a balance of probabilities that the above characteristics apply to you, then you would have proven your case, that you were discriminated against.

32. In this case the uncontradicted evidence of the Complainant was that during the period May 1, 2006 to July 31, 2006 he was Acting Network and Telecommunications Administrator. His position was challenged by Ms. Simon Bahaw on the basis that the



Complainant did not possess the requisite minimum qualification of a First Degree in Computer Science, Computers and Telecommunications or Electrical and Computer Engineering or equivalent. Mr. Bahaw's challenge came by way of his memorandum dated June 13, 2006 in which he asserted that the Complainant did not have the required minimum qualification. Mr. Bahaw further asserted that he had "*numerous certifications including a degree*".

33. As a result of Mr. Bahaw's memorandum aforesaid, the then Deputy General Manager (Management Information System Department), Ms. Annamay Haynes wrote a memorandum to the then General Manager, Human Resources, with a printed date of 2006, June 07" which is contradicted by the hand written date "2006/07/07" next to the signature of Annamay Haynes. On the basis that this document was in response to that of Mr. Bahaw dated June 13, 2006. The Tribunal is of the firm opinion that the correct date is the hand written one, that is, July 7, 2006. This memorandum by Ms. Haynes made a clear request to the General Manager, Human Resources, to verify whether the Bachelor Degree Programme from which he was awarded a certification was accredited. In addition, Ms. Haynes wrote in her second paragraph of the said memorandum that, "Mr. Bahaw indicated that his examinations were undertaken at the School of Business and Computer Studies (SBCS)".
34. It is abundantly clear from Ms. Haynes memorandum that what was required of the Human Resource Department was to conduct inquiries to determine whether the Bachelor Degree Program which awarded Mr. Bahaw's Certification was "accredited". At that time the only institution charged with the responsibility of engaging in the accreditation exercise was the Accreditation Council of Trinidad and Tobago, a body established by Section 3 (1) of the Accreditation Council of Trinidad and Tobago Act, Chap. 39:06. Further, it is public knowledge that the said Act came into force via a Proclamation by the President of the Republic of Trinidad and Tobago on July 9, 2004 by Legal Notice No. 137 pursuant to Section 1 (2) of the Act. On September 2, 2004 the then Minister of Science, Technology and Tertiary Education, announced the appointment of the twelve-member Board of the Accreditation Council of Trinidad and Tobago.



35. This interpretation of the word “accredited” used in Ms. Haynes memorandum finds unequivocal support from the then Manager, Human Resources Administration. Ms. Susan Noel who by memorandum dated January 31, 2007, addressed to Mr. Simon Bahaw, indicated to him that his Bachelor of Science Degree in Information Technology which he obtained from Canterbury University, UK (December, 2004) may not be accredited and therefore not recognised in Trinidad and Tobago. Ms. Noel required Mr. Bahaw to do two specific things:

*“Seek and obtain verification from the Accreditation Council of Trinidad and Tobago regarding the status of the Bachelor of Science Degree in Information Technology from Canterbury University; and*

*Identify the local educational institution in which you were enrolled while pursuing the course of study leading to the award of the Bachelor of Science Degree in Information Technology from Canterbury University”.*

36. Furthermore, the said memorandum indicated that he was required to submit this information by February 28, 2007, with the express warning *“failure on your part to submit this information will result in the termination of your acting appointment”*.

37. Prior of this memorandum of Ms. Noel, the Complainant had lodged a complaint by memorandum dated November 9, 2006 requesting that an investigation be conducted into Mr. Bahaw’s qualification.

38. However, prior to this memorandum, Ms. Haynes memorandum of July 7, 2006 had already triggered the investigatory process. The tenor of this memorandum directly contradicts the evidence of Mr. Ronnie Spencer when he stated that:

*“During the material time it was not a policy of the Authority to vet the qualifications presented by current employees but only vet the qualifications of new employees”.*

39. The Tribunal construed the phrase “during the material time” to mean during 2006 when the qualifications of Mr. Bahaw and the Complainant were being questioned. In addition, the word “vet” according to the New Oxford Dictionary of English is to make a careful and



critical examination of something. Thus, when Ms. Haynes requested the Human resources Department to verify whether Mr. Bahaw's degree came from an accredited institution, it was a clear signal that the investigatory process had begun.

