RM

EMPLOYMENT TRIBUNALS

Claimant: **Mr M Miah**

Respondent: **Stanstead Airport Limited**

Heard at: **East London Hearing Centre**

On: **13, 14 and 15 February 2019**

Before: **Employment Judge Ferguson**
Members: **Mr G Tomey**
Ms J Owen

Representation

Claimant: Mr H Allison (Solicitor)

Respondent: Mr A Moore (Solicitor)

JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

1. **The Claimant's complaint of unfair dismissal fails and is dismissed.**

2. **The Claimant's complaint of discrimination on grounds of race and/or religion fails and is dismissed.**

REASONS

INTRODUCTION

1. By a claim form presented on 30 April 2018, following a period of early conciliation from 8 March to 3 April 2018 the Claimant brought complaints of unfair dismissal and discrimination on grounds of race and religion. The Respondent defended the claims. At a Preliminary Hearing on 23 July 2018 the parties presented an agreed list of issues as follows:

Unfair dismissal

1.1 What was the Respondent's reason for dismissal? The Respondent contends the reason was conduct.

1.2 Was the Respondent's reason for dismissal a potentially fair reason for dismissal?

1.3 Did the Respondent follow a fair procedure in dismissing the Claimant?

1.4 Was dismissal reasonable in all the circumstances of the case?

1.5 If it is found that the dismissal was unfair, should any compensation be reduced in accordance with Polkey and/or contributory fault?

Direct discrimination

1.6 Did the Respondent treat the Claimant less favourably on the grounds of his race and/or religion by dismissing the Claimant? Namely, did the Claimant's race and/or religion influence the Respondent's decision when determining whether or not the Claimant was guilty of the conduct he had been alleged to have committed?

2. In a Case Management Preliminary Hearing Summary sent to the parties on 16 August 2018, Employment Judge Prichard noted that the Claimant was arguing that the evidence against him in the disciplinary proceedings was "tainted by discrimination". Employment Judge Prichard said that this was likely to be relevant to the unfair dismissal complaint, i.e. did the decision makers accept evidence that perhaps they should not have accepted because it was tainted by discrimination. As to the discrimination complaints, he noted that the list of issues identified only the dismissal decision as an act of discrimination and that no freestanding substantive allegations of racism were made against colleagues.

3. Both parties confirmed agreement with the list of issues at the start of the Final Hearing.

4. We heard evidence from the Claimant. On behalf of the Respondent we heard evidence from Patricia Hillier, Samantha Johnson and Elizabeth Austin.

FACTS

5. The Claimant commenced employment on 11 June 2006 with British Airports Authorities (BAA) as customer service assistant at Stansted airport. The Claimant is of Asian ethnicity and is a practising Muslim. The airport was taken over by Manchester Airport Group (MAG) in 2014 and the Claimant's employment transferred to the Respondent, which is part of MAG. By then the Claimant was a customer service officer. After the transfer his job title changed to customer experience ambassador.

6. In October 2017 managers at the Respondent became aware of an allegation that the Claimant had made inappropriate comments to colleagues in the "rest room". We did not hear any direct evidence about how the matter was first brought to management

attention. Ms Hillier, the disciplinary officer, said that her understanding was that the incident was reported to the security team, who informed the police, and that Teisha Lock, a training manager, conducted an investigation. Ms Johnson, the first appeal officer, said that her understanding was that a colleague of the Claimant's, Wayne Hollis, had reported the comments to the police. Special branch had become involved and the police and/or special branch raised the matter with Darren Bartram, Head of Customer Services.

7. On 16 October 2017 Jatinder Panesar, the Claimant's line manager, telephoned the Claimant while he was on annual leave to tell him that he was suspended. The Claimant says he was not told the reason for the suspension. The following day Kate Benyon, HR Business Advisor, wrote to the Claimant to confirm his suspension. The reason given was the following allegation:

> "That recently (date to be confirmed) you are alleged to have made comments of a threatening and offensive nature and a breach of expected standards of professionalism."

8. Around the same time three of the Claimant's colleagues completed "customer experience incident reports". They are set out in full below.

