



EMPLOYMENT TRIBUNALS

BETWEEN

Kamal Sayany

Claimant

-v-

Rudolf Steiner School (South Devon) Ltd

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Exeter

On

24-28 July 2017

EMPLOYMENT JUDGE PSL Housego, S Richards and EA Uppington

Representation

For the Claimant: In person

For the Respondent: Mr M Howson

JUDGMENT

The judgment of the tribunal is that all the claims are dismissed.

REASONS

1. In this case the claimant claims that he has been unfairly dismissed, and brings other claims of breach of contract for notice pay, for unlawful deduction from wages, and for accrued holiday pay. He asserts that he should have been an IT manager on £21,000 a year, not a 10 hour a week IT support worker and IT teacher on about £5,500 a year. The respondent contends that the reason for the dismissal was misconduct, that the dismissal was fair, and denies the remaining claims.

2. The claimant also claims that he has suffered detriment by reason of race, religion and philosophical belief. He states that his mother is English and his father was from what was India (his father being born before 1947) but is now Pakistan. He is Muslim. The philosophical belief is that of the Steiner / Waldorf method of education. The detriments he claims to have suffered are the dismissal and his treatment before that, and he claims there was an offensive comment by a colleague about Muslims generally which was harassment.
3. We have heard from Edwina Ratcliffe, who took the decision to dismiss the claimant, from Cathy Day against whom the claimant made the allegation that she had made a comment to him on 24 November 2014 which as a Muslim he found offensive, from Gaby Wood, office administrator, and from Marcus Link, who is now responsible for the administration of the respondent. We heard oral evidence from the claimant. All the witnesses were cross examined.
4. As to documents, the Tribunal was provided with;
 - R1: a paginated and indexed bundle of documents including correspondence back and forth, incorporating most of the documents relied on by the claimant;
 - R2: a cast list, chronology and list of issues (the claimant accepting at the start of the hearing that the list of issues was agreed;
 - R3: witness statement of Marcus Link;
 - R4: witness statement of Edwina Ratcliffe;
 - R5: witness statement of Cathy Day;
 - R6: witness statement of Gaby Wood.and from the claimant:
 - C1: a bundle of documents including many transcripts of conversations covertly recorded;
 - C2: the claimant's witness statement;
 - C3: details of the pages of the transcripts the claimant considered most relevant;
 - C4: the notes made by the claimant that are referred to in the Scott Schedule of allegations.

Evidence

5. Edwina Radcliffe said that she made the decision to dismiss. This was because, and only because of the refusal of the claimant to hand over the passwords despite 4 clear instructions to do so. The claimant failed to attend the meeting, and the decision was taken in his absence, as he had been told would happen. The refusal seemed to her to be designed to try to get the respondent to give him the full time job as IT manager that he sought.
6. Cathy Day spoke to the comment complained about by the claimant. On 20 November 2014 he covertly recorded a conversation they had when leaving a meeting, which conversation he had instigated. It was about women's rights, and led on to the oppression of women by Boko Haram and others with extreme ideologies. Ms Day

- referred to “breeding” at high levels and made reference to the possibility of being “done for” if “they overtook the west”. Ms Day said that she is a member of “Beyond Borders Totnes”, works 2 days a week with two Syrian refugee families with whom she celebrated Eid, that she has hosted 5 Muslim students in her home, and that one of her best friends is a Muslim from Egypt. She could not now recall the conversation as it was 2 ½ years ago now, but she would not want to insult anyone, did not recall him being offended, and the transcript he had produced showed him saying “Like Catholics?” and she had agreed. She was born Catholic and had not taken offence at that response. She felt somewhat betrayed, as they had been, she thought, very close friends, and the discrimination she was accused of was anathema to her.
7. The management group had repeatedly asked him to draw up a job description for himself but he had not done so. It was she that recommended that he join the Vision Group, but he had not been able to stay on it as the chair felt that he was too new to the school, and he had not complained at the time. She had nothing to do with the disciplinary proceedings. Ruby Starheart was somewhat volatile and prone to flying off the handle.
 8. Gaby Wood said that she was the office administrator. Ruby Starheart could be somewhat irascible. The witness was there when the incident the claimant complained of occurred. Ruby was just angry and left with her files. She had to squeeze by, and was carrying files which she lifted up as she did so. She had not threatened to hit the claimant with them. She left in response to something the claimant had said.
 9. Marcus Link said that the school had many discussions about the way it should be run, on non hierarchical lines. However this constant discussion had led to a paralysis of non management such that basic requirements to do with the Charity Commission and the delivery of education to the children were not occurring properly. Ultimately, the school had appointed him as chair and brought in a hierarchical structure so that changes could be made adequate to manage the school. He set out the history of the claimant’s employment and involvement with the school, the history of the wish of the claimant to be IT manager and a narrative of the request for passwords. He set out the history of the suspension and disciplinary matter and the appeal. He went through the claims of the claimant serially. The proposals of the claimant were effectively requests for a job, and not a balanced assessment of the options available. There was no consideration in them of the possibility of outsourcing. The claimant was not amenable to management. The outsourcing had been at no greater expense than the claimant’s suggestion and had worked very well. There was now a modest annual fixed charge for support.
 10. The claimant gave evidence and was cross examined. His Scott Schedule, his ET1 and his witness statement (which was more a skeleton argument) were taken as his evidence in chief. All three members of the Tribunal made notes of his evidence, mine being in typed form. It was extraordinarily difficult to follow the evidence of the claimant. Plainly he has spent years studying the Rudolf Steiner / Waldorf philosophy of education. This permeated the entirety of his evidence. It is very long on sophisticated complex ideology, but very short on specifics. The note of his submissions gives a flavour of the evidence he gave.
 11. In summary, his view of the Steiner / Waldorf philosophy is the true version of that philosophy, and the school had departed from it. He now realised that Cathy Day, whom he had regarded as a sister, had the discussion with him on 20 November 2014 intentionally so that he would come to doubt himself. Previously he had regarded himself as just like anyone else, but this caused him extreme self-doubt from which he was only recently recovered. Having intentionally driven a wedge between him and everyone else by causing him that self-doubt she had then, with others, marginalised him. While accepting that she was largely supportive of his view of the Steiner / Waldorf principles,

and that it was only he, Anne Acland, and Cathy Day that were of that view, she had moved away from that position to some extent.

