



EMPLOYMENT TRIBUNALS

Claimant: Mr Z Sakharkar

Respondent: Heckmondwike Grammar School Academy Trust

Heard at: Leeds

On: 27, 28, 29 and 30 November
2017

9 January 2018 (RESERVED)

Before: Employment Judge Keevash
Mr T Downes
Mr W G Appleyard

Representation

Claimant: In person

Respondent: Mrs A Gray, solicitor

RESERVED JUDGMENT

The complaints of unfair dismissal and race discrimination fail.

REASONS

Background

1 By his Claim Form the Claimant brought complaints of unfair dismissal, race discrimination, unlawful deduction from wages/breach of contract and redundancy. The Respondent resisted the complaints. Subsequently at a Preliminary Hearing the complaints of unlawful deduction from wages/breach of contract were struck out on the ground that they had no reasonable prospects of success.

Issues

2 The issues which had to be determined were identified at Preliminary Hearings on 16 May 2017 and 25 July 2017. The Claimant relied on race, namely his Indian ethnicity, as the protected characteristic for the purposes of his discrimination complaints.

Hearing

3 At the beginning of the Hearing Mrs Gray informed the Tribunal that the Claimant had disclosed twenty four audio recordings of workplace conversations. She asked the Tribunal to treat with caution the transcripts prepared by him because they did not constitute a wholly accurate record. At various stages during the Hearing the Respondents' witnesses disputed the accuracy of the transcripts. The Employment Judge explained that any conflict could be resolved by listening to the recording in question. However, neither party asked the Tribunal to listen to any of the recordings.

4 The Employment Judge informed the parties that for the avoidance of doubt they did not have permission to record the proceedings. He also gave the Claimant general guidance about how to present his case, emphasising the need to focus on giving evidence in support of each of his complaints and the need to challenge witnesses during cross examination where there was a conflict of evidence on a materially important matter.

5 The Claimant gave evidence on his own behalf. Elaine Bennett, Ian Firth and David Ronald Pollard, former colleagues, gave evidence on his behalf. James Longridge, Head of the Design and Technology Department, John Michael Flynn, Finance Director, Nathan Dexter Bulley, Headteacher, and Derek Cross, Governor, gave evidence on behalf of the Respondent. The Tribunal also considered three bundles of documents.

Facts

6 The Tribunal found the following facts proved on the balance of probabilities:-

6.1 On 6 April 1992 the Claimant was employed by the Respondent as a Senior Design Technician.

6.2 By a letter dated 16 July 2015 Mr Cook, the then Headteacher, informed the Claimant that he had decided to give him a final written warning which would remain permanently on his personnel file but which would be disregarded for disciplinary purposes twelve months from the date of the warning provided that there was no further misconduct within that time. He found the allegations to have been substantiated, namely that the Claimant (a) on 11 May 2015 behaved in an unprofessional manner by swearing at and intimidating Ms Hargreaves and (b) over a prolonged period intimidated Ms Stansfield.

6.3 By a letter dated 24 September 2015 Ms Stansfield informed the Respondent:-

"I wish to formally document my concerns regarding my position working in the Design Technology department and wider school with Mr Sakharkar. Due to the events last term which led to his suspension from school and his behaviour returning to the department, I am concerned about his mental state and my safety working alone with him. I wish to make clear I am not physically scared of him but his demeanour is very intimidating when annoyed or if he is feeling challenged ...".

6.4 By an email dated 30 September 2015 addressed to Ms Stansfield Mr Longridge referred to his discussion with Mr Cook and to their subsequent meeting. He set out details of an agreed plan to help her cope with the Claimant.

6.5 In or about October 2015 the Respondent conducted a staffing structure review of the Design and Technology department. Among other matters it decided to remove the Claimant's Senior Technician role from the structure. He accepted the offer of Technology Technician.

6.6 On or about 1 July 2016 Mr Longridge wrote a performance management overview statement about the Claimant. He stated:-

" ...

This year has seen a number of unfavourable events that are inconsistent with Zahoor's usual conduct (i.e. conduct towards staff – including suspension during investigation, falling asleep at work, punctuality for work, use of phone and email for personal use during directed school hours). These issues have been discussed at length with Zahoor and he has shown a great deal of thoughtfulness to find ways that he can avoid them in the future ...".

6.7 On 1 July 2016 there was an incident involving the Claimant and Mr Longridge.

6.8 By an email dated 4 July 2016 Mr Longridge informed Mr Flynn about the incident. He concluded:-

"Given the nature of previous events regarding Zahoor's conduct within the department and Zahoor's new allegation that I am discrimination (sic) against him I think we need to take further action to avoid events like this from happening again. Zahoor's conduct was highly unprofessional and despite my friendship with Zahoor I'm not willing to accept this kind of behaviour in the department ...".