40. The response of Mr. Bahaw with reference to Ms. Noel's memorandum of January 31, 2007 was via memorandum dated February 26, 2007 in which he indicated that the Accreditation Council referred him to the Ministry of Foreign Affairs, since presumably he had indicated that his certificate "*is covered by the Hague Convention*". He maintained further that he attached a copy of a letter addressed to your office (Ms. Noel's office) which he collected from the Permanent Secretary, Ministry of Foreign Affairs.
  
41. The sole witness for the Respondent Mr. Ronnie Spencer's response to questions put to him by the Tribunal are as follows:  

Question by Chairman, "*from your perusal of your records, do you have anything at all or did you come across anything at all to suggest that he sought to seek and obtain verification from the Accreditation Council?*"

Response "*No, I have nothing in my records*".
  
42. To suggest as he did that he had sought information from the Accreditation Council of Trinidad and Tobago (ACTT) without more is misleading. Since the Complainant sought the same information from ACTT and obtained a clear statement from this body that Canterbury University was not an accredited institution.
  
43. Furthermore, Mr. Bahaw in his memorandum stated that he had received most of his certification from the Computer Learning Centre, which he maintained was no longer in existence as of November, 2006, but was still able to make contact. The Tribunal found this statement to be rather strange, since he had indicated to Ms. Haynes that his examinations were undertaken at the School of Business and Computer Studies (SBCS).



44. Additionally, Mr. Bahaw provided a letter on the Computer Learning Centre letterhead dated February 23, 2007 (from an institution that was no longer in existence) which stated that he was a student there since 1999 and had done many certification courses. The letter went on to state that: *"I know he was successful in his Bachelor of Science from the Canterbury University. He studied on his own and where possible he received assistance from the lecturers here and at other institutions. His exams were written at authorised examination centres"*.
45. The difficulty with the above quotation is that it directly contradicts the information Mr. Bahaw provided to Ms. Haynes that his examinations were taken at the School of Business and Computer Studies (SBCS). The letter from the Computer Learning Centre on the other hand, indicated that his exams were written at authorised examination centres - without condescending to give the names of the centres.
46. It is pellucidly clear to the Tribunal that the information given in his (Mr. Bahaw's) letter was calculated to mislead and obfuscate the issue of the accreditation of his degree. In addition, what is startling is that Ms. Noel, in her memorandum to him, had indicated quite explicitly that failure to submit the required information will result in the termination of his acting appointment. However, what is quite remarkable is that Mr. Ronnie Spencer admitted in court that Mr. Bahaw did not provide the requested information even though the onus was on him to so do.
47. Not only was Mr. Bahaw's appointment as Network Communications Administrator not terminated, but according to the evidence on oath of Mr. Ronnie Spencer, Mr. Bahaw was promoted to the position of Manager, Telecommunications in 2012, and subsequently to the position of Senior Manager, IT Services in 2013.
48. It is noteworthy to mention that the Respondent acted decisively when Mr. Bahaw lodged his complainant about the Complainant not having the requisite first degree qualification, by terminating the Complainant, and appointing him to the position of Acting Network and



Communications Administrator. This was done in a matter of weeks. Yet when Mr. Bahaw did not comply with the directives of Ms. Noel, the then Manager, Human Resources Administration (Ag), under threat that his acting appointment would be terminated; when he failed to so do, instead of having his acting terminated, he was subsequently promoted to two (2) senior positions in rapid succession.

49. It is in those circumstances that one is inclined to the view that the Complainant was treated less favourably than Mr. Bahaw, and that the only logical reason for such treatment was because of his race. Support for this approach can be found in *Nagarajan –v- London Regional Transport Board* [1999] 4 All ER 65 where the House of Lords indicated that: *Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Normally the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances”.*
50. To be sure, the present day approach in determining if a Complainant is treated differently or less favourably, is not to engage in an sterile search for an actual or hypothetical comparator but the need to focus on the “*reason why*” question. In this regard see *Landele and Mc Farlene –v- The United Kingdom* [2010] ICR 507 and *Cordell –v- Foreign and Commonwealth Office* [2011] Eq LR 1210. In the instant case the reason/s why the Complainant was treated less favourably vis-à-vis Mr. Bahaw could only be because of his race.
51. As regards, the allegation by the Complainant that he was discriminated against by victimisation by the Respondent, Section 6 (4) of the Act deals with discrimination by victimisation. The said section states as follows:  
*“A person (“the discriminator”) discriminates by victimisation against another person (“the person victimised”) in any circumstances relevant for the purposes of any provision of this Act if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has:*