> **Sophia Bauer**
>
> At approximately 10am myself, Wayne Hollis, Amy Irving, and Mohammed Miah were in the rest room talking about a group bonding exercise where Wayne suggested that as a group we should go paint balling. At this point Mo scoffed and said 'as long as we use a real gun'. He then claimed that he has an AK47 at home as do 'all other Asians' and that one day soon we will all know about it when they turn up to shoot up the airport. At this point the conversation was swiftly changed.
>
> This whole exchange made me feel very uncomfortable and worried so I didn't say anything and made my way upstairs to my point.
>
> **Wayne Hollis**
>
> On or about Tue 3rd of October I was in the Bay 8 crew room using the computer to complete a report. Whilst doing this I was engaged in a conversation with Amy Irving and Sophia Bauer about sorting out a team building event, namely paint balling. Sometime during the chat Mo Miah entered the room and joined the conversation. He began talking about using AK47's which I know to be a Russian made assault rifle. I told him that I didn't think he would know one end of a gun to another, to which he replied that he had one at home and knew how to use it and that one day we would know it when the Asians turn up at the airport and start using them. At that time I took little notice of these comments as he has made remarks like this before. However it did seem to upset the girls in the room. I did mention this to the uniformed police officers whom I saw in the crew room the following day, but they seemed uninterested.
>
> **Amy Irving**
>
> We were in the staffroom waiting to be briefed before shift and Conor Doyle was discussing organising a paintballing trip. The conversation moved on to guns and

> Wayne Hollis's days in the RAF. Wayne was talking about the different guns he had shot when Mo turned around and told the people that were listening that he had a type of gun at home. I think he said an AK47, but I can't be sure as I don't know anything about guns. We all kind of ignored the comment until he said "us Muslims know how to shoot a gun properly" insinuating the RAF don't as this was the topic in conversation. At this point I got up and walked away as on numerous occasions in the past Mo has made similar comments to this. It made me feel extremely uncomfortable which is why I left at this stage. Other people involved in the conversation included Wayne Hollis, Sophia Bauer, Conor Doyle and possibly other team members of team A.

9. On 18 October Ms Benyon also asked Jatinder Panesar to obtain an incident report from Conor Doyle. Mr Panesar responded as follows:

> "Hi Kate,
>
> I have done some investigation, the only time Sophia, Mo, Amy and Wayne could be in together on shift is between 1500-1800 on the 5th.
>
> Conor was in on a night shift from 1800 that day, when the others were due home.
>
> He does not recall anything and states he did not have a conversation with, nor was he present during a conversation with Mo."

10. A security incident report was created on 19 October 2017 by Tom Morement, Airport Security Advisor. None of the Respondent's witnesses was able to explain how this document came about, but it records that Amy Irving had reported a concern to Mr Morement that she had been asked by Amandeep Sogi, a customer experience manager, to change the statement she had written about the Claimant because her original statement contained irrelevant information and was too personal. It also records that Mr Morement has had multiple conversations from 17 March 2017 to present, including with police and special branch, about the Claimant and possible ISS related material, including pictures, videos, statements and recordings. He says he was also advised that the Claimant had

> "…made a direct threat to the airport on the 03rd of October in which he claimed he would shoot up the airport with an AK47 and that the Muslims would soon show us how it isdone. As a result of this threat the DFT was informed along with the police and a PTI done this came back with a score of Amber. The original source of the information wishes to remain anonymous however other members of staff have since come forward to back up there claim."

11. The Claimant attended an investigation meeting on 8 November conducted by Teisha Lock, supported by Kate Benyon. The Claimant was accompanied by a union representative. Teisha Lock informed the Claimant that allegations had been made about a conversation with colleagues in the rest room on 3 October. The three incident reports were summarised. The Claimant was not told the identity of the witnesses. He denied being party to any conversation about paintballing or guns. He specifically denied saying anything about an AK47 or any of the comments attributed to him in the reports. When asked why colleagues would say this, he said maybe it was some sort of discrimination. "People make comments about my religion". He mentioned an occasion when someone

wrote “terrorist” on a note with an arrow pointed to his seat in the training room. He said he had reported this to BAA managers who did not work there anymore. He was asked if such comments still continue and he mentioned someone making a comment that he had a cruel religion.

12. The Claimant mentioned there was a WhatsApp group for the team and wanted to show Ms Lock “inspirational messages” he would send every Monday. The Claimant said he had a good working relationship with the team. He said he had deleted the group because of his suspension but that Rebecca Dow was in the group so may have the details.