12. It was inexplicable that the school had not appointed him IT manager, and therefore much to do with his philosophical belief. He could not point to any religious aspect to this treatment. He was entirely right about the problem with the IT systems. The school should have appointed him IT manager, because that was effectively what he did anyway. As to the passwords, it was folly to give them to someone (his line manager Kevin Jones) who knew little about IT. Ultimately his Union had told him that he had to comply with the demands, and he had said that he would, some 2 ¼ hours after the deadline, but they suspended him as their deadline expired, and before he could do so. He was asked again, when suspended, by the outside contractor brought in to manage the IT. A competent IT supplier would have managed without the passwords and information, and therefore this IT supplier was incompetent, and so he was safeguarding the school by not supplying them to the contractor. He could not recall why he had started recording all his conversations and meetings with others, but he started doing so in October 2013, on a digital hand held device, and he downloaded them to his computer periodically, and had retained them all.

Submissions

13. The claimant made lengthy submissions. These are set out here in full so that the claimant's assessment of the situation is clear. The claimant said that the Tribunal had heard from Edwina Ratcliffe that the main reason for his dismissal was passwords. This was a managerial request but she was involved in Kevin Jones overseeing him as line manager, and so she was not in a position to make an independent decision to dismiss. The independent decision maker should be an independent decision maker and she was not. The chair was Sarah Rowett but she was too involved or partial, and so dismissal was unfair on technical grounds. There was diminished practice at the school. For example he was pushing for a strategic plan and performance management based on Steiner's 3 fold approach which resonated with ACAS best practice. As to him being difficult or obstructive, the examples given by Marcus Link held no weight. The incident with the screwdriver was resolved by him and by Martin Wallace. He always had the school's interests at heart including the password issues. As to his character - see the bundle page at 1161, an unsolicited thank you email from a teacher - typical of the day to day work he did.
14. The conversation at C1:1252 - it was not £21k extra. It was £21k for all his work including teaching. It was £10k for the IT, which was less than the £18k for set up costs Marcus Link had said was incurred. The cost was £15k for 18 months and some of the materials cost would be spent to address IT functionality needs. It had to be taken into consideration the extra support they now pay for, and it was fair to say that these 2 figures were comparable. He wanted to ensure sufficient funding for IT materials cost beyond 18 month contract. He was confident that he was of the highest competence and would involve the least cost to school - that was his intention.
15. The Martin Wallace letter as to the screwdriver incident at 1084 was clear - the other was at fault.
16. Suzanna Chapman confirmed at C1:1186 that David Chapman had to apply for his job several times. He, the claimant was doing the work of IT manager, and it was not a new role. On 13 February 2015 he felt supported by Kevin Jones. This was a proposal at no or a low cost basis. At page 1280 Kevin Jones recognised the need for constant in house movement. It was not a static IT system. At the same meeting (at 1254) Kevin Jones pointed out the downfalls of outsourcing compared to in house such as him - he suggested where the school needed to go in terms of IT - Kevin Jones said they would

- not take it all on. At C1:1252 there was recorded a comment by Kevin Jones that recognised his salary included teaching salary and that Kevin Jones thought it not over the top. At C1:1278 he said that they needed an 18 months contract as it would show commitment to him. So his line manager was clear about the merits of his IT proposal, and he was led to believe it met with his approval, and he was led to believe he could negotiate the details with the support of Kevin Jones. They said he was out to create a job for himself - Marcus Link said it was his own agenda so no external contractor option was included, but in 2013 he had sorted out telephony and worked with a Mr Macandless on quotes. These were expensive and he had developed a programme of work with support of an external contractor.
17. There was no one better qualified to advise on IT than him, or to assess the way forward. It was unfair and unreasonable to exclude him from his function. At C1:1146 was an email with an outsourcing company. So his dismissal was not by reason of password requests or his work, which was of an exceptional standard. There is an email in bundle about teaching - reports to head of upper school at C1:1159 - he said those were excellent.
 18. At the school council in January 2015 Marcus Link and C Cooper said his work in IT was not in question. There were unfounded characterisations of conduct or capability.
 19. The reason for his dismissal was his advocacy of 3 fold social order and Cathy Day's use of Islamophobia to destroy the support he had - Kevin Jones said he felt sick doing it but had to do so, to set example to other members or staff. At C1:1276 (a covert recording of a discussion) Kevin Jones described someone else being moved aside and who was, as a result, now a wreck. Cathy Day repeatedly undermined his role - systems admin and so on - and also his role in the management group. At C1:1273 Cathy Day said Kevin Jones was not in charge but was responsible for making it work. Kevin Jones was not placed to, and did not intend to, represent IT at management group but he, Kevin Jones, held that responsibility. In response to that (C1:1170) Cathy Day said he not was needed as "*IT is represented here*" and he might not be needed. That was designed to undermine him in front of his peers.
 20. It was implied that he was lazy, working fewer hours than he claimed. Based on this she said outsourcing was cheaper. She drove a wedge by saying so, a wedge between him and his colleagues created by Islamophobia - even the person he described as a sister treated him so.
 21. As to the school council role, and why discrimination was on philosophical grounds - there was a conversation with Marcus Link of 05 January 2015 (C1:1194). It explained concerns about an Aberdeen school that had closed the previous year. It was not intended to criticise Marcus Link but to get him to listen to things not addressed - but stick to a plan and put in other things. Sarah Rowett said without performance management an organisation goes nowhere. Marcus Link presented it in different light at C1:1212. Marcus Link said that the claimant was critical of his chairing of the meeting and suggested that to school council. Marcus Link said it was personality issues - it happened, but the correct characterisation was that there was an agenda here and it should be set in that context.
 22. Marcus Link would say it was nothing to do with his (the claimant's IT report) - Marcus Link said that the claimant was an intelligent speaker, but not so clear on overall constructive voice, and that jarred with him.
 23. At C1:1213 a concept arose that was not put to everyone - Julie Crittenden said this might be good reason but they needed to be careful. Cathy Day brought up goodwill as to the travel and pointed out problems if there was no direction. The claimant said some

