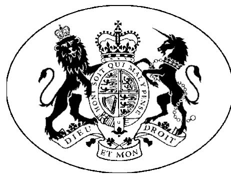

EMPLOYMENT TRIBUNALS

Claimant: Mr Aadam Muhammad

Respondent: St John Ambulance

Heard at: Leicester

On: 31 July 2017
1 & 2 August 2017
19, 20, 21 February 2018

Before: Employment Judge Ahmed

Members: Mrs B Tidd
Ms J Dean

Representation
Claimant: In person
Respondent: Mr A Johnston of Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The Claimant's complaint of direct race discrimination is dismissed.

2. The Respondent's application for costs is adjourned to be heard on a date to be fixed.

REASONS

1. By a claim form presented on 15th December 2016, Mr Muhammad brings a complaint of direct race discrimination. Although he also ticked the box for bringing a complaint of unfair dismissal, Mr Muhammad does not have the qualifying period of service to bring a claim for ordinary unfair dismissal. Mr Muhammad describes himself as of African-Caribbean origin and is of black skin colour. Mr Muhammad was engaged by the Respondent as a Trainer Assessor from 6th June 2016 until the effective date of termination on 14th September 2016. The Claimant resigned from his job before completion of his probationary period and thus his job title with the Respondent remained as 'Trainer Assessor (Under Probation)'.

2. The Claimant has represented himself throughout these proceedings. Unfortunately, and perhaps because of the absence of legal representation in the

drafting of the claim form and witness statements, it was not easy to discern what the specific allegations and issues were. The ET1 is largely a collection of attachments including copies of emails which have at times been cut and pasted into the Grounds of Complaint and what appears to be an amended draft (with tracked changes) of amendments to the initial claim and the further and better particulars. In its final form the document is not easy to follow. The Respondent, who has been legally represented at all times, presented Grounds of Resistance setting out what it considered the issues and allegations doing the best that it could to identify the allegations of race discrimination.

3. At the commencement of this hearing Mr Johnston for the Respondent identified what he believed were the allegations which were either in the Claim Form (ET1) or the Claimant's witness statement. There were instances where allegations in the witness statements did not have any corresponding reference to the ET1 or vice versa. Mr Johnston produced a table of the 'alleged less favourable treatment'. The Claimant agreed this was a complete list of all the allegations he wished to pursue as contained in his ET1 and further and better particulars. Mr Johnston contended that a number of them would require a formal order of amendment as they were not in the original ET1. He opposed any application for amendment.

4. As a consequence the first matter for the tribunal was to determine whether the Claimant should have permission to amend his claim. Having regard to the principles in **Selkent Bus Company v Moore** [1996] IRLR 661, we refused permission to amend for the following reasons:

4.1 The application for amendment was very late;

4.2 The amendments were significant;

4.3 The proposed allegations would now be out of time.

4.4 The Claimant had the benefit of legal advice at the time he presented his claim;

4.5 There would be substantial prejudice to the Respondent in having to defence allegations which it had not prepared for.

As a consequence the only allegations left for determination were allegations 1 - 5, 9, 12 – 14 and 16 – 23 in the agreed table.

5. Mr Muhammad relies upon two comparators, Mrs Maria Allan and Mr Gary Fox. Both of them commenced employment with the Respondent as Trainer Assessors (Under Probation) at the same time as the Claimant.

6. At the commencement of the hearing the Claimant submitted a witness statement from Mrs Allan but she had not been asked to attend and give evidence. After it was explained that a witness statement without oral evidence was likely to carry less weight the Claimant applied for and was granted a witness order against Mrs Allan who gave oral evidence when the case returned after it went part heard. There has never been any application to call Mr Fox.

THE FACTS

7. Mr Muhammad was engaged within the Training Group of the Respondent to undertake Training Delivery. The manager of the relevant training team was Miss Lorna Williams who has been with the Respondent since 1991. Her job at

the time was Delivery Co-ordinator. Within the Claimant's team there were different levels of trainers. New trainers worked under the supervision and guidance of 'Lead Trainers' whose role is to mentor and assist new trainers and trainee trainers. These Lead Trainers included Mr Paul Hodkinson and Miss Stephanie Stronnar. Ms Williams was the Claimant's line manager.