6.9 On or about 8 July 2016 the Claimant began a period of absence due to sickness.

6.10 In or about July 2016 Mr Cook informed Mr Bulley that on 1 July 2016 there had been an incident involving the Claimant; an allegation of misconduct had been made against the Claimant and Dr Gregson had been instructed to conduct a disciplinary investigation.

6.11 By a letter dated 22 July 2016 Mr Flynn informed the Claimant that following the incident the Respondent had commenced an investigation. He was asked to identify relevant witnesses.

6.12 On 9 September 2016 the Claimant raised a grievance against Ms Stansfield

6.13 By a letter dated 15 September 2016 Mr Flynn invited the Claimant to a disciplinary investigation meeting.

6.14 On or about 3 October 2016 Dr Gregson sent Ms Daddy, HR manager, his investigation report in which he concluded that there was a case to answer in respect of the incident.

6.15 By a letter dated 10 October 2016 Ms Daddy invited the Claimant to attend a disciplinary hearing. She stated:-

"... The purpose of the hearing is to consider an allegation of misconduct against you. This allegation is serious and may amount to misconduct under the Academy Disciplinary Policy, namely:-

3. Acts of verbal or physical abuse or acts of bullying or harassment to pupils, colleagues or any other person.

The allegation is that on 1st July 2016 you were heard to have been shouting aggressively at you line manager during a meeting between you...

We do not intend to call any witnesses to the hearing. If you wish to call any relevant witnesses to the hearing please let me have their names as soon as possible and no later than 12pm on 21st October 2016...".

6.16 On 12 October 2016 the Claimant discussed with Ms Daddy arrangements for the disciplinary hearing. She told him that he would have to speak to his witnesses outside school hours.

6.17 On 13 October 2016 the Claimant attended a Grievance meeting which was conducted by Mr Bulley. He was accompanied by Ms Maxwell, UNISON representative.

6.18 By a letter dated 14 October 2016 Mr Bulley informed the Claimant:-
“,, I listened carefully to your perceived grievances and have concluded that they are either historical or unsubstantiated and therefore the grievance has been rejected...”.

6.19 On 14 October 2016 the Claimant interviewed Ms Bennett about the incident.

6.20 On 17 October 2016 the Claimant interviewed Mr Firth about the incident.

6.21 By a letter dated 21 October 2016 the Claimant informed Ms Daddy that he wanted to call “the following witnesses. Elaine Bennett and/or Ian Firth (either will do but prefer Elaine Bennet if 2 can't be allowed...”.

6.22 By a letter dated 21 October 2016 Ms Daddy informed the Claimant:-
“... I note that you wish to call witnesses. You are entitled to call any witnesses you wish to attend. Please note however that it is your responsibility to invite the witnesses and organise for them to attend. I would be grateful if you could confirm to me as soon as practically possible, by no later than 31st October 2016, how you believe these witnesses will help your case in order that I may brief the panel.”

6.23 On 1 November 2016 the Claimant attended a disciplinary hearing which was conducted by Mr Bulley. He was accompanied by Mr McKenny, UNISON trade union representative. Mr Pinder, Chair of Governors, attended as a member of the disciplinary panel. Dr Gregson and Ms Daddy also attended. Dr Gregson presented the management case which included the statements of Mr Flynn, Mr Roberts and Mr Longridge. The Claimant presented a written statement from Ms Bennett. He did not call her or any other witnesses. At no stage did he suggest that he had been prevented from so doing; he did not state that he needed to ask them questions to help put forward his case. The disciplinary panel adjourned the hearing.

6.24 By a letter dated 3 November 2016 Mr Bulley informed the Claimant that the panel had decided to dismiss him with immediate effect and to make a payment in lieu of notice.

6.25 By a letter dated 7 November 2016 Mr McKenny informed Ms Daddy:-
“...
We wish to appeal against this decision on the following grounds.

Firstly, there was no objective evidence that his behaviour constituted ‘shouting aggressively’. James Longridge made no formal complaint regarding the behaviour. Therefore it could not be decided that there was an issue to investigate.

Secondly, some of the statements presented as evidence weren’t signed. These shouldn’t have been admitted as evidence.

Thirdly, when the adjourned it is clear that the panel considered further evidence that was not presented to us. This was a clear breach of procedures.”

6.26 By a letter dated 14 November 2016 Ms Daddy asked the Claimant to explain what evidence was considered by the panel during the adjournment and to provide any new evidence by 1 December 2016.

6.27 By a letter dated 21 November 2016 Ms Daddy invited the Claimant to attend an appeal hearing. She explained that the hearing would be “a full rehearing to review the original decision”.

6.28 By a letter dated 24 November 2016 Mr McKenny informed Ms Daddy:-
“...It states in the decision that ‘Peter confirmed that the statement included in the pack was true and accurate’. It also states ‘James confirmed that his statement was true and accurate’.

As these confirmations did not take place prior to the hearing they must have been obtained during the adjournment.”