- staff supporting existing staff arrangements - it was very important for there to be staff acceptance.
24. At C1:1214/5 Marcus Link had said goodwill was very important, Cathy Day was resistant but now said they had a system and was now keen on it. She did not want complete change again. Marcus Link said intervention was necessary to make things clearer and quoted two well intended, but clashing, papers.
 25. It was the fulcrum of orgspeak (sic) versus anthroposophy of the Steiner school Waldorf speak: both were equally well intended but clashing (sic). I enquired which one of these did he espouse. He was on the anthroposophical side and advocating orgspeak. I observed that I thought he had just said that they were conflicting. The claimant said that Marcus Link thought so, but there was significant overlap. I asked if his position was that he wanted to be in the overlap area. The claimant said that was where he thought he was. After the school council of 12 January 2015 the words versus and clash - the system needed to change its development. *[Note: this paragraph exemplifies the difficulty the Tribunal had in comprehending the assertions and claims of the claimant.]*
 26. I asked if this was what he said was the conflict that led to his dismissal. Yes, said the claimant, Council made the decision to reverse the strategic direction and that any support for previous direction needed to be minimised - Cathy Day, Anne Acland and him were the 3 people referred to as resistant to this change of direction.
 27. I asked whether he was saying that he, Cathy Day were both victims, as he saw it, of change of direction. There were a series of meetings from 05 January 2015. I asked how so, as he had said that he and Cathy Day were in the minority. I asked about this as he said that he had a difficulty with Cathy Day. That was so. I asked if his case was that Cathy Day was out to get him, though they were on the same side. Apparently so, said the claimant. I asked if he had any idea why, as it was counter intuitive. The claimant said she was older school and wanted the 3 fold social order, as did he. I asked why she would have a go at her ally in arguing for the same way forward. The claimant said that on 08 January 2015 (at C:1203) - he was invited to speak by the chair of the meeting, as were others - Cathy Day was last to speak and he was penultimate. Anne Acland and he remained in favour of the 3 fold order, Cathy Day in favour of making a slight modification but otherwise keeping the old system, not a change of direction.
 28. He was characterised as having edited the recordings but he had not. I said that he had selected the recordings and part recordings produced to the Tribunal. The claimant said the recordings were accurate and he took care to make sure they were. Cathy Day's position was an adjustment and not a reversal of position.
 29. I enquired as to the relevance of this to the claims. Cathy Day was in support of his point of view, as was Anne Acland, his sponsor. I asked if he could help as to which allegations this related. It was about philosophical belief and religion. I asked how religion was involved. Religion was used as a wedge subtly, step by step, to orchestrate a shift or change of direction. I asked if he was saying that the person who used the wedge was Cathy Day. That was what he was saying. I asked if why he said that as she was on his side. The claimant said that she peeled away and had foot in both camps. I asked if he was saying this about November 2014, when the conversation he complained about occurred. No, the ball had rolled along. Was it the case that in November 2014 Cathy Day was fully on side? No, as in the issue of Caroline Jones and he as sponsor, but she, Cathy Day supported the person pushing against him and was divisive in her support, not supporting him. There was a wedge driven between him and his colleagues.
 30. Ruby Starheart and Kevin Jones effected his severance. I asked what the claimant said Ruby Starheart had to do with his removal. She put a contract on the table when others

said postpone the proposal till that dealt with - so his proposal was replaced with his contract, which was not yet signed as C1:1169 showed.