8. All new starters are provided with initial documents and they are advised to use those documents and guidance until they are able to go 'solo', that is the stage where they are almost qualified to undertake training entirely on their own. All Trainer/Assessors under probation are provided with the same standard documents. The aim is that each new Trainer/Assessor will be allocated a Lead Trainer to work with him or her throughout the entire time to assist them during the probation period. Unfortunately, when the Claimant began his employment with the Respondent there were insufficient Lead Trainers to allocate each Trainee.

9. The Respondent operates a traffic light system whereby trainers are graded on progress by the use of red, amber and green colours to signify their position in probation. All Trainers are graded red to begin with until they have satisfactorily completed all the assignments. Although the system is potentially confusing, it is tolerably clear in that there are individual assignments which are also assessed by using the same colour code. When a Trainer has completed all assessments, without any action points and to the required standard, they will be marked as being 'amber'. It is therefore possible for an individual piece of work or assignment to be graded as amber yet retain a red overall score.

10. It was anticipated that Mr Hodkinson would specifically work with the Claimant from the start of his employment to assist him through probation. Unfortunately, for personal reasons and then a period of annual leave, Mr Hodkinson did not begin to supervise the Claimant's work, or to see it first hand at any rate until the middle of August 2016, which was almost two months into the Claimant's employment. Mr Hodkinson saw the Claimant delivering a Re-qualification course and a Refresher course on 16th, 17th, and 18th August 2016.

11. Unfortunately, Mr Hodkinson did not regard the training sessions to have been delivered satisfactorily. He noticed that the Claimant was keen to use his own materials and resources rather than those issued by the Respondent. Mr Hodkinson examined the Claimant's own material and concluded that it was not fit for purpose. There were gaps in the necessary information and some of it seemed irrelevant. In addition, the way in which the resources were used along with the style of the Claimant's delivery meant that parts of the training over-ran with some aspects left undelivered completely. After observing the sessions Mr Hodkinson provided the Claimant with feedback and in particular on the resources which the Claimant was using. Mr Hodkinson was concerned that the resources the Claimant was using were not suitable and that the Claimant appeared to be spending an excessive amount of time in preparing such resources rather than building up his first-aid knowledge. Mr Hodkinson felt the Claimant was 'lecturing', a term which the Claimant was himself using, whereas the aim was not to lecture but to refresh memories and revise skills.

12. Mr Muhammad did not welcome the feedback he received. He strongly disagreed with the issue of his own resources and said that he would continue to do what he had done so far. He felt that the word 'lecturing' had been misinterpreted.

13. Mr Hodkinson was particularly concerned about the Claimant's insistence

on using self-developed resources which had not been approved at either local or national level. Mr Hodkinson received information from other trainers that Mr Muhammad was spending so long in preparing and designing his training resources that his first-aid knowledge was inadequate and not developing at the rate expected. Mr Muhammad could not seemingly answer relevant questions without referring to the first-aid manual. It was not the level of development that was expected after 10 weeks in training.

14. After an annual refresher course on 18th August 2016, Mr Hodkinson fed back to the Claimant that some of the he had used in one session was inappropriate. It was not rude but could give rise to offence. On one occasion in a role play Mr Muhammad had said to a gentleman, who was somewhat on the large side, "are you ready for this big man?".

15. On 19 August 2016, the Claimant went to see Mr Hodkinson to show him the resources and materials he intended to use. Mr Hodkinson suggested that the Claimant might benefit from leaving the resources aside and instead concentrating on building his knowledge. He suggested that one way might be to leave his folder of resources out of the next course. Mr Muhammad told him that "was not going to happen".