6.29 By a letter dated 7 December 2016 Ms Daddy informed Mr McKenny that during the disciplinary hearing Dr Gregson had stated that Mr Roberts and Mr Longridge had agreed their statements. However, since Mr McKenny had argued that the statements could be discounted because they were unsigned, Mr Bulley had felt it appropriate to confirm with both witnesses that their witness statements were a true and accurate record of events. Both did so confirm.

6.30 On 10 February 2017 the Claimant attended an appeal hearing which was conducted by Mr Cross. He was accompanied by Mr McKenny. Mr Eakin and Mr Atherton, Governors, attended as members of the panel. Ms Daddy and Dr Gregson also attended. Dr Gregson presented the management case. The Claimant and Mr McKenny responded to the allegations. After an adjournment Mr Cross informed the Claimant that the panel had decided to uphold the dismissal decision.

6.31 By a letter dated 13 February 2017 addressed to the Claimant Mr Cross confirmed the panel’s decision.

Law

7 Section 98 of the Employment Rights Act 1996 (“the 1996 Act”) provides:-
“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2)...
- (2) A reason falls within this subsection if it –
- (a) ...
 - (b) relates to the conduct of the employee ...
- (4) Where the employer has fulfilled the requirements of subsection (1), 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 ...”.

Section 13(1) of the Equality Act 2010 (“the 2010 Act”) provides:-

“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.”

Section 23(1) of the 2010 Act provides:-

“On a comparison of cases for the purposes of section 13 ... there must be no material difference between the circumstances relating to each case.”

Section 26 of the 2010 Act provides:-

“(1) A person (A) harasses another (B) –

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of –
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B ...

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect ...”.

Section 39(2) of the 2010 Act provides:-

“An employer (A) must not discriminate against an employee of A's (B) –

- (a) ...
- (c) by dismissing B;
- (d) by subjecting B to any other detriment.”

Section 136 of the 2010 Act provides:-

“(1) This section applies to any proceedings relating to a contravention of this Act.

(2) 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.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision ...”.

Submissions

8 At the conclusion of Day 4 of the Hearing the Tribunal ordered the parties to file and serve written submissions and to file and serve comments on each other's submission. The parties complied with that Order. In her submissions Mrs Gray referred to **British Home Stores Ltd v Burchell** [1978] IRLR 379 EAT; **Foley v Post Office** and **HSBC Bank plc v Madden** [2000] IRLR 827 CA; **Rhonda Cynon Taff County Borough Council v Mahoney and anr** [2000] ICR 1283 CA; **British Leyland UK Ltd v Swift** [1981] IRLR 91 CA; **J Sainsbury plc v Hitt** [2003] ICR 111 CA; **Williams and ors v Compair Maxam Ltd** [1982] IRLR 83 EAT; **Shrestha v Genesis Housing Association Ltd** [2015] IRLR 399 CA; **Hadjoannou v Coral Casinos Ltd** [1981] IRLR 352 EAT; **Paul v East Surrey District Health Authority** [1995] IRLR 305 CA; **Polkey v Dayton Services Ltd** [1987] IRLR 503 HL; **Nelson v BBC (no.2)** [1980] ICR 110 CA; **Igen Ltd v Wong** [2005] IRLR 258 CA; **Ayodele v Citylink Ltd and anr** [2017] EWCA Civ 1913 CA; **Madarassy v Nomura International plc** [2007] IRLR 246 CA; **Bahl v The Law Society and ors** [2004] IRLR 799 CA; **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2001] IRLR 285 HL; **Chief Constable of Kent Constabulary v Bowler** UKEAT/0214/16/RN EAT; **Richmond Pharmacology v Dhaliwal** [2009] ICR 724 EAT; **Robertson v Bexley Community t/a Leisure Link** [2003] IRLR 434 CA; **Porter v Bandbridge Ltd** [1978] ICR 943 CA; **Hendricks v Metropolitan Police Commissioner** [2003] 1 All ER 654 CA; **Dedman v British Building and Engineering Appliances Ltd** [1974] 1 All ER 520 CA; **Robinson v Post Office** [2000] IRLR 804 EAT.

Discussion

Credibility

9 The Tribunal found that the Claimant was an unsatisfactory and unreliable witness. His evidence was inconsistent and contradictory. Wherever there was a conflict between his evidence and that of the Respondent's witnesses, the Tribunal preferred the latter. The Tribunal reached this conclusion after observing and hearing the Claimant giving evidence and presenting his case. Its concerns included the following matters. Firstly, he referred to several transcripts of recordings of conversations which he made covertly during his employment. During cross examination he accepted that these were not wholly accurate and that he had omitted parts which did not support his case. Secondly, in his witness statement the Claimant stated that he "may" be recording the conversation on 1 July 2016. It was surprising that he did not prepare a transcript of that recording. It was a vitally important meeting and the recording offered him an opportunity to corroborate his evidence about what happened – in particular whether he did commit the alleged act of misconduct. He did not give any or any satisfactory explanation for this failure to provide that evidence. Thirdly, he gave evidence that he did not have a red folder in which he made notes before accepting that he did have one. Fourthly, he gave evidence that the Respondent failed to notify him that he could bring witnesses to the disciplinary hearing although he accepted that he had received letters in which he had been informed of this. Fifthly, he gave evidence that Mr Longridge did not do anything after he complained about Ms Stansfield. In cross examination he accepted that this was incorrect; Mr Longridge did speak to her "after one hour's persuasion". These examples led the Tribunal to conclude that the Claimant lacked credibility.