31. C1:1169 on showed that Cathy Day and Ruby Starheart and Kevin Jones set about characterising him as lazy and greedy and drove a wedge between him and the management group, Cathy Day having first driven a wedge for him on 20 November by undermining his own confidence .
32. Then at his disciplinary hearing, all this was to reduce support for the 3 fold social order and to enable the new system to come into play subsequently. *[I read this note back to the claimant and he agreed it was so.]* Whether IT was undertaken by him or by a contractor was not the most important issue. I asked whether his case was that it was all a device to get rid of him and abandon the 3 fold social order and bring in the present system. The claimant said Marcus Link wanted to throw out the baby with the bathwater as the water was cold. He had said that on 12 January 2015. Cathy Day had described the 3 fold social order as the baby.
33. At page 1120 on 20 January 2015 there was a management group meeting, and this was at the bottom of page 1124, discussion about incident of locking him in the room, and support for new member of staff by Caroline Jones. She was offered performance management as a way of introducing it to the management team. As her sponsor he had arranged meeting her and Dave Chapman for introduction and briefing on the strategic plan, and he (Dave Chapman) was very good at explaining the 3 fold social order - that was his business project, the ATMOS project in Totnes, so he thought Dave Chapman the best person to help her understand the culture and offer her greater support than he could.
34. I asked if the claimant could help us as to the relevance of this to his allegations. Caroline Jones had asked for him not to be her sponsor, but this meeting had already taken place. Again, could he help as to which allegation this was relevant? It was number 22 on the Scott schedule. There was some difficulty with number 22. Caroline Jones denied that meeting occurred but David Chapman said it had taken place and he, the claimant, was not believed. The reference just given was that performance management was being discussed and he raised the meeting of Dave Chapman with Caroline Jones and she conceded it had taken place, though up to that point she had previously denied it.
35. That was a sensitive thing to bring up but helpful to do so, to discover and feel easier as a management group to conduct business, if they felt safe around the table about job security and not conflate objectives with resource requirements and without being characterised.
36. Caroline Jones was not content with no line management and insufficient induction to the 3 fold social order. This was a substantial difference as with the 3 fold social order style each member could have whole view of organisation and not a silo view. He referred to the 3 fold social order transitional provisions document as discussed with Gaby Wood yesterday - see 1053.
37. The document at C1:1066 dealt with transitional arrangements from long term prevailing culture to introduce the 3 fold social order - these related to resignations and the processes which needed to be viewed with clarity for else people would get embroiled in issues that are not strategic. Item 4 was the nub of these transitional arrangements, at 1066. *["In terms of the processes which needs to be reviewed/made clear, these are listed below. It is to be noted however, that without review and clarity over these processes it will not be possible for a management group to function in the way envisaged. This is because colleagues within the administration team will end up becoming embroiled in issues which stem from lack of clarity over these process (sic)*

and needing to deal with the resulting individual request/work stemming from this lack of clarity rather than supporting and enabling the management of the school and the subsequent strategic development work that is required. In practical terms without a commitment to reviewing and "sorting out" these processes there is little point in developing a management function, as to all intents and purposes it will be no more than setting another group of people up to fail.]

38. Gaby Wood said she had not received an email sent to all the management group at C1:1191 - he had prefaced that email by saying that he sent many attachments about the strategic plan. He had been working in the stress of no proper support and procedures not released to management group. This was one of the many initiatives he had set out. Suzanne Chapman said that management group and he were set up to fail.

Submissions by representative of the respondent

39. These were that the respondent met the *Burchell* test for unfair dismissal. This was clearly a lawful instruction and there was repeated refusal to comply. It was gross misconduct and dismissal was therefore within the range of reasonable responses. While it was not accepted there were any procedural errors, if there were, the test in *Polkey* applied. The outcome would have been no different. In any event there must be a contribution, and in the circumstances of no less than 100%. For the discrimination claims it was for the claimant to satisfy the Tribunal that the burden of proof shifted to the respondent. He had failed to do so. If the Tribunal did not have that view, then they could certainly be satisfied with the respondent's explanations. As to the other claims, they were predicated on the claimant being the IT manager on £21,000 a year. As his discrimination claims were that he was not awarded that position those claims could not succeed. The correspondence made abundantly clear that he had never been an IT manager, and never been on that salary. The harassment claim was out of time and it was not just and equitable to extend time. Cathy Day was a friend of the claimant and certainly did not have the intention of harassing him. It did not have the effect upon him required by the Equality Act 2010. It was an allegation simply thrown in to try to make life difficult for the respondent. One had to question why the claimant was recording all his conversations for years, especially one with his friend as they crossed the car park.

Facts

40. The respondent runs a school. It is a fee paying school, and a charity. It is called the Rudolf Steiner School as it is set up expressly to provide education along the philosophical principles established by Rudolf Steiner nearly a century ago. These we summarise (doubtless not fully accurately) as child centered education: the child finds his or her own way, and the teacher is a mentor and guide in that voyage of educational discovery. The concept is one of community and collegiality and equality, so that no one is paid more than another, there is no hierarchy and a Council is responsible for decisions, the chair of the council being responsible for implementation. The salaries and fees are low, and there is much parental volunteering to assist with the running of the school.
41. The claimant had children at the school. He has a background in IT. He offered to help with a recabling project and did so without charge. He offered to become an IT teacher at the school. He has no teaching qualifications, but in May 2012 this was agreed, on a trial basis, a few hours a week. This was renewed as an annual contract, and IT support added in for a few more hours a week, so that he worked 10 hours a week, at £10.03 an hour. He also volunteered to handle "bikeability" and then that became paid work as well.
42. The IT at the school had not received proper attention for years. The claimant took upon himself administrator roles for the computer systems. No one had any issue with this.