16. As a result of his concerns that the Claimant was both ignoring advice and feedback, Mr Hodkinson raised the matter with Miss Stronnar and Ms Williams. He suggested that the Claimant might benefit from a change of Lead Trainer and suggested Miss Stronnar, who agreed to take over the mentoring. Mr Hodkinson had no further dealings with the Claimant thereafter.

17. Mr Muhammad's insistence on using his self-developed resources continued. In a series of email exchanges between Ms Stronnar and the Claimant in the latter part of August 2016, it became clear that Mr Muhammad was not prepared to relent on the subject. In a long and instructive email dated 30 August 2016, Ms Stronnar wrote to the Claimant to say, inter alia:

" I feel that you are massively overthinking this and working yourself up into a state of worry that is entirely unnecessary.

…

In terms of other trainers resources, everyone is subject to the rules, no exceptions….all resources must be approved, if a trainer wishes to create their own resource for themselves it must be authorised by Lorna [Williams] (or Paul/myself). If they want to share that resource with others it must go to the employee forum so if you want to use another trainer's resource you need to know if it has been authorised by the forum…"

…..

Trainers are not permitted to use unauthorised resources full stop."

18. As a consequence of the exchange of emails, and after requesting a meeting, Mr Muhammad was invited to a meeting with on 1st September 2016 with Ms Williams. As it happened on that day he was booked on an Automated External Defibrillators (AED) course. As a consequence of the meeting being fixed for that day, he was unable to attend the course. As it was, Mr Muhammad did not attend the meeting either citing a cold as the reason. In an email he sent on 7th or 8th September, he tendered his notice of resignation to take effect from 14th September 2016. His last day at work is however agreed as 31st August 2016. Within the resignation email the Claimant made references, for the first time, to being discriminated against by reason of race.

19. Following the termination of his employment Mr Muhammad submitted a grievance on 24th October 2016. The grievance was investigated by Ms Sharon Asher. The Claimant was invited to have an investigatory meeting on 21st November 2016. Ms Asher held interviews with Mr Hodkinson, Mr Fox, Miss Stronnar, and Ms Williams. Mr Muhammad was accompanied by a representative from the Racial Equality Centre.

20. The issues identified in the grievance process were:

20.1 That the Claimant was hampered by a lack of resources and that whilst he saw other trainers using their own resources, some of which were being trialled, he was not permitted to use his own resources which he had spent considerable time preparing.

20.2 That the Claimant found himself travelling greater distances for training sessions than other trainers. When he had mistakenly gone to the wrong venue he was then sent to the correct venue whilst other trainers who made the same error were allowed to stay.

20.3 That the Claimant felt segregated from the rest of his team.

21. Ms Asher, who gave evidence at this Tribunal hearing, dismissed all of the allegations in the grievance save in relation to one matter which was left undecided. She found that Mr Muhammad was not stopped from using resources that were already in circulation and that his position was no different to other trainers. She did not find that Mr Muhammad was travelling significantly greater distances than other trainers. She does not appear to have dealt with the issue of the Claimant going to the wrong venue but she did find that the Claimant was not segregated.

22. On 15th December 2016 the Claimant presented his claim to the Tribunal.

The allegations and issues

23. In respect of the allegations which were allowed to proceed following the amendment application (adopting the same numbering of the issues as the agreed list which means that there are no allegation numbered 6 - 8, 10, 11, and 15) these were as follows:

Allegation 1

24. That Mr Hodkinson provided Mrs Allan with unauthorised additional training resources on 8 August 2016.

Allegation 2

25. That Mr Hodkinson made the Claimant feel 'increasingly uncomfortable' within the working environment providing little or no sincere and genuine support.

Allegation 3

26. That Mr Hodkinson and/or the Respondent provided the Claimant less favourable support than was offered to his comparators.

Allegation 4

27. That Mr Hodkinson provided less favourable support to the Claimant than

his comparators in not giving the Claimant the same additional training resource as offered to his comparators.

Allegation 5

28. That the Respondent provided Mr Fox and Mrs Allan with unauthorised additional training resources which used by the majority of other St John Ambulance Trainers/Assessors which was not provided to the Claimant.

