



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Haroon Ahmed

v

British Airways PLC

Heard at: Watford

On: 12 – 15 June 2018

Before: Employment Judge Henry

Appearances

For the Claimant: In Person

For the Respondent: Ms T Barsam – Counsel

JUDGMENT

The decision of the tribunal is that:

- I. The claimant has not been discriminated against on grounds of race,
- II. The claimant has not been discriminated against on grounds of religion or belief.
- III. The claimant's claims are dismissed

REASONS

1. The claimant by a claim form presented to the tribunal on the 2 August 2017 presents complaints for discrimination on the protected characteristics of race, and religion and belief.
2. The claimant commenced employment with the respondent on the 4 November 2016. The effective date of termination was the 28 June 2017; the claimant then having been employment for 7 months.

Issues

3. The issues were agreed following a preliminary hearing on the 5 October 2017, and set out by an order of the same date as follows:

3.1 Direct race/religion or belief discrimination - section 30 of the Equality Act 2010

3.1.1 The claimant's race is British/Pakistani;

3.1.2 The claimant's religion is Muslim;

3.1.3 The claimant relies upon the following treatment as less favourable treatment amounting to discrimination;

Flight London Heathrow – Cape Town 29 to 31 March 2017;

3.1.4 The allegations made by the cabin crew in Cape Town that;

3.1.4.1 the claimant had, during the outward flight, been reading the Koran under a blanket, and

3.1.4.2 gone missing, and

3.1.4.3 had access to the sleeping area.

3.1.5 As a result, the claimant was removed as a member of the cabin crew on the return flight;

3.1.6 The perpetrators of the less favourable treatment were the cabin crew, Ms Kerr and Ms Musk;

3.1.7 The comparator is a hypothetical comparator. The basis for the claimant saying that the less favourable treatment was because of race, and religion or belief, is that he was alleged to have worn traditional Asian clothes at the hotel in Cape Town;

Flight London Heathrow to Moscow 23 to the 24 May 2017.

3.1.8 The allegations made by Charlotte Bicknell, a member of the cabin crew, that the claimant had, during the flight, made the comment which is set out at paragraph 17 and 18 of the respondent's ET3 Response Form;

3.1.9 The perpetrator of the less favourable treatment was Charlotte Bicknell;

3.1.9 The comparator is a hypothetical comparator;

Dismissal the 28 June 2017

3.1.10 The dismissal was based upon the alleged discriminatory treatment set out above, and the dismissal itself was therefore an act of direct discrimination;

3.1.12 The comparator is a hypothetical comparator;

Evidence

4 The Tribunal heard evidence from the claimant, and from the following witnesses on behalf of the respondent;

Miss Katie Proudlove, In-Flight Business Manager and Probation Review Manager;

Miss Alexandra Burkinshaw, CSM on board trip to Cape Town – reported the claimant’s unusual behaviour to flight crew;

Miss Rachel Kerr Cabin Crew on board trip to Cape Town – reported the claimant’s unusual behaviour to Ms Burkinshaw;

Miss Charlotte Bicknall Cabin Crew on board the trip to Moscow – reported claimant’s comments on Moscow flight;

5 The witnesses evidence in chief was received by written statements upon which they were then cross examined. The Tribunal had before it bundles of documents exhibit R1 and documents R2, R3, R4 and R5. From the evidence heard and the documents seen, the Tribunal finds the following material facts.

The facts

4. The respondent is British Airways PLC, an international airline company. The claimant was employed as a Mixed Fleet Cabin Crew member, based at London Heathrow. The claimant having commenced employment with the respondent on the 4 November 2016, was at all material times working within a period of probation.

5. It is not in dispute that, the claimant being a new member of cabin crew, was slow in carrying out his duties on board the aircraft, however as a new cabin crew member, there was nothing of particular concern with his performance that called into question his being on course to satisfactorily complete his probation, until March 2017, when concerns were raised as to his performance on a flight between London Heathrow and Cape Town, on the 21 and 31 March 2017.