The unfair dismissal complaint

What was the reason for dismissal?

10 Mr Bulley gave evidence that he and Mr Pinder, the Chair of Governors, dismissed the Claimant because of his misconduct. Mr Cross gave evidence that he and the two other members of the appeal hearing panel upheld the decision because of his misconduct. The Tribunal accepted the evidence of Mr Bulley and Mr Cross who were honest and credible witnesses. Their evidence was supported by contemporaneous documents. The Tribunal decided that the reason for the dismissal related to conduct. There was no basis for upholding the Claimant's contention that his dismissal was in reality part of a hidden agenda to remove his new role as part of a continuing restructuring process. Although Mr Longridge adopted a less hand off approach to his management style than had the Claimant's previous manager, he had not taken opportunities to escalate or formalise incidents such as the sleeping episode. If the Respondent had wanted to manage the Claimant out of his job, it could have tried so to do beforehand.

Did the Respondent act reasonably or unreasonably?

11 The Tribunal understood that the correct approach to deciding the fairness or unfairness of "a conduct" dismissal was to follow the guidance of the Employment Appeal Tribunal in **British Home Stores**. It had to determine whether (a) the decision makers had an honest belief that the Claimant had committed an act of misconduct (b) that belief was based on reasonable grounds and (c) that belief was formed after a reasonable investigation.

12 Mr Bulley gave evidence that he and Mr Pinder believed that it was more likely than not that the Claimant had shouted aggressively at Mr Longridge. Mr Cross gave evidence that he and the two other members of the appeal hearing panel believed that it was more likely than not that the Claimant had conducted himself professionally and had shouted inappropriately at Mr Longridge. The Tribunal accepted that evidence and found that the decision makers genuinely believed that the Claimant had committed an act of misconduct.

13 The Tribunal next considered whether the decision makers had reasonable grounds for their belief that the Claimant had committed an act of misconduct. Mr Bulley gave detailed evidence on this point. He and Mr Pinder relied on the statements of Mr Flynn, Mr Roberts and Mr Longridge; the Claimant's admission that Mr Longridge had been extremely quiet during the incident; the lack of any reason to believe Mr Longridge had acted inappropriately; the lack of any reason to believe that the witnesses named above had any reason to be dishonest or that they had any ulterior motive; the Claimant's suggestion in an email to Dr Gregson that he could only take so much before becoming "vocal" with Mr Longridge; the Claimant's admission in both the investigation meeting and the disciplinary hearing that his voice may have been raised and that at several points he stated that there was a "heated discussion"; any raised voice toward another member of staff in frustration was inappropriate; the Claimant's attempt to deny that he acted inappropriately alongside his attempt to justify his conduct because of his frustration with Mr Longridge.

14 The Tribunal accepted Mr Bulley's evidence. It found and decided that he and Mr Pinder had reasonable grounds for their belief that the Claimant had committed an act of misconduct. In reaching that conclusion the Tribunal rejected the Claimant's submission that the belief was formed against the weight of the

evidence. Mr Bulley's evidence showed that he and Mr Pinder had coherent and logical arguments to support their belief. The weight of the evidence supported that belief.

15 Mr Cross also gave detailed evidence on this point. He and the other panel members relied on the Claimant's admission in the investigation meeting and the disciplinary and appeal hearings that he spoke with a raised voice; it was inappropriate for an employee to speak to a line manager in anything other than a "normal" voice; there were four independent witnesses who confirmed that they were concerned about what was happening in the room where the Claimant and Mr Longridge were; there was no reason to believe that the makers of the statements had been dishonest; the Claimant understood that shouting at his line manager was not acceptable conduct; Mr Longridge did not consider that the Claimant's conduct was acceptable; it was reasonable for a member of staff (more senior than Mr Longridge) to instigate a disciplinary investigation; the Claimant's attempt to justify his conduct appeared to amount to a concession that his conduct was inappropriate.

16 The Tribunal accepted Mr Cross' evidence. It found and decided that he and the other panel members had reasonable grounds for their belief that the Claimant had committed an act of misconduct. Mr Cross' evidence showed that he and the others had coherent and logical arguments to support their belief. The weight of the evidence supported that belief.