Allegation 9

29. That Ms Stronnar and/or the Respondent made the Claimant feel increasingly uncomfortable in the working environment and by not providing similar guidance and support as given to the Claimant's comparators.

Allegation 12

30. That Ms Williams and/or the Respondent provided less support than that offered to the Claimant's comparators, in particular the Respondent did not provide the Claimant with the same additional training resources as his comparators.

Allegation 13

31. That the Respondent made the Claimant feel increasingly uncomfortable in the working environment not providing similar support to his comparators.

Allegation 14

32. That the Respondent deliberately marked the Claimant assessments at lower grades in comparison to Mr Fox and/or Mrs Allan.

Allegation 16

33. That the Respondent applied less favourable practices regarding *travel* when compared to the Claimant's comparators.

Allegation 17

34. That the Respondent applied less favourable practices regarding *training opportunities* when compared to the Claimant's comparators.

Allegation 18

35. That the Respondent applied less favourable practices regarding the use of *additional training resources* when compared to the Claimant's comparators.

Allegation 19

36. That the Respondent made the Claimant become increasingly uncomfortable within the working environment *not addressing his perception of being professionally incompetent* in comparison to his comparators.

Allegation 20

37. That the Respondent and/or Ms Williams made the Claimant feel increasingly uncomfortable within the working environment not providing similar support and guidance as his comparators.

Allegation 21

38. This is a repetition of allegation 19

Allegation 22

39. This is a repetition of allegation 5.

Allegation 23

40. That the Claimant was forced to resign in response to less favourable treatment.

THE LAW

41. Section 13(1) of the Equality Act 2010 ("EA 2010") defines direct discrimination as follows:

> "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."

42. Section 23(1) of EA 2010 states that:

> "On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case."

43. Section 39(2) of EA 2010 states that:

> "An employer (A) must not discriminate against an employee of A's (B)—
>
> (a) as to B's terms of employment;
>
> (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
>
> (c) by dismissing B;
>
> (d) by subjecting B to any other detriment."

44. Section 136 of EA210 states:

> "(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."

45. The definition of direct discrimination in section 13 EA 2010 contains two elements. Firstly, there must be *less favourable treatment*. Secondly the less favourable treatment must be *because* of a protected characteristic (in this case, race).

46. The concept of less favourable treatment imports a comparative exercise in which the treatment of the Claimant must be considered in relation to an actual

or a hypothetical comparator. Less favourable treatment is not the same as unfavourable treatment.

47. Section 23 (1) of EA 2010 makes it clear that in determining less favourable treatment there must be no material difference between the circumstances of the Claimant and the circumstances of the comparator other than of course the difference in the protected characteristic, in this case race.

48. Section 39 EA 2010 sets out the statutory prohibition against discrimination which includes dismissal. In this context dismissal includes a resignation by way of a constructive dismissal.

49. Section 136 EA 2010 deals with the important issue of the burden of proof in discrimination cases. Section 136 contains the so-called 'reversal of the burden of proof' provisions.

50. The proper interpretation of how section 136 EA 2010 should be applied was explained in **Madarassy v Nomura International Plc** [2007] IRLR 246. Although that case predates the EA 2010, there is clear subsequent authority that it sets out the correct test to apply. In **Madarassy**, the Court of Appeal made it clear that the burden of proving the absence of discrimination does not shift to the employer simply on the Claimant establishing a difference in status or a difference in treatment. Such differences only indicate a *possibility* of discrimination. They are not, without more, sufficient material from which a Tribunal *"could conclude"* that on a balance of probabilities the Respondent had committed an unlawful act of discrimination. "*Could conclude*" must mean that a reasonable Tribunal "could properly conclude" from all the evidence before it. That is the first stage of the two stage process set out in section 136 EA 2010.

51. At the second stage of the section 136 EA 2010 process, if the Tribunal is satisfied that the Claimant has proved facts from which an inference of race discrimination can be drawn, the Respondent must then provide an explanation for its treatment of the Claimant. That explanation may mean that the treatment was not because of race. If however, on a balance of probabilities, the Respondent is not able to show that the treatment was not because of race at the second stage then the Claimant must succeed.