43. On 05 November 2012 the claimant was told that he had successfully completed his probation period and was offered a one-year fixed term contract (R1: 164). There was a parallel contract as IT support (R1: 165). The IT support was for four hours a week. The total salary was £5544.44 a year.
44. In February 2013 the claimant took on some cycle training on a paid basis. He had previously done this on a voluntary basis. Six hours more IT support was added to the contract taking the IT hours up to 10 week.
45. There was a complaint in September 2013. The claimant was carrying out some re-cabling work at the weekend in a classroom. A volunteer parent came into the classroom and there was an altercation. The claimant pressed the handle of a screwdriver to the chest of the parent, who subsequently complained. There was a mediation, the claimant apologising for his actions, the parent apologising for his insensitivity to the claimant when intruding upon to work the claimant was doing, also as a volunteer.
46. From about October 2013 the claimant took to carrying with him a personal digital recorder. He recorded, covertly, every conversation and meeting he had with anyone, and downloaded them all to his computer where he retained an archive of them all.
47. On 02 October 2013 the claimant submitted an *"IT situation report"*. This suggested an IT management function met by a full-time post. He did not want to *"volunteer for a further crisis"* if this was not done.
48. In January 2014 the sponsor of the claimant (everyone has a sponsor) did not wish to continue with this role. She felt he had taken on a perception of a management role which he did not have.
49. In February 2014 the claimant was invited to join the management group, and on 27 March 2014 all members of that group were requested to review and amend their job descriptions. The claimant was offered a further fixed term contract from 01 September 2014 until 31 August 2015. He never signed such a contract and eventually it was imposed upon him. He was asked not to remain on the management group: he was not an experienced enough teacher thought the chair of that group.
50. The claimant wanted to be a full time IT Manager with the respondent. He set out what he thought needed doing, by him, and what he wanted to be paid for doing so in a second report, dated 18 November 2014. He set this out in a four page report, R1: 203 – 206. This concludes by setting out what he could offer. He was then IT support and wanted to be IT manager. The Tribunal finds that the claimant never was IT manager. That report was not accepted by the council, which so decided at a meeting on 01 December 2014.
51. By now, the school had changed from its *"3 fold order"* with different *"realms"* with no one in overall charge of anyone else or anything, to a more hierarchical method of organising things, with Marcus Link effectively in the role of CEO (though he was not so titled).
52. At about this time another new member of staff commenced, Caroline Jones. She wanted the keys from Mark Eyers, another employee in the finance section. On 16 September 2014 the claimant and a member of staff called Vicky were with Mark Eyers. Caroline Jones locked the claimant and Vicky out of the meeting, and for a while they were locked in a different room together. The claimant asserts that this was discriminatory, on the basis of philosophy or belief.

53. In October 2014 Kevin Jones was appointed on a 1 year fixed term contract as full time estates manager, at a higher salary than others, and was given the responsibility for IT also, and was therefore line manager to the claimant, as the claimant accepts.
54. In October 2014 it was noticed that the claimant's contract had expired on 31 August 2014 and not been renewed. By letter of 12 December 2014 the claimant was invited to a meeting to discuss his employment (R1: 210). This was a formal letter because the matter had been outstanding for some time. It said that if he did not attend the contract as a teacher with an IT support role would be imposed upon him with effect from 21 January 2015. It was.
55. On 16 December 2014 the claimant requested of Ruby Starheart a copy of his personnel file, and that was given to him. Ruby Starheart felt very uncomfortable about the way that he had done this and made a contemporaneous note about it (R1: 212/213).
56. The claimant sent a message through his new sponsor, Anne Acland that he would not attend the meeting and the contract should be sent to him by post. There was no reason given for this.
57. On 12 January 2015 the claimant produced a third report (R1: 217/218). This was for the management group and school council meeting. It set out his proposed way forward. It said *"I am however aware that many teachers and administrative staff are – quite rightly – not satisfied with the level of IT provision in the school and find this a source of considerable frustration. This situation could easily be addressed with adequate resourcing and with full recognition and support of my role as IT manager; a function which I have been holding on an unpaid basis now for almost a year."*
58. On 23 February 2015 Kevin Jones first requested of the claimant that he provide the administrative passwords for all the IT systems. Kevin Jones said that it was an area of vulnerability as no one else knew what the passwords were, and if something happened to him they would not be able to gain access. He also requested that Gaby Wood's Google administrator rights also be restored to her. (01:307)
59. On 24 February 2015 Ruby Starheart wrote to the claimant, referring to a meeting that took place on 12 February 2015. It recited that the claimant said that the contract offered to him would not enable him to resolve the problems with the school's IT systems. It was clearly set out that there would be a continuation of the previous contract, and as the claimant was still concerned they would write a letter which absolved him of any responsibility for issues arising from the inadequate IT system. There was no guarantee of a permanent position as an IT manager.
60. On 08 March 2015 Kevin Jones wrote a second request to the claimant (R1:312). *"I, as an authorised officer of SDSS, have asked you to provide me with the admin passwords, any software discs and product codes that you are holding and gave you a specific deadline for this to happen. Legally these items belong to SDSS and therefore withholding them cannot be viewed as either friendly or professional and asking for them was entirely reasonable given your own expressed concerns about your view of the vulnerability of the situation with the IT at SDSS. Providing SDSS with the information requested is one small step towards mitigating the vulnerability and I must insist that you do so immediately."*
61. The claimant wrote (R1:313) to Marcus Link and Kevin Jones on the same day saying that he had been acting as IT manager, that the school could take this away from him but if so *"there would clearly need to be a settlement agreement to cover this."*

62. On 16 March 2015 Kevin Jones wrote to the claimant (R1:239/240) and made a third request of the claimant for the passwords etc. The letter expressly stated that there was no expectation that the claimant act in the capacity of an IT manager. It said that on two previous occasions, 23rd February 2015 and 8 March 2015, he had been asked, but had failed, to provide information about the systems. He was required to supply the information by 9 am on 18 March 2015. He was told that failure to do so would be gross insubordination and would lead to disciplinary action and be considered gross misconduct. He was expressly stated not to be liable for anything that happened by reason of the IT system failing, and nor was he the IT manager.
63. At about 1:15 am on 18 March 2015 the claimant emailed to say that he had taken advice from his union representative and been told that he must comply with the request. He said that he would do so at about 11:15 am when he had finished teaching that morning. That email was not produced to the Tribunal by either side, but both agreed that it was sent and said this.
64. The claimant was suspended at about 9 am on 18 March 2015. He says this was unfair because he could not comply with the deadline because he was teaching. When asked the question it became apparent that he had not considered delivering the information before starting teaching at 8:30 am. Nor did he deliver it when he was suspended and sent home, or subsequently.
65. On 09 April 2015 Kevin Jones wrote to the claimant (R1:387). That email informed the claimant that they had taken on an outsourced contractor, AME Solutions. He was requested to supply all the information to James Johnson of that organisation. This was a fourth request. He did not comply with it. The reason he gave, in evidence, was that any competent IT provider could manage without the passwords and so on, and that therefore it was self-evident that this was an incompetent IT provider, and that he was safeguarding the school's interests by not supplying the passwords to an incompetent IT provider. Comment would be superfluous.
66. There followed a disciplinary hearing. This was chaired by Sarah Rowett, but the decision-maker was Edwina Ratcliffe. The decision letter states that "we" decided to proceed in the absence of the claimant. It dismissed him.
67. There was correspondence about an appeal, but the claimant never put in a structured appeal, and the correspondence petered out.
68. The Tribunal accepted the evidence that Ruby Starheart is volatile, and that she left the meeting in response to something the claimant said in that meeting. She did not attempt to strike him with files. There was no action by her that could found a claim for harassment. There is no connection between anything Ruby Starheart did and the religion or philosophical belief of the claimant.