6. Within British Airways, there is an accepted culture known as “crew resource management” being an underlying principle, dictating how British Airways employees are to deal with certain situations and interpret specific behaviour whilst on duty, covering the period from when the member of staff swipes on for duty, to include; cabin crew, flight crew and management, to the point of the member of staff swipes off duty. The requirement is addressed by Ms Proudlove in evidence to the tribunal, that:

“CRM goes beyond an identifiable and measurable policy as it forms the basis of a crew member’s job role and underpins their emotional intelligence, situational awareness and the decisions they make whilst onboard an aircraft.”

7. A list of the CRM criteria can be found at R1 page 456 A to J.
8. It is also not in dispute that, British Airways, through its training seeks to foster a culture of teamwork in order to be prepared should an incident arise, requiring emergency action, where a breakdown in teamwork at any point could jeopardise a response, such that, any issue no matter how seemingly small, is to be flagged up and reported to a senior member of staff.
9. It was further Ms Proudlove’s evidence, which was accepted by the claimant, that:

“For example, if a member of cabin crew witnesses suspicious or unusual behaviour, this should immediately be reported to the onboard senior cabin crew member (SCCM) who will in turn report to the commander.”

10. It is also not in dispute that, the CRM encourages an open culture, and that nothing is, as stated by Ms Proudlove, “silly” to mention/report, and that:

“if something does not feel right, and crew are always encouraged to err on the side of caution. British Airways encourages the escalation of anything suspicious or “out of the ordinary to their manager”.

...

CRM forms the foundation of safety awareness onboard an aircraft and creates an open operating culture at British Airways. Proactivity surrounding safety related matters is paramount to British Airways and crew are encouraged to report anything suspicious/unusual as it may turn into a threat or a risk to security ...”

11. With reference the flight from London Heathrow to Cape Town, colleague crew members, Ms Kerr and Ms Musk, who were operating the flight with the claimant in the World Traveller Cabin, which is situated to the rear of the aircraft, and behind which is the crew rest area, observed certain behaviours of the claimant which caused them concern, and which was raised with the senior crew member on board Ms Burkinshaw, the Customer Services Manager.

12. It is here noted that, the claimant had had no previous contact with any of the crew members on that flight, and neither had any of the crew members flown with one another before, such that to all intents and purposes, this flight was the first encounter each crew member were then having with one another.
13. Ms Kerr raised concerns that after they had completed the first service, she had noticed the claimant sitting down reading a religious book, identified as a religious book on Christianity, with a blanket pulled up to his neck, which Ms Kerr states, was of concern because it gave the impression that the claimant was resting when he should have been actively on duty; a concern which was corroborated by Ms Burkinshaw in evidence to the tribunal that, the claimant although permitted to sit, whilst on duty, was to be alert to what was going on in the aircraft.
14. For completeness, it is here recorded that, whilst reference has been made to the claimant reading a religious book, it has not been advanced before the tribunal that that was a material factor for the claimant alleging considerations of race or religious and belief, where considerations for this concern being raised Ms Kerr.
15. On Ms Kerr reporting her concerns to Ms Burkinshaw, and on the claimant by this time no longer seated reading his book, no further action was taken. The claimant does not dispute the actions as reported by Ms Kerr, save that he does not accept that he had a blanket.
16. Ms Kerr further raised concerns that, during the first break, albeit the claimant was still on duty, she had noticed the claimant entering the bunk area of the aircraft.
17. It is not in dispute that the bunk area is only to be accessed at allocated times, and it is not otherwise to be accessed unless the member of crew is on their rest break, the entering of, outside of the crew members designated rest period, disrupted those crew members then on their rest break and sleeping, and a practice that is not permitted.
18. Ms Kerr reported to Ms Burkinshaw, on Ms Burkinshaw's hourly check of the aircraft, that she had seen the claimant entering the bunk area on a number of occasions, and that on her challenging him as to his entering the bunk area, she stated that he did not respond, for which she states she found this behaviour suspicious as he was unable to answer why he kept entering and re-entering the bunk area. It is Ms Burkinshaw's evidence that, she did not take any action on the report as the claimant had, after being spoken to by Ms Kerr, stopped entering the bunk area and therefore there was no need for her to intervene.
19. The claimant does not challenge his entering the bunk area, but maintains that he had cause, namely; carrying out security checks, having his break and obtaining a blanket for a passenger. This account was given by the claimant when he was subsequently questioned about his actions, as part of

his Probation Review Meeting on the 5 April 2017, to be addressed later herein. It is however noted that, on the claimant being interviewed by the IFCE (Insight Business Manager) on landing from the flight on the 31 March, he stated that he had only gone into the bunk area once, to get a blanket for a passenger. Of relevance for the tribunal's determination, is the fact that the claimant was witnessed entering the bunk area at a time, which was not then appropriate practice.