52. We recognise that there is an alternative approach to the two stage approach set out in **Madarassy** (identified in **Laing v Manchester City Council** [2006] ICR 1519) which is to move straight to the reason why question, that is to ask why the discriminator acted as he or she did, rather than the two stage process identified in **Madarassy**. Ultimately, it matters not as both approaches have led us to the same end result.

<u>CONCLUSIONS</u>

53. The Claimant relies upon two named comparators, Mrs Allan and Mr Gary Fox. Mrs Allan left the Respondent's employ coincidentally on the same day as the Claimant. It is not suggested that she did so for any reason involving the Claimant. Mr Fox went on to succeed in his probation and became a solo Trainer. He remains with the Respondent.

54. We begin the general observation that there are significant differences between the circumstances of Mrs Allan and that of the Claimant. Whilst Mrs Allan agreed with the Claimant that Mr Hodkinson was not a 'helpful trainer' Mrs Allan accepted under cross-examination that Mr Hodkinson did not in fact provide

her with any additional training resources other than the ones that were supplied to all trainers. The only possible exception is that Mr Hodkinson sent Mrs Allan an email on 8th August 2016 after he had observed Mrs Allan deliver a session in which he provided some feedback (an email Mrs Allan denies receiving) but nevertheless Mrs Allan accepts that she had not been provided with any additional resources other than the ones that the Claimant himself received. She agreed with the Respondent's suggestion that if a colleague had something useful, such material would be exchanged with others subject to consent of the creator of the material. That was not the same as generally circulating for use any materials howsoever and by whomsoever created. She also confirmed that she never turned up for a training session at the wrong location unlike the Claimant.

55. The Tribunal heard no evidence from Mr Fox. He was not called by either party. The Respondent chose not to call him and the Claimant did not apply for a witness order. In the absence of any evidence from Mr Fox it is difficult to establish his circumstances in relation to the Claimant. However, even on the undisputed evidence it is clear that Mr Fox was in very different circumstances to those of the Claimant. By late August he was very close to going solo whereas the Claimant was nowhere near it. There was no question of Mr Fox insisting upon using his own resources whereas. There is nothing to suggest that Mr Fox was not prepared to abide by the Respondent's instructions on the use of one's own resources.

56. In all of the circumstances therefore we are satisfied that the Claimant's circumstances were not the same or materially similar to those of his named comparators. The Claimant's case has not proceeded upon reliance on a hypothetical comparator but if it did there is no reason to think that the Respondent would have treated anyone else who stubbornly insisted on using his own self-developed resources any differently. That finding would dispose of the complaint in its entirety but for the sake of completeness we propose to deal with all the allegations individually:

<u>Allegation 1</u>

57. We have dealt with this to some extent already because the Claimant's own witness and comparator Mrs Allan accepts that she was not provided with any additional training resources other than the email of 8th August 2016 email which was not to all intents and purposes a resource but some helpful feedback. If the Claimant was in the same circumstances there is no doubt he would also have received the same feedback.

<u>Allegation 2</u>

58. The allegation is factually incorrect. We are satisfied that Mr Hodkinson was providing sincere and genuine support. He had no reason to want Mr Muhammad to fail. His concerted efforts to help the Claimant show that he was keen for the Claimant to succeed but when he felt that the Claimant was ignoring advice and hostile to feedback he asked for someone else to take over the Claimant's mentoring.

<u>Allegation 3</u>

59. The situation between the Claimant and his comparators is very different. There is no evidence that either of the Claimant's comparators were attempting to use their own self-developed resources, nor had they been instructed to stop

using their own resources.

Allegation 4

60. This appears to relate to the provision of resources to another trainee and/or probationer, Miss Johnson, and in relation to the provision of resources to Mrs Allan on 8th August 2016. We have already dealt with the second part of that allegation. In relation Miss Johnson, she is neither a named comparator nor is there any evidence that she was provided any greater support than the Claimant.