17 The Tribunal found and decided that the investigation conducted by the Respondent was reasonable. There was no basis for the Claimant's contention that the Respondent was not interested in investigating matters that might exonerate him. The Tribunal found that during the investigation process Mr Flynn asked him to identify witnesses; before the disciplinary hearing Ms Daddy informed him that he was entitled to call witnesses. However, he chose not to call witnesses at the disciplinary and appeal hearings. At both hearings he was represented. Neither he nor Mr McKenny asked for an adjournment to allow time for the panel to hear any other witnesses. The Tribunal also found that the Respondent did not prevent him interviewing witnesses himself. Ms Daddy informed him that he had to interview his witnesses outside working hours. That was an understandable and reasonable request. Ms Daddy did not make it with the intention of making it difficult for him. In fact before the disciplinary hearing the Claimant was able to interview Ms Bennett and Mr Firth. Further the Tribunal decided that the appeal panel acted reasonably when deciding that there was no need to question either Ms Bennett or Mr Firth directly during the investigation. Even if they had been interviewed directly during the process, it was clear that the outcome would have been exactly the same. Their evidence only related to a period of less than ten minutes when they were in the vicinity of the incident. The incident lasted for over thirty minutes.

18 The Tribunal next considered whether the decision to dismiss was within the band of reasonable response open to a reasonable employer in these circumstances. It noted that at the Preliminary Hearing on 16 May 2017 the Employment Judge indicated that this Tribunal would not go behind the final written warning and examine the circumstances of that earlier disciplinary process. However, the Claimant contended that the allegation in relation to the incident was conveniently constructed shortly before the warning was due to expire.

19 At the time of the incident the Claimant remained subject to a final written warning. It was of no significance that, if the incident had occurred about two weeks later, the warning would have expired. There was no evidence that the Respondent in some way had instigated or manufactured the incident. The Claimant was responsible for it. In the Tribunal's judgment there was no doubt that the decision to dismiss fell within the band of reasonable responses available in these circumstances. Not only was the Claimant subject to a final written warning but it had been issued for similar conduct. In such circumstance there was clearly less scope for concluding that dismissal was outside the band of reasonable responses. Further the disciplinary and appeal panels acted reasonably when taking into account the fact that the Claimant had shown no remorse. As a result they were not confident that he would conduct himself appropriately in future if he became frustrated with Mr Longridge or another member of staff.

Other matters

20 During the course of these proceedings raised other matters. Some of these were neither addressed in his evidence nor in his submissions. However, for the sake of completeness, the Tribunal did consider them. It found and decided that any delay in the conduct of the investigation process and the disciplinary procedure was reasonable. It was caused in part by the summer holidays, the Claimant's sickness absence and the unavailability of his trade union representative. Secondly, the Tribunal found and decided that the Claimant was given ample opportunity to present his case and challenge the evidence of the Respondent's witnesses. He also had an opportunity to present evidence of mitigation. Finally, the Tribunal found and decided that the Respondent did not act inconsistently when failing to dismiss Mr Pollard or Mr Flynn. The Claimant was subject to a final written warning whereas Mr Pollard was not; Mr Pollard was due to leave the Respondent's employment shortly after his alleged incident. There were material differences between those two cases. There was insufficient evidence to enable the Tribunal to embark on any comparison between the cases of the Claimant and Mr Flynn. The Tribunal was unable to conclude that any difference in treatment was evidence that the Claimant was unfairly dismissed

21 Accordingly the Tribunal decided that the Respondent acted reasonably when dismissing the Claimant having regard to the factors set out in section 98(4) of the 1996 Act. The complaint under this head failed.

The discrimination complaints

Complaint that the Respondent treated the Claimant less favourably when handling complaints and conduct issues

22 The Claimant gave evidence that Mr Longridge spoke to him about moving some trays which Ms Stansfield had organised. However he showed no interest when the Claimant told him that Ms Stansfield had completely altered a cupboard which the Claimant was managing.

23 Mr Longridge gave evidence that allegations were made by both the Claimant and Ms Stansfield about the other. He did not take sides or formally reprimand either in relation to those complaints. He denied that he treated Ms Stansfield or any other member of staff more favourably than he treated the Claimant. He also gave evidence about a complaint that he had moved some trays and a complaint that she had reorganised a cupboard. He gave a satisfactory explanation for both incidents:- he had requested Ms Stansfield to reorganise the cupboard. He

denied that he asked members of staff to keep an eye on the Claimant and record any incidents.

24 The Tribunal accepted Mr Longridge's evidence. It found and decided that any less favourable treatment was not to any extent because of race.

Complaint that the Respondent treated the Claimant less favourably when Mr Longridge refused to give him time off to attend a course at Bradford University

25 The Claimant gave evidence he allowed Ms Stansfield time off but refused him permission to attend a part time film making course.