20. Further matters of concerns were raised and reported to the Customer Service Manager, Ms Burkinshaw, by Ms Musk, about the claimant's performance that, the claimant had been seen to be searching through a dirty trolley and that when questioned by Ms Musk, the claimant had asked "*whether she thought he looked suspicious*" this being a strange reply. The claimant does not dispute being questioned by Ms Musk, but states that it was a cutlery trolley that he was looking through and that when questioned, he had stated "*is there something suspicious?*" On each account, what is material for the tribunal's determination is that, a response from the claimant making reference to suspicious behaviour, was not a response that would have been expected and was then of reasonable concern to Ms Musk.
21. On these matters being raised with Ms Burkinshaw, she reported this to the flight crew as she felt the claimant's behaviour, as a whole, was not quite right, seeking to keep the flight crew informed. On there being discussion as to what should be done, it was suggested that the claimant be stood down. This was objected to by Ms Burkinshaw, as she had not witnessed the behaviour personally; Ms Burkinshaw seeking to witness such behaviour on working with the claimant before taking action.
22. Further, by this flight, approximately one hour before landing, a passenger raised concerns as to the claimant's experience and training, for which a customer comment card was completed and handed to Ms Musk as the passenger disembarked the aircraft.
23. The tribunal further here notes in respect of this flight that, Ms Burkinshaw having received the concerns raised by Ms Kerr, she had, on one of her hourly checks, asked crew members generally how they felt about the flight and whether they had any concerns. It is Ms Burkinshaw's evidence to the tribunal that, the feedback she received was that the claimant was "eccentric, odd and quite strange" this being offered without reference by her to the claimant.
24. On the flight crew being transported to their hotel, on arrival in Cape Town, Ms Burkinshaw further discussed the claimant with the flight crew for the return flight, and whether the claimant should then be stood down. It was the Captain's and Ms Burkinshaw's opinion, that, she should work in the cabin with the claimant and keep an eye on his behaviour. The First Officer however, was not comfortable therewith.
25. For completeness, the tribunal here records that the First Officer reported the concerns to the Asset Protection Team ("**ATP**"), a part of the safety and

security directorate responsible for protecting British Airways people, property, information and brand worldwide, who advised that the claimant was to be stood down for the return flight to London.

26. The claimant was subsequently informed of his being stood down by the Captain, and that he would be travelling back to London as a passenger.
27. On the cabin crew returning to the hotel, this before the claimant had been stood down, the claimant was observed to be keeping himself to himself, going directly to his hotel room on arrival, as opposed to joining the rest of the crew, and on his later joining the crew by the pool area of the hotel, he had seated himself away from the further crew members, and at which time the claimant was seen to be wearing a purple outfit, believed to be traditional Asian clothing.
28. As above stated, the claimant was later than evening informed of his being stood down for the return flight to London, as too was Ms Burkinshaw informed of the claimant being stood down.
29. On Ms Burkinshaw not agreeing with the claimant being stood down, she contacted the Duty Operations Manager and was informed that the matter had been taken out of her hands, and that the claimant was to be stood down.
30. The further crew were not informed of the claimant being stood down until they had passed security at the airport, where the claimant was screened as a passenger. The claimant was thereafter taken out of uniform and provided with alternative attire.
31. It is the claimant's evidence that for the return flight, he was not treated respectfully by some cabin crew members. This however is not accepted by the respondent, who took the claimant through the treatment afforded him by Ms Burkinshaw, for which the claimant accepted in evidence that she was compassionate and caring and had addressed his concerns on the aircraft.
32. Beyond stating these facts, the return flight is not material to the issues for this tribunal's determination. The tribunal says nothing further thereon.
33. On the claimant's return to London Heathrow, he was interviewed by members of the In-Flight Customer Experience Team, during which the claimant raised concern that he found the attitude of the crew on the London Heathrow to Cape Town flight "disgusting" and generally upset with their behaviour towards him; a note of which is at R1 page 56, the claimant stating that he believed he had been discriminated against by Ms Kerr and Ms Musk, because of his ethnicity and that he wished to raise a grievance.
34. The claimant subsequently raised his concern with the Service Safecall, on the 2 April 2017. Safecall is an independent body, engaged by British Airways to handle confidential calls from British Airways employees and ex-

