

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. 0005 of 2012

BETWEEN

DESMOND NOEL

Complainant

AND

THE AUDITOR GENERAL OF 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. Delzin instructed by Ms. Sylvester appeared on behalf of the **Complainant**

Ms. Nabbie and Ms. Boxhill appeared on behalf of the **Respondent**

Date of Delivery of Judgment: September 15, 2017

JUDGMENT

BACKGROUND:

1. This case is concerned primarily with the allegation by the Complainant that he was discriminated against by the Respondent contrary to Sections 5(a) and 9(b) of the Equal Opportunity Act, Chap. 22:03, in the way that, in circumstances that are the same or not materially different, the Respondent has treated the Complainant less favourably than persons of a different race, by the Respondent's refusal and/or deliberate omission to afford the Complainant access to the opportunity to act in the post of Audit Director during the periods as follows:
 - (i) 17th February 2010 to 8th April 2010
 - (ii) 10th May 2010 to 15th July 2010
 - (iii) 8th June 2010 to 19th July 2010; and
 - (iv) 16th August 2010 to 9th December 2011.

2. In addition, the Complainant is seeking a Declaration that the Respondent has victimised the Complainant contrary to Section 6(d) of the Equal Opportunity Tribunal Act, Chap. 22:03, in the way that, the Respondent has treated the Complainant less favourably than in those circumstances the Respondent treats or would treat other persons and has done so by reason that the Complainant has alleged that the Respondent has committed an act, which (whether or not the allegation so states) would amount to a contravention of the Act. And further the Complainant is also seeking damages including aggravated and/or exemplary and/or vindictory damages.

3. On the other hand, the Respondent by its amended Defence filed on September 30, 2013 indicated that the Respondent did not discriminate against the Complainant on the basis of his race in terms of not being recommended to act in the next higher position during the periods outlined in his Complaint and Particulars thereof. Moreover, it is the position of the Respondent that the Complainant was never victimised; and that he was not recommended to act in the next higher position was due to his poor performance record.

THE EVIDENCE:

4. With reference to their respective positions hereinabove the parties submitted the undermentioned Witness Statements:
 - (a) Witness Statement of the Complainant filed on September 30, 2013.
 - (b) Witness Statement of Sharman Ottley filed on September 30, 2013
 - (c) Witness Statement of Reahla Balroop filed on September 30, 2013
 - (d) Witness Statement of Shiva Sinanan filed on September 30, 2013
 - (e) Witness Statement of Elizabeth Ann Mofford Benjamin filed on September 30, 2013
 - (f) Witness Statement of Gaitrie Maharaj filed on September 30, 2013.

5. Essentially, it is the evidence of the Complainant that he began his employment at the Auditor General's Department at the entry level in the Technical Class and on October 10, 2000 he received a letter of even date from the Service Commissions Department appointing him Auditor Examiner Assistant I, Auditor General's Department with effect from 14th June, 1999.

6. The Complainant indicated that throughout his working life at the Auditor General's Department he applied himself conscientiously to be a better auditor. In that regard he wrote and was successful in the final examinations of the Association of Chartered Certified Accountants (ACCA) in December, 1999. He maintained that he was the only person in the Department who passed those examinations in that sitting. And was subsequently recommended to act as Audit Senior with effect from May 15, 2000. After him the following officers passed the ACCA final examinations: Jennifer Lutchman, Nela Dwarika Ali, Anisha Baksh and Cheryl Ann Wright.

7. This witness stated that he took steps to further develop himself by attending a number of training courses, taken examinations and became a member of professional bodies; and at the time of doing his witness statement he was reading for the Henley Masters in Business Administration (2008-2013). He forcefully pointed out that he used his personal funds for all these examinations and training; and retained membership in the