26 The Tribunal accepted Mr Longridge's evidence. It found that the Claimant requested time off so that he could attend a two year part time film making course at Bradford University. He refused because the Claimant's weekly attendance at the course (a half day each week) would clash with his contracted hours. He was concerned that the Respondent would be left without adequate technician support. He was also not satisfied that supporting attendance at the course would bring the Respondent any benefit. By contrast Ms Stansfield was allowed to flex her time occasionally to run freelance art courses. This was discussed when she was appointed; she always made clear requests. Mr Longridge was satisfied that her activity would benefit the Respondent.

27 The Tribunal found and decided that there were material differences between the Claimant's case and that of Ms Stansfield. The facts did not show that the Respondent had treated him less favourably in similar circumstances than it treated her or would treat others.

Complaint that the Respondent treated the Claimant less favourably when Mr Longridge allowed Ms Hargreaves time off to consider and prepare her application to attend a teacher training course

28 The Claimant did not give any direct evidence about this complaint.

29 Mr Longridge gave evidence that he gave Ms Hargreaves permission to undertake a teacher training course with the Respondent as part of its School Centred Initial Teacher Training programme. He did not agree that he allowed Ms Hargreaves time off from work in order to complete her application form. He refused the Claimant's request for time off to attend the Bradford University course (see above). He did not agree that a comparison was appropriate. Ms Hargreaves attendance on her course was potentially beneficial for the Respondent. In fact in September 2014 she resigned her Junior Technician post and started teacher training with the Respondent. On the other hand, (for reasons stated above) he was not satisfied that the Claimant's attendance at his course would be of any benefit to the Respondent.

30 The Tribunal accepted Mr Longridge's evidence. It found and decided that there were material differences between the Claimant's case and that of Ms Hargreaves. The facts did not show that the Respondent treated him less favourably in similar circumstances than it treated her or would treat others.

Complaint that the Respondent treated the Claimant less favourably and harassed him when in or about September 2014 Mr Longridge spoke to him about talking at work

31 The Claimant gave evidence that Mr Longridge told him not to talk to staff; this was in line with a departmental policy which did not apply to teachers; the policy did not apply to Junior Technicians; Mr Longridge refused to put the policy in writing.

32 The Tribunal rejected the Claimant's evidence where it conflicted with that of Mr Longridge. It found that on a particularly busy day in the department Mr Longridge witnessed the Claimant spending a significant amount of time talking with Mr Gerrard during working hours. This happened after Ms Hargreaves has expressed her concerns about the Claimant's work ethic and after the Claimant had complained about his workload. He told the Claimant that he needed to focus more on his work and to spend less time having social conversations with staff. He did not instruct the Claimant not to speak at all to other members of staff. At the time he had no concerns with Mr Gerrard's performance. In any event he was not his line manager. In similar circumstances he would have treated in the same was any other member of staff whom he line managed.

33 The Tribunal found and decided that the Respondent's conduct was not to any extent because of race and that any unwanted conduct was not to any extent related to race.

Complaint that the Respondent treated the Claimant less favourably and harassed him when on or about 23 September 2015 Mr Longridge spoke to him about using the computer at work

34 The Claimant gave evidence that Mr Longridge stopped him using email and forbade him from sitting down. During the discussion he told Mr Longridge that had better give the same instruction to the Junior Technicians in the team.

35 Mr Longridge gave evidence that during a lesson he witnessed the Claimant using his computer for about 30-45 minutes. He told the Claimant that he had concerns about his use of email and the computer. He instructed him that in future his use of email should be limited to outside lesson time and suggested that he should only check emails at the beginning or end of the day. The Claimant was unhappy with the instruction and said that he had better give the same instruction to the Junior Technicians. He denied that he forbade him from sitting down. At the time he had no similar concern about other staff. If he had, he would have treated them in a similar manner.

36 The Tribunal accepted Mr Longridge's evidence. It found that if he had similar concerns about other members of staff he would have treated them in the same way in similar circumstances. It found and decided that the Respondent's conduct was not to any extent because of race and any unwanted conduct was not to any extent related to race.

Complaint that the Respondent treated the Claimant less favourably and harassed him when in or about March 2015 Mr Longridge dumped work onto him and telling him he could leave if it was too stressful

37 The Claimant did not give any direct evidence about this complaint.

38 Mr Longridge gave evidence that at about this time he had removed the Claimant's authority to manage the Technicians' jobs. He took responsibility for

managing and distributing tasks between the Claimant and the Junior Technician. The Claimant's workload was no different to anyone else's within the team. Mr Longridge confirmed that the Claimant talked to him about being stressed. He recalled making an off the cuff comment like 'I'm not forcing you to work here'. He denied telling him that he should leave. He later apologised, explaining that he had felt exasperated by the Claimant's constant challenge of any decision or instruction made or given by him.

39 The Tribunal accepted Mr Longridge's evidence. It found and decided that the Respondent's conduct was not to any extent because of race and any unwanted conduct did not to any extent relate to race.