employees, where employees feel unsafe and/or report unprofessional conduct. The report from Safecall is at R1 page 193. The Safecall Record of Complaint is at R1 page 75 to 78, and notes of interviews in respect of that Safecall Report, are at R1 page 149 to 152 and 181 to 184.

35. The claimant also by correspondence on the 31 March, made complaint in the following, which is here set out in detail as it gives an account of the claimant's concerns at the material time, and sufficient to amount to a contemporaneous record:

“Hi Lisa,
hope you're well. I'm sorry I had to send you this e-mail. I also tried yesterday but the hotel had issues with their wi-fi. I wanted to inform of an incident on the flight. I was working position 10 and with two crew members, one which she called Hannah.

Following from our previous conversation I never thought I would become a victim in bullying. Throughout this flight the crew member attitude towards me is so much different to the rest. There were several times where she raised her voice in front of passengers where these passengers spoke to me about her.

I don't why I feel the opposite of a victim (sic) as I feel I am being blamed for this by the crew. I was calm throughout and did exactly what we spoke about instead of being quiet. I believe Hannah did not like this and thought I would be quiet. I'm really upset about this all situation “sic” and now having a position home a passenger I asked them why. Also on two occasions I approached the SCCM Alex to tell her this on the flight but as things got towards the end busy I was getting told off by the crew members. Alex never approached me back to ask why I needed to speak to her but instead decides to position me back. I feel I have been victimised. I am sorry to send you this e-mail, Lisa, but I have never come across as being bullied in this way and customer approaching me telling me the same ...”

36. The In-Flight Business Manager responsible for the claimant, Ms Proudlove, on receiving the above information concerning the flight, determined to hold a Probation Review Meeting. It was Ms Proudlove's evidence to the tribunal that, where any negative incidents occur regarding a member of crew on probation, it is practice that a Probation Review Meeting is held. In respect hereof, Ms Proudlove made enquiries of CSMs who had previously flown with the claimant, for which she received the following from CSM, Ms Maddox:

“As you are aware I recently flew with Haroon Ahmed on my recent NCT 25-27 March 2017. Haroon was a friendly crew member and he was allocated the number 7 position within World Traveller. Despite six of my crew being relatively new online, I was initially impressed by their team and work ethic. But I'm going to be totally honest with my perception of Haroon, as he would tend to go off and do his own thing regarding service delivery, and every time I would complete my walk around, he was either missing or doing what he wanted to do? Which when I asked his fellow crew their feedback, each and every one said he was strange and very hard to work with. I also had the pleasure of working alongside a fellow crew member, who had trained with Haroon and also confirmed the same feelings I had regarding his strange behaviour, which she

said he demonstrated during the training course also. During the flight, on a number of occasions, I asked Haroon, was he okay? How was he finding the role now online and why he kept going off and not working as a team? He would have an answer for everything. Confirming he was okay? He was able to twist the story to support himself (if that makes sense)? I offered my support and advised him to come and talk to me if he was unsure about anything ...”