Allegation 5

61. As we have already indicated Mrs Allan was not provided with any additional training resources on her own evidence, other than the attachment to the email of 8th August which she denies receiving. There is nothing to suggest that Mrs Allan was refused permission to use her own self-prepared resources.

Allegation 9

62. As with Mr Fox, the Claimant has not sought to call Ms Linda Dawson or Miss Stronnar to give evidence. In any event, the Claimant's dealings with Miss Stronnar were relatively brief and the email exchanges were largely as a result of the Claimant failing to follow proper guidance. Neither of the Claimant's comparators failed to follow proper guidance. In terms of a hypothetical comparator we are satisfied that anyone of a different race would have been treated in exactly the same way given the same instruction and guidance.

Allegation 12 and 13

63. These appear to be a repetition of earlier allegations and for the same reasons they are dismissed.

Allegation 14

64. The allegation is that Ms Dawson, who was not called to give evidence, deliberately under-marked the Claimant and/or over marked Mr Fox requires us to make a value judgment on the scoring process. We cannot, in the absence of some evidence, question the genuineness of the marking process and substitute our view for what the Claimant should have received. As for the suggestion that Mr Hodkinson gave Mrs Allan green/amber grades for the course on 8th August 2016, the confusion on the Claimant's part appears to arise from the fact that individual grades and separate assignments are quite distinct from red, green or ambers overall status. At no point did Mrs Allan ever reach amber status *overall*, which was exactly the same position as the Claimant. There was therefore no less favourable treatment.

Allegation 16

65. This relates to an incident when the Claimant was required to attend a training session in Market Harborough. Unfortunately, the Claimant made an error and instead went to the Northampton location. The Claimant lives in Leicester. When he arrived at Northampton he was instructed by Ms Williams to go to Market Harborough. At the time the Claimant appears to have accepted it an inconvenience of his own mistake. However he later discovered that a colleague had made a similar mistake but had not been told to go the correct venue but allowed to stay.

66. The Claimant's original complaint was that Mrs Allan was the person who was allowed to stay but during the hearing of the evidence it became clear that it could not have been Mrs Allan. It is agreed that the date in question was 11th July 2016. In his witness statement Mr Muhammad says:

> "Lorna Williams has stated that M. Allan was the other trainee who was at the Northampton Venue with C. Stronnar on 11 July 2016".

67. Ms Williams agrees that the Claimant was told to go to Market Harborough but denies that the decision was motivated by race. The rationale for her decision was that the Trainer at the Northampton venue was too inexperienced to deal with two under-probation trainees, the Claimant being one of them. She therefore made the decision that it was not feasible for the Claimant to stay and given that Market Harborough would ultimately be on the way home for the Claimant.

68. It is now clear that Mrs Allan was not in fact at Northampton on the day in question. Firstly, the Respondent's records do not have Mrs Allan at Northampton on the day in question. Secondly, Mrs Allan was adamant in her evidence that she has never gone to the wrong venue and given her relatively short period of employment it is likely she would have remembered if she had. Thirdly, at no point does Mr Muhammad say that he ever spoke to Mrs Allan about it or had direct personal knowledge of Mrs Allan being at the wrong venue. Fourthly, Ms Williams gave evidence that attendance at the wrong venue had never happened before and there are only two instances of it. One involved the Claimant and the other involved Mr Fox.

69. We therefore conclude that Mrs Allan is not the appropriate comparator but rather it should be Mr Fox. We can only surmise that Mr Muhammad has misread the relevant part of the grievance investigation where it states:

> "Aadam also highlighted that on 11th July he had turned up at the wrong venue in Northampton and was advised by Lorna [Williams] that he needed to attend his correct venue. This was because Maria Allan (new trainer) was already there training with the trainer, and the trainer can't look after two trainees during the normal training course. The correct venue was about 17 miles away (13 minute journey in rush hour) – the correct venue was closer to Aadam's home venue so better for him. Lorna [Ms Williams] called the trainer to say he'd be a little late".