Complaint that the Respondent treated the Claimant less favourably when Mr Longridge spoke to him about his use of the telephone at work

40 The Claimant gave evidence that whenever Mr Longridge wanted to discriminate and enforce a restrictive rule he mentioned that it did not apply to teachers or Junior Technicians. He gave the use of the telephone as an example.

41 Mr Longridge gave evidence that he did instruct the Claimant not to use his personal mobile phone during working hours. He did this because he had received complaints about the amount of time the Claimant spent on his telephone dealing with personal, non-work related matters. At the time he had no similar concern with any other member of staff. If he had, he would have treated them in the same way.

42 The Tribunal accepted Mr Longridge's evidence. It found and decided that the Respondent's conduct was not to any extent because of race.

Complaint that the Respondent treated the Claimant less favourably and harassed him when in or about March 2015 Mr Longridge told him that everyone was complaining about his performance and that he should pull his weight.

43 The Claimant gave evidence that Mr Longridge told him "everyone is complaining about" him. He requested but was not given specific details.

44 There was little or no conflict in the evidence relating to this complaint. The Tribunal accepted Mr Longridge's evidence that on his return from sick leave he received several allegations about the Claimant's conduct. It found that in order to prevent matters escalating, he told the Claimant that some complaints had been made and he suggested ways in which he could alter his conduct to avert similar complaints being made in the future. He instructed the Claimant not to engage in his own investigation and told him that he did not think it important who made the complaints. He was concerned that the Claimant would confront members of the team. At that time the Claimant repeatedly challenged Mr Longridge by fishing for information about his confidential conversations with team members. Mr Longridge was uncomfortable with his persistence and his intention of confronting members of the team.

45 The Tribunal found that in similar circumstances Mr Longridge would have treated any other member of staff in a similar manner. He tried to address concerns with the Claimant's conduct and told him how to improve his behaviour. His conduct was understandable. The Tribunal found and decided that the Respondent's conduct was not to any extent because of race and any unwanted conduct did not relate to any extent to race.

Complaint that the Respondent treated the Claimant less favourably when on 11 May 2015 Mr Longridge allowed Ms Hargreaves and Ms Stansfield to talk down and undermine him

46 The Claimant gave evidence that at a departmental meeting Ms Hargreaves said "What's your problem?" and allowed Ms Stansfield to talk down to him on three occasions in September 2015.

47 The Tribunal accepted the evidence of Mr Longridge. It found that at the department meeting Ms Stansfield did no more than explain why she thought the current system of delegating jobs was not working. She indicated that she thought it was down to user error. She did not target this comment at anyone in particular. At no point did she or Ms Hargreaves speak out of turn directly to the Claimant. The Tribunal did not make any findings in relation to the September 2015 allegations; these were not part of the Claimant's pleaded claim.

48 The Tribunal found and decided that there were no facts which showed that the Respondent treated him less favourably than it treated or would treat others.

Complaint that the Respondent treated the Claimant less favourably when Mr Longridge stated in the Ms Hargreaves investigation that he brought his own work to the school

49 The Claimant gave evidence that Ms Hargreaves had a business of making and selling ceramic pots and cups. Mr Longridge allowed her to use the Respondent's kiln and clay to fire these items. During an investigation Mr Longridge reported that the Claimant brought his own work to school but failed to mention anything about Ms Hargreaves.

50 Mr Longridge gave evidence that he did not recall having specifically referred to the Claimant bring his laptop into school. He allowed Ms Hargreaves to use the kiln outside school hours because this did not interfere with her duties. The Claimant had previously been given permission to use the Respondent's facilities to fix and build photography equipment outside his contracted hours.

51 The Tribunal accepted Mr Longridge's evidence. It was unable to find any reference made by him about the Claimant using a laptop as alleged. In any event it found that he would have discussed this with the Claimant if he considered that his use of the Respondent's time and resources were affecting his performance of his duties.

52 The Tribunal found and decided that the facts did not show that there was any less favourable treatment. There were materially different circumstances between the Claimant's case and that of Ms Hargreaves. He had not been given permission; she had.

Complaint that the Respondent treated the Claimant less favourably when on or about 4 June 2015 Mr Longridge reported that he had harassed Ms Stansfield

53 The Claimant did not give any direct evidence about this complaint.

54 Mr Longridge gave evidence that Ms Stansfield told him that the Claimant deliberately made difficult her task of taking photographs during the Advanced Innovation Challenge AS Level Examination. He denied accusing the Claimant of harassing Ms Stansfield and corroborating her statement. Instead he informed

the Claimant that she had indicated that she felt intimidated by and harassed by him. He suggested that the Claimant needed to be more careful about how his conduct towards her may be perceived.

55 The Tribunal accepted Mr Longridge's evidence. It found and decided that the Respondent's conduct was not to any extent because of race.

Complaint that the Respondent treated the Claimant less favourably when on 4 June 2015 Mr Longridge gave a reason why he was feeling down

56 The Claimant gave evidence that during an interview Mr Longridge reported that the Claimant may have been feeling bad because he had played the part of a dying man.