13. The Claimant said that the only person who would make comments about guns in the rest room would be Wayne Hollis. He suggested that perhaps Mr Hollis had mentioned it and others misunderstood and thought it was him. The Claimant also said that Mr Hollis had previously said something that made him cry. The Claimant had raised this with a manager who was not working there anymore.

14. Teisha Lock interviewed each of the three witnesses on 27 and 28 November. Wayne Hollis said that the incident took place on “3rd or the week before”. He maintained his account of what the Claimant had said. When asked if anyone else overheard he said “Definitely one other staff member there not from MAG – extra staff. Eg cleaners.”

15. Sophia Bauer said that the incident was on 3rd or “thereabouts”. She also maintained the account she had given in the incident report. Amy Irving confirmed the Claimant had made the comments about the AK47. She also said that the Claimant says “atrocious things” and mentioned a video he had sent her of a US soldier torturing someone in Syria, and a comment on the team WhatsApp group saying that the London Bridge attack was a hoax by the government.

16. Rebecca Dow was interviewed and asked about WhatsApp group. She confirmed there were 2 groups. Ms Lock asked whether the Claimant had ever mentioned bullying or discrimination. She said no.

17. On 6 December the Claimant was invited to a disciplinary hearing. He was charged with alleged gross misconduct as follows:

> “That you are alleged to have made comments of a threatening and offensive nature and a breach of expected standards of professionalism”

18. Enclosed with the letter were anonymised copies of the incident reports and interview minutes. It is not in dispute that the Claimant was not given a copy of the email exchange between Kate Benyon and Jatinder Panesar about Conor Doyle or the security incident report.

19. The hearing took place on 18 December, conducted by Patricia Hillier, supported by Kate Benyon. The Claimant was accompanied by a union representative and a note-taker for the union.

20. The Claimant maintained that he had not made the alleged comments. He was asked about the allegation in Amy’s interview that he had posted inappropriate material on a WhatsApp group. He denied it. He said there were a small handful of people who do

not like him. He said he was not saying that they were out to get him, but it was "some sort of discrimination". He mentioned that recently when organising an event someone had put in a comment about Osama Bin Laden. He said he had raised this verbally at the time.

21. Ms Hillier confirmed in her evidence that she had two printouts of screen shots from WhatsApp chats. She said these were not shown to the Claimant and she did not take them into account in reaching her decision. She said she only raised the issue because she was "trying to understand the credibility in the answers I was getting".

22. She also could not recall being given the email exchange about Conor Doyle – she was not aware that he had been spoken to – or the security incident report.

23. The union representative questioned why there were only three statements and said she was worried about the three people conspiring.

24. The Claimant said he wanted to get statements of support from colleagues but was not able to contact them.

25. The minutes record the Claimant saying the following:

> "Not 1st time we discussed paintballing event. I do most of the organising of events. Conversation where people were talking about guns. What is concerning me is people saying I claimed I had AK47 and I would come to airport and use it. Totally false. Security is part of my role – my job as well to keep the airport safe. After all these years it would be silly to make a comment like that. If really felt something like that then would keep it inside."

26. In his oral evidence the Claimant said he never acknowledged in the disciplinary hearing that there had been a discussion of paintballing or conversation about guns. He said the minutes were not accurate. We find that the Claimant did make the comments recorded in the minutes. He had never alleged that minutes were not accurate until his oral evidence to the Tribunal. We also found his evidence to be lacking in credibility in other respects. He was very unclear and gave inconsistent evidence about when he had raised any previous concerns about allegedly discriminatory treatment.

27. The meeting was adjourned. When it resumed Ms Hillier informed the Claimant of her conclusion that the Claimant was guilty of the gross misconduct alleged. She said in her evidence to the Tribunal that she concluded on balance it was more likely than not that the Claimant had made the comment about having an AK47 and using it at the airport. She considered that the Claimant had admitted a conversation took place about guns. She considered the Claimant's allegation of collusion and took the view that the statements were consistent but not so consistent as to suggest collusion. She also considered there was no evidence to support the contention that the witnesses had reason to fabricate the allegation. Her view was that because of operating in a high-risk industry, where security is paramount, dismissal for gross misconduct was the appropriate sanction.