70. It is possible that Mr Muhammad has taken the second sentence of that passage to mean that those were Miss William's words whereas it is quite possible that that extract (taken from the interview of Ms Williams on 15th December 2016) was in fact Ms Williams merely repeating that the Claimant had said Mrs Allan was also there. In other words, it is quite possible for Miss William's account to be consistent with her witness statements (where she merely states that there was another new starter on the day, without identifying the individual in question), that there was another new starter.

71. Mr Fox had gone to the Rugby venue by mistake on one occasion when he should have gone to Tamworth. In his case Ms Williams decided that he should stay. Her rationale was that Mr Fox was significantly further ahead in his training and close to going solo. There was not another trainee already at the location which Mr Fox was and Mr Fox had actually started running the course by the time the mistake was spotted. Ms Williams decided that it would be better for Mr Fox to stay.

72. In all of the circumstances therefore we are satisfied that the reason for the less favourable treatment was not because of the Claimant's race but rather for

the reasons set out in the preceding paragraph.

Allegation 17

73. The allegation is that the Claimant was required to attend a meeting on 1st September 2016 which resulted in him missing the AED training. It is accepted that the Claimant's comparators did attend the AED training.

74. We are satisfied that whilst the Claimant missing training was less favourable treatment, the reasons (applying the second stage of the **Madarassy** test or the reason why tests) were as follows:

74.1 Mr Muhammad had raised a number of very important matters in his exchanges of emails with Miss Stronnar and these needed to be dealt with urgently.

74.2 Mr Muhammad had sought a personal meeting (albeit not on the 1st September) which needed to be arranged. Ms Williams was therefore simply acceding to the Claimant's request. Neither of the other comparators had asked for a personal meeting.

74.3 The meeting needed was arranged at a time when it could cause least disruption. The Claimant could attend the AED course at a later date.

Allegation 18

75. This is a repetition of previous allegations and for the reasons given earlier is dismissed.

Allegation 19

76. The allegation relates to the Claimant disputing that he lacked relevant first-aid knowledge. We accept that Mr Hodkinson genuinely held that view.

Allegation 20

77. This is allegation that Ms Williams did not deal with issues raised by the Claimant in his emails. In that respect there is no less favourable treatment as neither of the Claimant's comparators engaged in the sort of emails that the Claimant did, either in terms of volume or subject matter. The Claimant's emails were argumentative and took issue with practically every suggestion. The Claimant was not prepared to accept any adverse feedback or guidance. It is extraordinary that any trainee should tell a manager when he is advised to leave his own materials at home that it was "not going to happen".

Allegations 21 and 22

78. These appear to be an amalgamation of previous complaints and for the reasons given earlier are dismissed

Allegation 23

79. There was no breach of any express term that the Claimant can rely on to establish a constructive dismissal. There was no act of race discrimination. We do not find a breach of the implied term of trust and confidence, nor of any other implied term, not least because that is not the Claimant's case and also because the Claimant has failed to show that, objectively speaking, the Respondent had

conducted itself in a manner calculated or likely to destroy trust and confidence

80. There is one other matter which does not appear in the above list. It is an allegation that the Claimant was asked to travel longer distances than his comparators. That allegation lacks any factual basis. The Claimant could have easily asked for details of the mileage undertaken by his comparators but has not done so. There is no evidence that he was asked to do any more travelling than other Trainers of a different race.

81. For the reasons given above the complaints of direct race discrimination are all dismissed.

82. After announcing our decision orally in open Tribunal, the Respondent made an application for costs. The Claimant wishes to seek independent legal advice. We considered it was appropriate in the circumstances to adjourn the costs application to another date. Case Management Orders in relation to the Costs Application are given separately.

____

Employment Judge Ahmed
Date: 6 April 2018

JUDGMENT SENT TO THE PARTIES ON

09 April 2018

....

....
FOR THE TRIBUNAL OFFICE