37. A Probation Review Meeting was duly held with the claimant on the 5 April, notes of which are at R1 page 248 to 256, where all the concerns raised were considered, together with the claimant's previous good report, for which it was decided that the probation period be extended by three months.
38. The claimant does not complain about this process, or the extension of his probation as acts of discrimination, or otherwise, save that the probation meeting had been brought forward one month early, the reasons for which have been addressed supra.
39. For completeness, it is here noted that, on the conclusion of the Safecall investigation and their furnishing their report, Ms Proudlove met with the claimant to discuss his options. The claimant sought mediation between himself and Ms Kerr and Ms Musk. On Ms Kerr and Ms Musk subsequently declining mediation, on the grounds that they did not have any issues with working with the claimant and were happy to fly with him, this was relayed to the claimant. The claimant has not pursued the matter further and no further action has been taken hereon.
40. On the 23 to the 24 May 2017, the claimant was a member of the cabin crew on board a flight from London Heathrow to Moscow, working alongside Miss Bicknall. The claimant and Ms Bicknall were not known to one another before the flight, neither had they flown together. For that flight, the claimant, Ms Bicknall and Ms Stacha-Karpiak, worked in the rear galley of the aircraft.
41. Following the first service onboard the aircraft, the three crew members struck up a conversation discussing their length of service, and how they were enjoying it, during which Ms Bicknall advises that, the claimant stated that he was not enjoying working for British Airways and was thinking of leaving because of what had happened on the Cape Town flight, the claimant informing his colleague crew members that, he had been stood down on the return flight, and how the crew and CSM had had concerns about his behaviour on board, further advising that *“when you look like he does, you get treated differently”* which, whilst the claimant had not stated what he meant thereby, Ms Bicknall had assumed he was referring to his ethnicity, which on Ms Bicknall stating that it was nothing to do with the way a person looks, Ms Bicknall states that the claimant shrugged off her comment. The claimant has not challenged Ms Bicknall as to this account.
42. It is Ms Bicknall's evidence that, she and her colleague crew member found the claimant's account suspicious, and believed that there was more to the event than the claimant had informed them, which they then found nerve racking being on a flight with him.

43. It is further Ms Bicknall's evidence that, the claimant was overly talkative on the flight, discussing issues of his family life and personal life, to include his having been divorced after being in an arranged marriage and of his wife only marrying him to get into the UK, and that he had lost two news agencies in the divorce settlement. The claimant again has not challenged this account.
44. The tribunal pauses here, and records an incident regarding a trolley on board the flight, for which the claimant states Ms Bicknall had caused a collision with a passenger's knee, but was reluctant to complete an Incident Form, for which she, Ms Bicknall, refused to accept responsibility and took umbrage at his completing an Incident Form in accordance with procedure.
45. It is Ms Bicknall's evidence that, the control of the trolley had been had by the claimant, and it was due to him that the trolley had hit the passenger, but despite this, the incident had not been a matter of concern to warrant an incident report.
46. It is further the claimant's evidence to the tribunal that, Ms Bicknall's behaviour was quite odd on her mentioning issues he found concerning as to how she disliked her job, and that she *"doesn't have much care on board,"* further stating that, she had mentioned sensitive topics and made racial comments towards him in front of passengers, such as *"Slough is full of Pakistanis and Muslims, I hate it"* the claimant further stating that, he had tried to walk away as he was angry and upset.
47. The tribunal here notes that, the claimant did not raise this as an incident and did not raise it with the CSM on board, neither had he raised this matter in subsequent interviews concerning the flight, the only reference hereto is before this tribunal. The tribunal does not find this to be a true account of events.
48. On the return flight from Moscow, there was little interaction between the claimant and Ms Bicknall until approximately twenty minutes before landing, when Ms Bicknall mentioned the events of the Manchester Bombing that had occurred on the 22 May, whilst in the galley area to both the claimant and Ms Stacha-Karpiak, as to how horrible the attack was.
49. It is accepted by the claimant that, of the statement Ms Bicknall states he had made, in reply to her question, this would amount to an act of gross misconduct.
50. Ms Bicknall further states that, on her ending the conversation with the claimant that she found his comments extremely offensive. She states that as the claimant walked past her he muttered under his breath, words that, *"one day I would grow up and get an answer to my questions"*.
51. On Ms Bicknall thereon raising the matter with her colleague Ms Stacha-Karpiak, she states that Ms Stacha-Karpiak also expressed concern and apprehension about the claimant.