28. The Claimant's dismissal was confirmed in letter dated 2 January 2018.

29. The Claimant appealed on 11 January in the following terms:

"Hi Kate, I hope your well and had a good Christmas and new year.

I would like to take this opportunity to say I would like to appeal regard my disciplinary outcome which was held on the 18th of December 2017.

I would to appeal on the grounds of:

1. Believe the sentence is harsh.
2. Investigation not well managed and balanced.
3. Believe decision is discriminative.
4. Complaint person recently been suspended for Islamophobia but still employed by company.
5. No account taken of mitigating circumstances.
6. Work history.

Please update me regards this appeal and hope to hear from you soon."

30. The hearing took place on 24 January 2018 conducted by Samantha Johnson, Head of Security. The Claimant's representative raised the fact that one of the people who made the complaint had been disciplined for racist comments in the past. The Claimant was asked how he knew who had made the statements and he said colleagues had called to tell him things. He referred to two incidents involving Mr Hollis – one where he had written Osama Bin Laden and another where he had called the Claimant "bongo". He was asked if he had ever brought this up before and said no, not since MAG took over. Samantha Johnson did not confirm that Mr Hollis was one of the witnesses, but did not deny it.

31. The Claimant also mentioned three people who he claimed had tried to give statements and not been allowed to.

32. The union representative said subconscious bias had to be considered. He believed that if it was a white person the Respondent would not have responded in this way.

33. The representative also queried the fact that the witnesses were anonymous. Susan Sackey of HR said this was because of the "nature of the subject and the workplace interactions may cause people to be uncomfortable. Witnesses can ask for anonymity hence the redactions".

34. After the meeting Ms Johnson interviewed the three individuals mentioned by the Claimant. Each said that they knew nothing of the incident for which the Claimant was dismissed.

35. It is not in dispute that Wayne Hollis was given a final written warning in 2016 for making "an abusive comment to a colleague in the tea room that could be perceived as racist". The comment, which Mr Hollis admitted, was made to a Muslim colleague and was along the lines of: "you should go back to Cyprus where you came from".

36. Ms Johnson dismissed the Claimant's appeal by letter dated 8 March 2018 [p.101]. Under the ground of appeal "Complainant Still Employed Despite Suspension for Islamaphobia", the letter notes that the Claimant had said one of the people who provided a witness statement, whom he named as Wayne Hollis, had previously acted in a racist manner and yet he was still employed by the company. Ms Johnson said she had looked into this and was satisfied that the outcome of that case was appropriate and was "distinctly different" from the Claimant's case.

37. Samantha Johnson's oral evidence was that she also considered whether Wayne Hollis's evidence was motivated by the Claimant's religion, but decided there was nothing to corroborate that assertion. She accepted that part of her decision-making was not reflected in the letter. Ms Johnson also said that, although she had not mentioned it specifically in the letter either, she considered the fact that there were time differences in the statements and concluded that it was not surprising if the witnesses could not remember the precise time or date, particularly given that they worked shifts.

38. The Respondent's disciplinary policy provides for a 2nd appeal by paper only. The Claimant appealed in the following terms:

> "Hi Susan,
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> I would like to appeal regarding the decision the company had taken with my dismissal case. I'm appealing on the grounds stated:
>
> 1. Investigations not well managed again.
> 2. contradiction in statements
> 3. mitigation totally ignored
> 4. key issues not answered from last meeting
> 5. no explanations given why I am a threat to airport.
> 6. Bias approach towards investigation
> 7. Prejudice outcome
> 8. Patronising response
>
> Can you please keep Mark (Union rep) updated with any correspondence."

39. The appeal was dealt with by Elizabeth Austin, the HR Director. She dismissed the appeal by letter dated 19 April. On issue of anonymity, the letter said:

> "I appreciate that there were a number of redactions made to some of the statements: this was because some of the witnesses requested to be anonymous. The only matters redacted were identifying data. I am satisfied, however, having regard to the information that was supplied to you, that you had sufficient information to enable you to properly understand the allegations and evidence that you were being called to answer. I also noted that you were, notwithstanding that redaction, able to identify those individuals by virtue of their testimony."

The letter later said:

> "Even if you are to be believed and that you made such comments in jest, for someone in that role – with your experience and service – was simply not acceptable conduct."