Conclusions

69. This is in reality a simple case. On four occasions the claimant was asked to deliver the passwords and other information about the school's IT systems. On four occasions he point-blank refused. He did so because he thought he knew best. He wanted to be the school's IT manager, and he thought they were wrong not to appoint him. He asked on multiple occasions and they said no each time. Yet he brings his claim asserting that this is what he was.
70. There is no other reason for his dismissal than refusal to comply with these lawful instructions. The various claims he put forward about philosophical belief are simply differences of opinion about how the school should be managed. It is plain that the

management of the school was a shambles before it was changed and Marcus Link and Kevin Jones were appointed and a system implemented. There was endless discussion of highflown concepts such as the *"three fold social order"*, but nobody actually decided anything, and no one was in charge of anything. Consequently there was no effective management of the school.

71. Ultimately, the claimant had a line manager, Kevin Jones, and he answered to the school council, and Marcus Link was in charge of implementing what the school council decided. The school council decided that Kevin Jones would be appointed and would be the claimant's line manager, and the school council decided they would outsource their IT support. Whether the claimant agreed with any of that is not to the point at all. They are perfectly rational management decisions made by people entitled to make them. The claimant was given lawful instructions about the passwords, and they were rational and sensible instructions. The belief of the claimant in assuming that he knew best is not an excuse for non-compliance. It would be gross misconduct even if his concerns were justified. The school had written to him specifically to absolve him from responsibility for any problems arising from the IT malfunctioning.
72. There is no element of religion in any of the treatment he complains about in his employment. Nor did he make any concrete assertion that there was any connection with religion. He asserted it was about his interpretation of the Steiner / Waldorf philosophy of education. Nor did he put to any witness any suggestion that being a Muslim was relevant. Accordingly the burden of proof in connection with the religious discrimination does not pass to the respondent. There is no question of philosophical belief discrimination in any of the matters complained of and again the burden of proof does not pass to the respondent in connection with these claims.
73. The allegation concerning Ruby Starheart is not made out on the facts. The allegation about being locked into a room is nothing to do with religion or belief. The point of it was to exclude anyone from the meeting with Mark Eyers, so that Caroline Jones could relieve him of his keys. Vicky did not have the same religion or philosophical belief. The claimants assertion that Vicky was *"collateral damage"* is incoherent, as the point of doing so was to exclude anyone from being with Mark Eyers, and was not targeted at the claimant. The conduct in so doing was certainly unusual, but it was not on the basis of any characteristic of the claimant. Caroline Jones would have done the same to anyone who was with Mark Eyers at the time. The claimant was able to make a recording of what was said through the glass door.
74. The claimant asserts that Caroline Jones did not want him to act as her sponsor. These were voluntary links depending on both people wanting it to continue. She did not. There is nothing to suggest this was anything to do with philosophy, and the claimant does not suggest that it is to do with religion.
75. The Tribunal accepted the evidence of Marcus Links, to the effect that while it was plain that IT needed attention, this was an institution with many needs and this was not at the top of Marcus Links' priorities.
76. There remains the covertly recorded conversation of 20 November 2014. It does not form part of a series. The claim was not lodged until September 2015, 10 months later. The claim is out of time. The Tribunal does not consider it just and equitable to extend time, and that claim is dismissed for that reason. It was extraordinary that the claimant covertly recorded that conversation. They were close friends. You do not record your conversations with close friends. Even if it was done by accident it is no less extraordinary that his covert recording was universal. The account that this comment was an intentional strategy to cause the claimant to have self doubt and to drive a wedge between him and others is extraordinary. There is no objectively rational basis for this

assertion when the claimant said that Cathy Day was like a sister to him, and that she and Anne Acland were his only allies in continuing to propound the “3 fold social order”.