52. It is Ms Bicknall's evidence that, at that point in the flight, the Captain announced the ten minutes to landing call, for which they then secured the cabin and took their seats for landing, which did not then offer her an opportunity to further address the issue.
53. Once the crew had disembarked the aircraft and had passed through the terminal, and on the bus to the staff car park, Ms Bicknall then relayed the comments of the claimant to the CSM, Ms Grey and the Captain, asking for their advice. She was advised to raise the issue with her CSM, which Ms Bicknall duly did, to her CSM, Ms Barnes.
54. The tribunal here records that, the claimant denies that he had any conversation regarding the Manchester Bombings with Ms Bicknall on board the aircraft.
55. Ms Barnes relayed the concerns to the Duty Operations Manager who referred the matter onto the Asset Protection Group. The Senior Asset Protection Team Manager and Duty Operations Manager determined that the claimant should be stood down from further flying, whilst the matter was investigated, which was communicated to the claimant on the 27 May. The matter was duly investigated and a report furnished by the APT Team, on the 6 June, to Ms Proudlove for her consideration, a copy of which is at R1 page 285.
56. On the 12 June, the claimant was invited to a Probation Review Meeting for the 14 June, being advised that:
- “A report has been received in which it suggests you made serious and inappropriate comments on board flight BA236 on the 24 May 2017, which may have severe safety and security implications. These allegations are serious and may constitute gross misconduct. At this meeting, I will consider whether to continue your employment with British Airways.”
57. The claimant was further advised of his right to be accompanied at the meeting by a companion.
58. The tribunal pauses here, as the claimant has raised issue that the correct procedure was not then followed, in that he was entitled to be disciplined pursuant to the respondent's disciplinary procedure, 5.1.
59. The tribunal addresses this briefly, in that, pursuant to the managing colleagues in probation procedures document R4, it provides the following:
- “Colleagues who join Mixed Fleet must complete a successful probation period. This is specified in their contract of employment ... The first six months of your employment with the company under this contract of employment is probationary during which time your employment will be under review. This period may be extended by the company at its sole discretion. At the end of your probationary period, your employment will either be confirmed or terminated. You and the

company may give one week's notice to terminate your employment during or at the end of the probationary period.

Managing colleagues through probation still involves management of poor performance and conduct issues as you would any colleague, but the approach you will take is slightly different. Our Colleague Guide section 5.1 Conduct and Poor Performance does not apply. For example, you will not need to conduct a full disciplinary investigation for a conduct issue and you will not need to follow the Managing Poor Performance Process for managing capability issues.”

60. And by way of example of the operation of the procedures, it provides:

“I have been made aware of a colleague posting some inappropriate comments on Facebook which may constitute gross misconduct. Do I suspend them under the Managing Conduct Policy? No, there is no requirement to conduct an investigation under the Managing Conduct Section of Our Colleague Guide whilst the colleague is in probation. You need to invite them to a Probation Review Meeting. They have the right to be accompanied to the meeting. You need to be clear that you will consider their continued employment at this meeting. This needs to be detailed in the invite letter. The likely outcome for gross misconduct would be termination of the contract within the probation period ...”

61. The tribunal finds that Ms Proudlove in holding a Probation Review Meeting, had used the correct procedure.
62. The Probation Review Meeting was in the course of events held on the 19 June. The claimant was represented by his union; notes of which are at R1 page 323.
63. It is here noted that Ms Proudlove after having the claimant give his account of events on the London Heathrow to Moscow flight, on the claimant giving little account of any conversation with Ms Bicknall, focusing instead on conversations with Ms Stacha-Karpiak, Ms Proudlove specifically addressed issues raised by Ms Bicknall as to discussions she states she had had with the claimant, as to his career and private life. The claimant here denied having such discussions with Ms Bicknall. Ms Proudlove here notes that, Ms Bicknall could only have obtained such details about the claimant from the claimant.
64. On Ms Proudlove then asking the claimant about discussions being had of the Manchester Bombings, it was the claimant's account that no such discussions were had.
65. The claimant hereon raised issue that he was being racially profiled, and questioned whether there was a possibility of collusion between the crew on the Cape Town flight, and the crew of the Moscow flight, for which Ms Proudlove undertook to investigate, duly making enquiries of the crew and consulting the iFlight Rostering System, by which she was satisfied that there was no relationship between the individual crew members and that they had had no relationship in respect of flights. Ms Proudlove concluded that there was no evidence of collusion.