40. Ms Austin acknowledged in cross-examination that that part of the letter was wrong, in that the Claimant had not ever admitted to making the comments or said that he had done so in jest. She said she meant that even if he had made such comments in jest it was still not acceptable conduct.

THE LAW

41. Pursuant to section 98 of the Employment Rights Act 1996 it is for the employer to show the reason for the dismissal and that it is a potentially fair reason. A reason relating to the conduct of an employee is a fair reason within section 98(2) of the Act. According to section 98(4) the determination of the question whether the dismissal is fair or unfair:

> (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.

42. In misconduct cases the Tribunal should apply a three-stage test set out in *British Home Stores Ltd v Burchell* [1980] ICR 303 to the question of reasonableness. An employer will have acted reasonably in this context if:-

> 42.1 It had a genuine belief in the employee's guilt;
>
> 42.2 based on reasonable grounds; and
>
> 42.3 following a reasonable investigation.

43. The Tribunal must then consider whether it was reasonable for the employer to treat the misconduct as a sufficient reason for dismissal. In respect of each aspect of the employer's conduct the Tribunal must not substitute its view for that of the employer but must instead ask itself whether the employer's actions fell within a range of reasonable responses (*Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439).

44. If the Tribunal finds that the dismissal was procedurally unfair, it should assess the chance that the employee would have been dismissed following a fair procedure and take that into account when calculating the compensation to be paid (*Polkey v AE Dayton Services Ltd* [1987] IRLR 503).

45. In *Reynolds v CLFIS (UK) Ltd and others* [2015] ICR 1010 Court of Appeal considered the issue of direct discrimination, where the allegation is that a managerial decision was based on information that was "tainted" by discrimination. In that case a senior manager had decided to terminate the Claimant's consultancy agreement. The Employment Tribunal found that the manager's decision was not related to the Claimant's age and dismissed the claim of age discrimination. The Employment Appeal Tribunal allowed an appeal against that decision, holding that it was necessary for the Tribunal to consider the mental processes of others in the company whose views had had a

significant influence on the decision, and to determine if those views were based on age. The Court of Appeal allowed the company's appeal and restored the decision of the Employment Tribunal. Liability for discrimination involving an allegation of tainted information could only attach to an employer where the individual decision-maker was him or herself motivated by the protected characteristic. The act could not be said to be discriminatory on the basis of someone else's motivation. Underhill LJ held that that "composite approach" was unacceptable in principle, and that they must be treated as separate acts. An employee in such a case was not left without a remedy because he or she could bring a separate complaint of discrimination in relation to the act of supplying the information that leads to dismissal. There had been no such complaint in the *Reynolds* case.

CONCLUSIONS

46. In the course of his oral closing submissions it became clear that the Claimant's solicitor, Mr Allison, had misinterpreted the effect of the Court of Appeal judgment in *Reynolds*. He appeared to have proceeded on the assumption that the Tribunal would treat any complaint of discrimination based on "tainted information" as including a complaint that the act of providing the information was itself an act of unlawful discrimination. That is precisely the opposite of what the Court of Appeal held. As an alternative to that submission Mr Allison applied for permission to amend the claim, to add a complaint that Mr Hollis's, Ms Irving's and Ms Bauer's submission of the incident reports were acts of discrimination on grounds of race and/or religion. We refuse that application. Applying the principles in *Selkent Bus Co v Moore* 1996 ICR 836, this is an application to add a new cause of action, which is substantially out of time. The Claimant has been represented since before the Preliminary Hearing and confirmed both at that hearing and at the start of the Final Hearing that the only act of discrimination in issue was the decision to dismiss. The Respondent has never responded to a complaint that the acts of the three witnesses constituted unlawful discrimination because no such complaint was pursued. If it were to proceed now it would obviously be necessary to adjourn the Final Hearing to allow the Respondent to respond and to prepare evidence. The Respondent would presumably seek to call the three individuals as witnesses. The balance of injustice and hardship falls overwhelmingly on the side of refusing the application. The only apparent reason for its lateness is a misunderstanding as to the law. All the evidence has been heard and it would be extremely unfair to the Respondent to allow an entirely new cause of action, which is substantially out of time, to be pursued.

<u>Unfair dismissal</u>

47. It is not in dispute that the reason for the Claimant's dismissal related to his conduct, which is a potentially fair reason. It was also not in dispute that Ms Hillier genuinely believed that the Claimant was guilty of the conduct alleged. The Claimant does dispute, however, that the belief was based on reasonable grounds and he takes issue with various aspects of the investigation.