77. The Tribunal rejects the claimant's assertion that the words spoken by Cathy Day were intended to, or had the effect, required to substantiate a harassment claim. Plainly the words were not well chosen, but this was a discussion while the speaker was in a hurry to go and do something else. The discussion was engineered by the claimant. Cathy Day's mind was clearly on female empowerment, and the extreme difficulty there is for women who are subjected to ideologies such as that of Boko Haram. When the entire transcript is read this was not an Islamophobic comment. The commitment of Cathy Day to equality was not challenged by the claimant, nor her evidence that she is an active worker with Muslim refugees. It is hard to imagine anyone less likely to be Islamophobic.. The claimant referred to her as someone he considered a “like a sister” and he cannot possibly have considered that she held Islamophobic views. The comment was not intended to have the effect of harassment and nor did it have that effect. Had we not dismissed this claim as out of time we would have dismissed it on the merits, or rather the lack of them.
78. The claimant asserted discrimination on the basis of philosophical belief. The belief relied on by the claimant is the Steiner / Waldorf philosophy. In submissions the representative for the respondent sought to challenge this as the basis for a discrimination claim. This had not been raised as an issue before, it being taken as being such a belief throughout. The Tribunal accepted that this was a philosophical belief such as to attract the protection of the Equality Act.
79. There is a Scott Schedule of allegations at R1:58 onwards. At 17 there commence the allegations relating to discrimination. The Tribunal asked the claimant to specify what type of discrimination he alleged in each case, and he did so at the start of the third day of the hearing. They are as follows, with what he asserts, and what the Tribunal finds:
- 17 - Encouraged to join the vision group to assist with developing strategy, but after the first meeting told not to again. The claimant said that this was background friction and was resolved. Given this statement that allegation cannot be sustained as a matter of discrimination.
 - 18 – He was not paid teaching department loading. The claimant said the same about this as about 17. In any event he was not a head of Department. Given that the claimant does not assert it was discrimination cannot be sustained as an allegation.
 - 19: - He was locked in the finance office preventing him from carrying out his work for the management group. The claimant says this is harassment on the basis of his philosophy, but that it was a tenuous and subtle connection. Given that submission this allegation cannot be sustained. It was certainly a very odd thing to have done, but was to exclude anyone from the discussion Caroline Jones wanted to have with Mark Evers. It is not credible that it was to exclude him on the basis of his philosophical belief and that Vicky was “collateral damage” as the claimant asserted.
 - 20 – He was shouted at and heavy files raised over his head as if to strike him in front of colleagues in the management group. The claimant said this was another example of something with a tenuous and subtle connection to discrimination, but it did have an undermining effect. An allegation the claimant says is tenuous and subtle does not shift the burden of proof. In any event the Tribunal did not find this made out on the facts. If it had been made out on the facts the Tribunal accepted the evidence of others that Ruby Starheart is irascible and volatile and was reacting to something (nothing to do with philosophical belief) said by the claimant in the meeting.

- 21 – He was shouted at and the door flung back on his hinges when he asked for a copy of his personnel file from Ruby Starheart. The claimant says this is a continuation of allegation 20. It is something that the claimant himself says has a tenuous and subtle connection to discrimination. It is not made out. Ruby Starheart was concerned enough about the conduct of the claimant to make a note at the time about his behaviour.
 - 22 – The authority for the line management of the bursar and the management group oversight of the finance office were undermined, and his tasks rendered untenable by Cathy Day and other members of the management group. The claimant says that this is by reason of his philosophical belief. The Tribunal finds that the claimant never had line management of anyone (and his philosophical belief eschews line management). Quite why the line management of the Bursar has anything to do with the claimant doing IT support work was not explained by him. The allegation is incoherent and fails.
 - 23 – His management IT report was discussed at Council. Trustees agreed that a plan was needed to provide adequate resourcing. He was told in front of the vision group that there was no money for salaries and his report was shelved, but this was not true and his work was given to Kevin Jones. The claimant says this is due to his philosophical belief. The claimant is correct in saying that his report was discussed at Council and rejected. Whether the claimant was managed by Kevin Jones or not, and whether the IT system of the respondent was dealt with by an in-house member of staff or outsourced is unconnected with any philosophical belief of the claimant and the allegation therefore fails.
 - 24 - Racist comments were made to him such as “*Muslims breed*” and “*overtake the West*” by Cathy Day. This is dealt with elsewhere in this decision. The allegation is out of time, is not part of a sequence, it is not just and equitable to extend time, but even if it were considered the allegation fails for the reasons given.
 - 25 – My contract, my capacity, my teaching, my work, my honesty, and my efforts were questioned in front of my colleagues on management group. Kevin Jones was assigned to me as line manager. No consultation. Contrary to arrangements in agreed strategy other staff changes were consulted extensively. A task was set to punish me and/or bring disciplinary proceedings against me comments to the effect “*disciplinary matter... A stick to beat him with*”. This is said to be a matter of philosophical belief and religion. The claimant has given no indication as to how this might be connected with religion. All that was questioned was the persistent attempt by the claimant to have himself appointed as IT manager at a salary of £21,000 per annum instead of his IT support and teaching role at about £5500 per annum. There is no connection with philosophical belief, and the claimant was unable to suggest any way by which the two are connected. This allegation fails.
80. In no case has the claimant met the first requirement of a discrimination claim of shifting the burden of proof to the respondent. While there is a statement that there is a race claim, the claimant did not advance this at the hearing. It was part of the heritage that has resulted in him being a Muslim. The claim for race discrimination is therefore dismissed.

The legal framework and decision

81. Setting this in the legal framework, the reason for the dismissal was conduct which is a potentially fair reason for dismissal under section 98 (2) (b) of the Employment Rights Act 1996 (“the Act”).
82. We have considered section 98 (4) of the Act which provides “... *the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and*

administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case”.