66. It was Ms Proudlove's findings in respect of the allegations against the claimant that, the claimant's conduct on the Moscow flight amounted to gross misconduct, and determined that the claimant's employment be terminated; her letter to the claimant, concluding:

“Having conducted a full review and having heard what you have to say, I believe that you did make those statements. I have serious concerns that these comments go far beyond an expression of view and have turned into a genuine security issue. These comments could have been in earshot of our passengers or other members of staff and if heard, would have caused deep distress. There was a difference between expressing a view about how these things occur (for example, through radicalisation) and a statement ...[of]...activity that has resulted in tragic events across the world. This constitutes gross misconduct and furthermore, is a comment that is at complete odds with everything that British Airways stands for. I understand that Equality Act issues have been highlighted throughout this process in that you have felt singled out because of your race and/or religion. By way of reassurance, my finding would be the same regardless of an individual's race and religion and that has not influenced my decision or the way that I have handled this process in anyway. As an airline, safety and security of our customers, colleagues and brand is of paramount importance. My concerns are so serious that I will not allow you to return to your contractual duties as cabin crew.

Therefore, after careful consideration, due to the serious nature or the incident and implications on safety and security, I have decided that your contract of employment with British Airways should be terminated on the grounds of gross misconduct.”

67. For completeness, all it is here recorded that the claimant subsequent to his dismissal, raised a complaint with safecall, a copy of which is at R1 page 341. The safecall report was closed on 20 July 2017, finding no evidence to support the claimant's claims.
68. The claimant presented his complaint to the tribunal on 2 August 2017

Submissions

69. The claimant presented written submissions, the respondent presented written submissions which were augmented by all oral presentation. The tribunal has given careful consideration to the party's submissions

The Law

70. On a claim of unlawful direct discrimination, it needs to be established that, there was less favourable treatment and that the reason or an effective reason was one of the protected characteristics. Sometimes a claimant is able to point to someone else in the respondent's employment who has been treated differently in the same circumstances. Indeed, it is a requirement that a comparator must be on the basis of someone else who is in the same or not materially different circumstances.

71. Where there is no person who actually fulfils the requirement of the statutory comparator, it is necessary to construct an imaginary or hypothetical comparator, a non-existent person who, had they existed, and had the same circumstances as the claimant, would have been treated more favourably.
72. It then becomes incumbent on the claimant to show that such an imaginary person would have been treated less favourably. At this point the test of comparison starts to merge with the test of motivation. The answer to the question "*what is there to show that the hypothetical comparator would have been treated differently?*" becomes almost the same as the answer to the question "*what was the reason for the treatment?*" Indeed, it is sometimes easier to go straight to the question of what was the motivation for the treatment rather than take it in the logical order, because if the answer to the question of motivation is answered in favour of the claimant, it becomes relatively easy to find that there has been different treatment.
73. Proving unlawful discrimination is a difficult task for a claimant. No employer will admit to it and indeed discrimination is often operating at an unconscious level. S.136 of the Equality Act assists the claimant in this regard. Where the tribunal finds facts, from which the tribunal could decide in the absence of any other explanation that a respondent had unlawfully discriminated, the tribunal must hold that the contravention of the Act occurred unless the respondent shows that it did not contravene the Act. It is for the claimant to show facts from which the tribunal might infer unlawful discrimination. Those facts may emerge either from the claimant's own evidence or from the evidence of the respondent, and is for the tribunal to infer from a consideration of all the facts in the case. If this is not established, the claim fails at that point. If there are such facts, the onus is on the respondent to show that the protected characteristic was not part of their motivation.
74. The claimant may not be able to point to a comparator whose circumstances are not materially different from his own, the statutory comparator, but may point to cases where there are similarities, and if he shows differential treatment, it may help him move the burden onto the respondent.
75. Normally speaking, the fact that the respondent has acted unreasonably in a particular regard, does not in itself, amount to facts that would raise the inference of unlawful discrimination. It is necessary to remark further that it is simply not enough to show that the claimant was treated in a particular way, and that he is of a particular protected characteristic. There are two stages to the test, not only must there be shown less favourable treatment, but it must be shown that the treatment was because of that protected characteristic, or that it can be so implied, and upon which the burden, as above stated, shifts to the respondent.