57 The Tribunal accepted Mr Longridge's evidence. It found that he was interviewed as part of the investigation into the Claimant's conduct towards Ms Hargreaves. Given the events he told Mr Roberts about a previous conversation where the Claimant had shared his feelings following his acting role as a man who had cancer. He thought that this might explain the Claimant's behaviour. In similar circumstances he would have told Mr Roberts about such a conversation with another member of staff.

58 The Tribunal found and decided that the Respondent's conduct was not to any extent because of race.

Complaint that the Respondent treated the Claimant less favourably when in or about December 2015 Mr Longridge told him not to use the school email system in school time to record incidents

59 The Claimant gave evidence that whenever Mr Longridge wanted to discriminate and enforce a restrictive rule he mentioned that it did not apply to teachers or Junior Technicians. He gave the use of the Respondent's email as an example.

60 The Tribunal accepted Mr Longridge's evidence. It found that he told the Claimant not to use work time or School resources to keep records of incidents for his own purposes. He was concerned that the Claimant was spending an excessive amount of time doing this. He carried with him a red file in which he used to make notes. The way in which he did this caused unrest in the department and was not good for morale.

61 The Tribunal found and decided that the Respondent's conduct was not to any extent because of race.

Complaint that the Respondent treated the Claimant less favourably when in or about March 2016 Mr Longridge refused to give him time off work in order to do work for his own business

62 The Claimant gave evidence that Mr Longridge allowed Ms Stansfield time off "for her private ventures" but did not allow him the same flexibility.

63 The Tribunal accepted Mr Longridge's evidence. It found that the Respondent had an agreement with Ms Stansfield regarding her hours of work and time off so that she could pursue other interests to supplement her income. The Claimant spoke to him about this. He explained that the Claimant could flex his hours using time off in lieu as he had previously done. As the Claimant had not made any specific proposal, it was not possible to assess the impact on the Department's

needs and how this could be addressed. For those reasons he could not formally agree to the Claimant taking time off on a regular and scheduled basis during working hours. The Claimant did not follow the Respondent's formal flexible working policy.

64 The Tribunal found that the Claimant did not make any request which was refused by Mr Longridge. It decided that in those circumstances there were no facts from which it could decide that the Respondent treated him less favourably than it treated or would treat others.

Complaint that the Respondent treated the Claimant less favourably when in or about March 2016 Mr Longridge spoke to him about his use of the school email

65 The Tribunal did not understand that this complaint was in any way separate from the complaint discussed at paragraphs 59 to 61 above.

Complaint that the Respondent treated the Claimant less favourably when in or about 1 July 2016 Mr Longridge continuously used the incident when he was asleep at work

66 The Claimant gave evidence that Mr Longridge selectively reported misconduct. He repeatedly reported the incident when the Claimant was found to be asleep at work. However he failed to report Ms Newton when she revealed to several colleagues that another member of staff was gay.

67 Mr Longridge gave evidence that he did refer back to an incident when the Claimant had been found to have been sleeping at work during his working hours. He wanted to remind him that his conduct was not at all times exemplary. He denied that Ms Newton had committed an act of misconduct.

68 The Tribunal accepted Mr Longridge's evidence. It found and decided that the Claimant had not established that Ms Newton had committed any act of misconduct. Accordingly there were material differences between the Claimant's case and that of Ms Newton. He had not shown that in similar circumstances the Respondent treated him less favourably than it treated her or would treat others.

Complaint that the Respondent treated the Claimant less favourably and harassed him when on or about 1 July 2016 Mr Longridge constantly criticised his performance and compared him with other technicians

69 The Claimant only gave evidence about this complaint in general terms .

70 Mr Longridge denied that he had been more critical of the Claimant's performance or that he unfairly compared him with any other member of staff.

71 The Tribunal accepted Mr Longridge's evidence. It found and decided that there were no facts which showed that the Respondent treated him less favourably than it treated or would treat others.

Complaint that the Respondent treated the Claimant less favourably when Mr Longridge favoured other staff and kept them in the loop

72 The Claimant gave evidence that Mr Longridge gave Ms Stansfield staff and subject times. Other members of staff knew about the move of the Claimant's desk before he was made aware of it.

73 Mr Longridge denied that he favoured any staff member and that he kept them (and not the Claimant) informed about departmental matters. He gave evidence that he gave Ms Stansfield a copy of staff and subject times because she asked for them. He would have given them to the Claimant had he asked. He explained why he had delayed telling the Claimant about the office move. He had not received Mr Cook's endorsement of his proposed plan.

74 The Tribunal accepted Mr Longridge's evidence It found and decided that the Respondent's conduct was not to any extent because of race.

Conclusion

75 Accordingly the Tribunal decided that the discrimination complaints failed.

Employment Judge **Keevash**

Dated: 23 January 2018