- a) *brought proceedings against the discriminator or any other person under this Act, or any relevant law;*
- b) *given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act, or any relevant law;*
- c) *otherwise done anything under or by reference to this act, or any relevant law, in relation to the discriminator or any other person; or*
- d) *alleged that the discriminator or any other person has committed an act, which (whether or not the allegation so states) would amount to a contravention of this Act, or any relevant law, or by reason that the discriminator knows the person victimised intends to do any of those things referred to in paragraphs (a) to (d), or suspects the person victimised has done, or intends to do, any of them”.*

52. Based on the foregoing provisions of the Act, it is well established in the evidence in this matter that the Complainant had lodged a complaint of discrimination with the Equal Opportunity Commission (EOC) against the Respondent in October, 2012. That he was treated less favourably than his “comparator” is an established fact found by the Tribunal. Moreover, it is the further evidence of the Complainant that the Respondent simply wanted to get rid of him. In support of that contention he indicated that in April 2013 he was advised by the then Transport Manager that there was no vacant job position in the organisational structure of the department, and that he should consider taking the Voluntary Early Separation Programme (VSEP). He refused to take Voluntary Early Separation.

53. Moreover, it is the evidence of the Complainant that having failed to convince him to take VSEP the Respondent attempted to insinuate that he was not medically fit to work. By memorandum dated May 16, 2013 from Assistant Manager; PS addressed to the Complainant, wherein he was instructed “*to visit the office of Dr. Johnny Maharaj on May 23, 2013 at 10:00am, for a medical evaluation to determine your fitness for further employment with the Authority*”.



54. With reference to the two (2) incidents aforesaid, which commenced shortly after the Complainant had lodged his complaint with the Equal Opportunity Commission (EOC), on balance, the Tribunal accepted the evidence of the Complainant as credible. As the *House of Lords recognised in Nagarajan (Supra)* the question is “*why did the Complainant receive less favourable treatment*”. If the answer to this question is that the discriminator treated the person victimised less favourably by reason of his having done one of the protected acts; in this case lodging a complaint of discrimination against the Respondent with the EOC. This, in the Tribunal’s opinion, had a significant influence on the outcome, and on balance the Complainant has made out his case of discrimination by victimisation.

## CONCLUSION

55. From the preceding analysis, it is evident on a balance of probabilities that the Respondent treated the Complainant less favourably on the basis of his race and that the Complainant had made out his case of discrimination by victimisation. This so whether the Respondent was consciously or subconsciously influenced by the fact that he had brought proceedings at the EOC against the Respondent. Consequently, the Complainant must be compensated.

## COMPENSATION

56. The jurisdiction of the Tribunal to make awards of compensation can be found in Section 41(4) of the Act wherein it states:

*“The Tribunal shall have jurisdiction to make such declarations, orders and awards of compensation as it thinks fit”*

57. The contemporary approach to dealing with the remedy of compensating the victim of discriminatory acts by a discriminator is succinctly stated by the learned author Karon Monaghan in his textbook entitled “*Equality Law*”, Oxford University Press, 2007 at page 575 para. 143 where he states that: “*Remedies for claims of discrimination closely match the remedies available in other claims for breach of a statutory tort. Compensation may be awarded, including compensation for INJURY TO FEELINGS and aggravated*



*damages. Compensation is otherwise generally to be assessed in the same way as with any other statutory tort. Exemplary damages may be awarded in an appropriate case”.*

58. In the English jurisdiction, the Court of Appeal in *Vento –v- Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102* in dealing with compensation for injury to feelings in anti-discrimination cases, was critical of the employment tribunal which awarded Ms. Vento £65,000 for injury to feelings, which sum included £15,000 as aggravated damages. The Court of Appeal found the award excessive. It substituted the sum of £18,000 for injury to feelings, plus £5,000 for aggravated damages. The court also discerned three broad bands of compensation for injury to feelings. These are as follows:

“(i) *The Top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.*

(ii) *The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.*

(iii) *Awards of £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings”*

59. The above Vento guidelines were updated in line with inflation in *Da’Bell –v- National Society for the Prevention of Cruelty to children (NSPCC) [2010] IRLR 19* where the top of the lower band moved from £5,000 to £6,000; the top of the middle band moved from £15,000 to £18,000 and the top of the higher band moved from £25,000 to £30,000. The court in that case noted that assessing compensation for injury to feelings is not an exact science. Disputes about the placement within a band are likely to be about fact and impression.