83. We have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as “s. 207A(2)”) and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2009 (“the ACAS Code”).
84. Potential reductions to the compensatory award are dealt with in section 123. Section 123(6) provides: “where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.” If there was any unfairness, which there was not, and if Polkey did not apply (which it does) contribution is 100%.
85. We have considered the cases of Post Office v Foley, HSBC Bank Plc (formerly Midland Bank plc) v Madden [2000] IRLR 827 CA; British Home Stores Limited v Burchell [1980] ICR 303 EAT; Iceland Frozen Foods Limited v Jones [1982] IRLR 439 EAT; Sarkar v West London Mental Health NHS Trust [2010] IRLR 508 CA; , Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR; Sheffield Health and Social Care NHS Foundation Trust v Crabtree UKEAT/0331/09; Bowater v North West London Hospitals NHS Trust [2011] IRLR 331 CA; London Borough of Brent v Fuller [2011] ICR 806 CA; and Polkey v A E Dayton Services Ltd [1988] ICR 142 HL. The range of responses of the employer is not infinitely wide but is subject to S98(4): Newbound v Thames water Utilities [2015] EWCA Civ 677, paragraph 61.
86. This are claims alleging discrimination on the grounds of a protected characteristic under the provisions of the Equality Act 2010 (“the EqA”). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges direct discrimination, harassment; and victimisation.
87. The protected characteristic relied upon is religion and philosophical belief, as set out in section 4 and 10 (religion or belief), of the EqA.
88. As for the claim for direct discrimination, under section 13(1) of the EqA a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
89. The definition of harassment is found in section 26 of the EqA. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for B.
90. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.
91. We have considered the cases of; Chapman v Simon [1994] IRLR 124; Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL; Igen v Wong [2005] IRLR 258 CA; Madarassy v Nomura International Plc [2007] ICR 867; Hewage v Grampian Health Board [2012] IRLR 870 SC; Brown v Croydon LBC [2007] IRLR 259

EAT; *Martins v Marks & Spencer* [1998] IRLR 326 CA; *Oyarce v Cheshire County Council* [2008] IRLR 653; *Nagarajan v London Regional Transport* [1999] IRLR 572 HL; *Chief Constable of West Yorkshire v Khan* [2001] IRLR 830 HL; *St Helens MBC v Derbyshire* [2007] IRLR 540 HL; *Pothecary v Bullimore* [2010] IRLR 572 EAT; *Martin v Devonshires Solicitors* [2011] ICR 352 EAT; *Luke v Stoke County Council* [2007] IRLR 777 CA; and *Hendricks v Commissioner of Police for the Metropolis* [2003] IRLR 96 CA; *Vento v West Yorkshire Police* [3003] IRLR 102 CA and *Da'Bell v NSPCC* UKEAT/0227/09; [and *Polkey v A E Dayton Services Ltd* [1988] ICR 142 HL]. We take these cases as guidance, and not in substitution for the provisions of the relevant statutes.

92. The starting point for an unfair dismissal claim should always be the words of section 98(4) themselves. In applying the section the tribunal must consider the reasonableness of the employer's conduct, not simply whether it considers the dismissal to be fair. In judging the reasonableness of the dismissal the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.
93. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances. A helpful approach in most cases of conduct dismissal is to identify three elements (as to the first of which the burden is on the employer; as to the second and third, the burden is neutral): (i) that the employer did believe the employee to have been guilty of misconduct; (ii) that the employer had in mind reasonable grounds on which to sustain that belief; and (iii) that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case. The band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.
94. The respondent had a genuine belief in the misconduct alleged, and there was a proper investigation. The facts are not in dispute. The requests are all in writing and the claimant accepts that he received them. The claimant accepts that he was bound to comply with those instructions, stating that his union had (correctly) so instructed him. He failed to comply with them. He was suspended, exactly as they said he would be. After his suspension he deliberately refused to comply with a fourth such instruction, even knowing of his union representative's advice.
95. It is arguable that there are procedural difficulties with the dismissal. It is highly unusual for a meeting to be chaired by someone thought not appropriate to make the decision and for the decision to be made by someone else at the meeting. There are several references to "we" in the decision letter. It is hard for the claimant to say this is unfair, because the philosophical belief he espouses indicate precisely that the decision should be made by the entirety of the group with no one in overall charge. In any event, if there is such a procedural difficulty with the dismissal *Polkey* applies. Whatever the structure of the decision-making process dismissal for gross misconduct was inevitable, and if we had reached that point we would have assessed contribution at 100%.
96. For the avoidance of doubt the Tribunal finds that refusal to obey these four lawful instructions was gross misconduct. In the circumstances dismissal is within the range of

reasonable responses of the employer. Effectively the claimant was saying that he was above instruction, which is something no sensible employer could tolerate.

97. Again for the avoidance of doubt the Tribunal finds that in no sense whatsoever was religion or philosophy or belief a factor in any treatment of the claimant by the respondent or any person within it. The race discrimination claim was effectively abandoned and is dismissed also.
98. The claimant makes monetary claims for breach of contract and unpaid wages. These are based on his assertion that he was in fact the school's IT manager and entitled to a salary of £21,000 a year, and back pay. This is based on the proposals rejected by the school several times. This is patently nonsense, and those claims also fail and are dismissed.
99. The respondent applied for costs of 18 hours at £60 in relation to two elements of the claims, and for the payment to the respondent of the £1000 deposit paid by the claimant pursuant to an order of this Tribunal. The claimant opposed this saying that he had borrowed £995 of the £1000 from someone else and wished to repay that person.
100. In response to questions from the Tribunal the representative of the respondent indicated that he did not know whether the respondent was liable to pay costs relating to the conduct of the hearing to the company retained to represent them. Since the purpose of an order for costs is to recompense a winning party a costs order is not appropriate where the Tribunal does not know that there is a liability to be recompensed. The claimant was ordered to pay a deposit as a condition to being permitted to continue with these claims. Given the findings of this Tribunal it would not be right to order it to be repaid to the claimant. We order the deposit of £1000 to be paid to the respondent.

Employment Judge P S L Housego
28 July 2017

JUDGMENT SENT TO THE PARTIES ON

23rd August 2017

.....
AND ENTERED IN THE REGISTER

.....
FOR THE TRIBUNAL OFFICE