48. As to the investigation, we do not accept the Claimant's argument that further witnesses should have been interviewed. Mr Doyle had said he did not recall the incident. We do not consider it outside the range of reasonable responses not to have sought out other witnesses, such as the cleaner mentioned by Mr Hollis. In the circumstances of the case it was reasonable for Ms Hillier to proceed on the basis of the three incident reports and interviews she had. We do think that ideally both the Claimant and Ms Hillier should

have been told what Mr Doyle had said because it was potentially supportive of the Claimant's case, but it was not so central to the case that we consider it rendered the investigation process unreasonable.

49. Similarly, we consider that ideally the Claimant should have been shown or given copies of the WhatsApp print-outs that Ms Hiller had at the discrimination hearing, but we accept that they did not form part of her eventual decision-making so there was no unfairness to the Claimant.

50. The security incident report obviously had the potential to prejudice the process if any of the decision-makers saw it, but none of them remembers seeing it and we accept that it did not influence the process in any way.

51. The Claimant makes no specific complaint about Amy Irving being asked to amend her statement. There is no evidence of any improper conduct; it appears that at most she was asked to remove matters that were not relevant to the specific allegation.

52. We do have concerns, however, about the fact that the evidence given to the Claimant was anonymised and the Respondent never told him who the witnesses were. We are doubtful as to whether anonymity was justified. Having said that, the Claimant did not complain about the anonymity until after his dismissal and it is clear that he had worked out who the witnesses were by the appeal hearing, where he referred to the three witnesses being "quite tight". He made the argument that there was "some sort of discrimination" and that there had been previous comments about his religion at the investigation and disciplinary stages. It was only at the appeal that the Claimant raised the point about Mr Hollis's previous conduct and alleged that he was motivated by the Claimant's religion. Failing to disclose the identity of the complainants may have prevented the Claimant from making that argument prior to his dismissal. Given that he was able to do so on appeal, however, and we accept that Ms Johnson considered it, we find that any unfairness in this respect was corrected on appeal.

53. The Claimant complains about not being told more specifically what the allegation was against him in the disciplinary invite letter. We do not consider that the Respondent acted unreasonably in this respect. It enclosed copies of the incident reports, so the Claimant could not have been in any doubt as to what he was alleged to have done.

54. As to the reasonableness of Ms Hillier's conclusions, we note that she had the evidence of the three witnesses as against the Claimant's account, flatly denying making any comment along the lines alleged. The Claimant claimed that the witnesses had colluded and invented the allegation. Faced with that evidence we consider it was reasonable for Ms Hillier to conclude that the Claimant made the comments alleged. There was obviously some doubt as to the date and time of incident, but this was not a significant matter. She reasonably took the view that the statements were very similar, but not so similar as to give rise to concern about collusion. We accept the Respondent's submission that in light of the nature of the Claimant's defence she was effectively faced with only two possible conclusions: either the Claimant made the comments or the three witnesses had invented the allegation. The latter would have been extremely serious conduct which itself was likely to have justified dismissal. In those circumstances it was entirely reasonable for her to conclude that there was insufficient evidence of collusion and the Claimant did make the comments. Even if Mr Hollis was known to be a person with a history of offensive discriminatory comments, that did not necessarily mean that his

account of what the Claimant said was false, particularly given that it was corroborated by two other witnesses.

55. As to procedural fairness, the Claimant argued that the Respondent failed to comply with its policy of inviting the employee to a disciplinary hearing within 48 hours of being notified of the charge. We do not accept that. The charge and the invitation were contained in the same letter.

56. There was no real argument as to the reasonableness of the sanction. We are satisfied that it was reasonable for the Respondent to conclude that making the comments alleged, whether or not it was done in jest, was extremely irresponsible and unprofessional, and that in a security-led environment dismissal was justified.

57. We therefore conclude that the claim of unfair dismissal fails.

Discrimination

58. We have already explained the effect of Court of Appeal's judgment in *Reynolds*. The Claimant did not allege or put to any of the Respondent's witnesses that any of them was motivated to any extent by his race or religion. In those circumstances the discrimination complaint is dismissed.

Employment Judge Ferguson

15 March 2019