60. However, since it has been advanced that “*remedies for claims of discrimination closely match the remedies available in other claims for a breach of a statutory tort*” it may be useful to examine decisions within the tort of defamation to be able to discern a trend of awards in such cases. In this regard the Tribunal examined a number of recent cases; these are as follows:

- a) *Pan Trinbago and Owen Serrette –v- Maharaj HCA 1071 of 1995*, where the court by its judgment delivered on December 20, 2002, awarded Pan Trinbago the sum of \$90,000.00, being damages for vindication of reputation, while Owen Serrette was awarded \$100,000.00 which said award included the additional element of damages for hurt feelings.
- b) *In Moore-Miggins –v- TnT News Centre HC 138 of 2001* where the allegation was made that the claimant had abandoned her legal practice to the detriment of her clients, the court in its judgment of July 17, 2007 awarded the claimant the sum of \$130,000.00 as compensatory damages and exemplary damages of \$20,000.00.
- c) In *Robin Montano –v- Harry Harinarine and Hindu Credit Union Communications Limited CV 2008 – 03039* the court, on March 22, 2012, awarded the claimant the sum of \$250,000.00 as general damages to compensate him for his injury to his feelings and reputation.
- d) *Nizam Mohammed –v- The Trinidad Express Newspaper Limited, Omatie Lyder and Ria Taitt, CV 2011 – 00264* is a case where the third named defendant wrote an article in which she stated that the claimant had been referred to the Disciplinary Committee of the Law Association and an order was made against him which was shown to be pure misinformation. In this case the court, by its judgment delivered on July 19, 2013, awarded the claimant the sum of \$325,000.00, inclusive of aggravated damages.
- e) *Dr. Keith Rowley –v- Michael Anisette, CV 2010 – 04909* is a case where the Defendant made certain defamatory statements of the claimant in Parliament and subsequently republished those statements in the media. The court by its decision



delivered on February 12, 2014, awarded the sum of \$475,000.00, inclusive of an element of aggravated damages.

f) *Rajnie Ramlakhan –v- Trinidad and Tobago News Centre Limited and Ramjohn Ali, HCA No. S-634 of 1999* a case where the Plaintiff was called a racist, inter alia. The court, by its decision of May 29, 2009, awarded the Plaintiff the sum of \$700,000.00 as general damages, inclusive of aggravated damages, to compensate the plaintiff for the serious distress, hurt and humiliation suffered for the injury to her reputation and as a vindication of reputation

61. It is apparent from the cases from this jurisdiction mentioned hereinabove, that our courts have awarded sums ranging from \$90,000.00 to \$700,000.00, depending on the seriousness of the defamation. And generally awarded compensation, taking into consideration the distress, hurt, suffering, injury to reputation and hurt feelings.
  
62. It is the opinion of the Tribunal that the discriminatory acts by the Respondent against the Complainant were of a serious nature. These acts of discrimination were not a one off incident but continued for an extended period of time. The Complainant in his particulars of complaint, indicated that he wanted to be compensated for emotional distress, harassment and humiliation. He also requested outstanding salary and benefits in the amount of \$914,548.00. However, this amount falls within the rubric of “special damages” and according to the learned author of *Mc Gregor on Damages*, 20<sup>th</sup> edition “If there be any special damage which is attributable to the wrongful act that special damage must be averred and proved”. This was not done, and therefore was disallowed by the Tribunal. Moreover, the claim for exemplary damages was not entertained as the evidence did not establish it within any of the three (3) categories in *Rooks –v- Bernard [1946] AC 1129*.



63. However, due to the seriousness of the discriminatory acts of the Respondent, the Tribunal has placed its award of compensation for injury to feelings in the “Vento” upper band in the amount of £20,000 which is equivalent to approximately TT\$186,000.00 (using an exchange rate of £1 to TT\$9.2942). This amount closely approximates the sum awarded in Moore-Miggins case (Supra) adjusted for inflation.

## **ORDER**

64. (i) The Respondent to pay to the Complainant compensation in the amount of \$186,000.00 with interest at the rate of 6% per annum from the date of filing of the complaint to payment.
- (ii) The Respondent to pay the Complainant his cost on the prescribed scale, that is, the sum of \$27,900.00 in accordance with rule 20.4(e) of the Rules of Practice and Procedure, 2016 of the Equal Opportunity Tribunal.
65. The foregoing decision is made and delivered by the Judge/Chairman of the Tribunal in accordance with Section 44 (7) of the Act, which states:

*“The decision of the Tribunal in any proceedings shall be made by the Chairman and shall be delivered by him”.*

**HIS HONOUR MR. RAJMANIL JOSEPH  
JUDGE / CHAIRMAN  
EQUAL OPPORTUNITY TRIBUNAL**