Conclusions

76. The Cape Town Flight – Reading the Koran under a blanket

- 76.1. The tribunal addresses this issue briefly, in that, it was not presented to the tribunal that Ms Kerr, the individual against whom the claimant complains of discrimination, made reference to the book being read by the claimant as the Koran, such that there is no substance to the claimant's claim in this respect.
- 76.2. Despite this, the issue of concern being raised, was not that of the nature of the book, but that the claimant reading a book under cover of the blanket was then not alert to what was happening in the cabin, and that any passenger observing the claimant in this state, would have believed him not then to be on duty; the reporting of which was in accordance with CRM protocol, and by which the tribunal can find nothing to suggest, or from which the tribunal could conclude, that consideration of race, or otherwise religion and belief, were then at play.

77. The claimant had gone missing

- 77.1. The tribunal has received no evidence of reports being made of the claimant going missing during the Cape Town flight. The tribunal finds this claim not substantiated.

78. The claimant accessing the sleeping area

- 78.1. It is not in dispute that the claimant had entered the bunk area at times when, in accordance with protocol, entry should not have been made, and it was in respect thereof that the claimant's conduct was reported. The fact that the claimant may have had just reason for entering the bunk area as he asserts, does not detract from the appearance, which was then outside of appropriate procedure, which was conduct then warranting it being reported; a fact which is accepted by the claimant as warranting its report, save that in his instance, he states he had just cause, which would not have been known to Ms Kerr at the material time.
- 78.2. In these circumstances, the tribunal finds no evidence of considerations of race, or otherwise religion or belief, being a factor in Ms Kerr reporting the claimant's conduct when she did, being in accordance with CRM protocol.

79. The claimant removed from the return flight

- 79.1. The tribunal addresses this issue as a separate issue going to discrimination, the tribunal having found no evidence as above

stated as to the reporting of the incident, being on the grounds of race or otherwise religion or belief.

- 79.2. The tribunal addresses this point briefly, in that, the decision to stand down the claimant on the return flight was not a decision of the cabin crew, but that of the APT in consultation with the First Officer, persons against whom the claimant does not allege discrimination.
- 79.3. In these circumstances, the tribunal does not find there to have been discrimination in respect of the claimant's return flight, on being stood down.

80. The claimant wearing traditional attire

- 80.1. The tribunal has been unable to find any nexus between the claimant's traditional attire, witnessed at the hotel on the Cape Town flight stopover, and any motivation of the cabin crew in respect of the acts of discrimination complained of on the London Heathrow/Cape Town flight; the issues complained of being, acts arising before the claimant was seen in his traditional attire.

81. Allegations of Ms Bicknall as a members of the cabin crew on the London to Moscow flight

- 81.1. This issue turns on who was to be believed as to the conversation being had. On the evidence before the tribunal, and as found by Ms Proudlove, there was significant evidence presented by Ms Bicknall to substantiate the conversation being had with the claimant during the flight, where the claimant denies such conversations taking place, such that, on a balance of probabilities, the tribunal finds that the account of discussions had on the flight between the claimant and Ms Bicknall, were as stated by Ms Bicknall.
- 81.2. The tribunal is particularly of this view, being in circumstances where there is no evidence that Ms Bicknall was motivated by considerations of race or otherwise religion and belief, the tribunal specifically here noting that, the claimant in evidence to the tribunal accounts for Ms Bicknall's fabricating this conversation, on account of the incident with the trolley hitting the passenger's knee, for which the claimant alleges Ms Bicknall took umbrage, and not being for reasons of race or religion or belief.
- 81.3. The tribunal finds no evidence to substantiate the claimant's claim, or evidence from which the tribunal could conclude that Ms Bicknall was motivated by considerations of race, or religion or belief, in respect of the conversations had regarding the Manchester Bombing.

82. Dismissal

82.1. On the claimant's submission being that the decision to dismiss was predicated on discriminatory allegations, on the tribunal's findings as above stated, that considerations of race, or otherwise religion or belief, had not been factors in the raising of concerns against the claimant, the tribunal finds no basis on which to support the claimant's contention.

82.2. The tribunal finds no substance to the claimant's claim in this respect.

83. The tribunal finds that the claimant has not been discriminated against on grounds of race, or religion or belief.

84. The claimant's claims are accordingly dismissed.

Employment Judge Henry

Date: 4 / 7 / 2018

Sent to the parties on:

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For the Tribunal Office