



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr M Ehsan**

v

**Markazi Jamiat Ahl – E - Hadith**

**Heard at: Leeds**

**On: 9 – 10 January 2019**

**Before:**

**Employment Judge J M Wade**

**Appearance:**

**For the Claimant: In person**

**For the Respondent: Mr A Green, Solicitor**

Note: A summary of the written reasons provided below were provided orally in an extempore Judgment delivered on 24 January 2019, the written record of which was sent to the parties on 10 January 2019. An request for written reasons was received from the claimant on 13 January 2019. The reasons below are now provided in accordance with Rule 62 and in particular Rule 62(5) which provides: In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how the law has been applied to those findings in order to decide the issues. For convenience the terms of the Judgment given on 11 January 2019 are repeated below:

## JUDGMENT

- 1 The claimant's complaint of unlawful deductions from wages succeeds. The respondent shall pay to him the sum of £5800.
- 2 The claimant's unfair dismissal complaint is dismissed.

## REASONS

### Introduction: Issues

1. The claimant was employed as a Minister of Religion (Imam) at the respondent mosque from July 2018 until his dismissal in 2018.
2. The issues in the wages complaint are as follows: I have to make primary findings of fact as to whether, on the claimant's case he was required to pay back, initially 50%, and then a lesser portion of his salary to the Secretary of the mosque, Mr Rehman, as a condition of continuing in his employment. His case

is, that arrangement amounts to a deduction from wages in the sum of £5,800 and was imposed as a condition of the respondent sponsoring his visa application. The respondent's case is that there was no such arrangement and the claimant is telling untruths about this matter.

3. In the unfair dismissal complaint the issues are: did the claimant make four disclosures, three orally and one in writing to the respondent, his employer concerning alleged financial malpractice in the mosque's affairs. If so, did those disclosures fall within Section 43C of the Employment Rights Act 1996 ("the 1996 Act") and if so, was the making of the disclosures the principal reason for the claimant's dismissal, as was his case.

### Evidence

4. Yesterday I heard from Mr Ehsan, the claimant, and from the President of the mosque, Mr Ali. I heard from Mr Rehman today, the Secretary of the mosque. Mr Ali's evidence was subject to interpretation by an interpreter, Mrs Mir, who was sworn in for that purpose yesterday. For the assistance of the Tribunal she was also able to assist in interpreting a section of a recording of a sermon delivered by the claimant, which was one of the matters on which the respondent relied as its principal reason for the claimant's dismissal. That sermon was given in Urdu and the parties were in dispute about what had been said. The Tribunal requested that the relevant section be interpreted into English and there was no objection to that approach from the parties.
5. The direction I have adopted to assist with fact finding in this case is:
  - 5.1 Is the account consistent with contemporaneous material, including increasingly, social media, smart phone and meta data based evidence?
  - 5.2 Is the account consistent with subsequent investigations or witness statements given?
  - 5.3 What was the Tribunal's impression of the witnesses when questioned: was the impression that they were telling the truth?
  - 5.4 What was the Tribunal's assessment of the witnesses' reliability on relevant matters: were they generally consistent with other material and good historians or were they mistaken in their recollections or beliefs?
  - 5.5 What does the totality of the chronology or circumstances tell the Tribunal about the inherent likelihood of the accounts?
  - 5.6 An initial impression or assessment of a witness has to be checked against all other factors;
  - 5.7 Placing too much significance on demeanour can be unsafe: a confident witness is not necessarily a truthful witness and a nervous one is not necessarily lying;
  - 5.8 A genuinely held belief which is wrong, or one untruth told, does not necessarily render other evidence from that witness unreliable;
  - 5.9 People often deny unlawful acts ("well he would, wouldn't he");
  - 5.10 Generally good historians still tell untruths; people do, on occasions, behave in unexpected ways, whatever the overarching likelihood;
  - 5.11 Skilled cross examination can demolish an otherwise cogent case;
  - 5.12 The Tribunal has a duty to put the parties on an equal footing during a hearing as part of the overriding objective;
  - 5.13 The formal rules of evidence do not apply to the Tribunal;
  - 5.14 Justice requires witnesses to have the opportunity to comment on disputed matters in, what is still, an adversarial process.

6. This is a civil matter in which the burden of proof is 'what is more likely than not'. In criminal proceedings the burden of proof is 'beyond all reasonable doubt', "are you certain so you are sure?", the question asked of juries. I do not ask myself 'am I certain'? About most of the matters in this case I cannot say I am certain, all I can say is that I consider my findings more likely than not. It is normally the case that what people say, in whatever form they say it, whether WhatsApp message, texts or emails at the time, or approximate time of important events, is more likely to give a reliable impression than what is said later on, when parties come to look at the events through the lens of history. I cannot say, in relation to any of the witnesses from whom I have heard in this case, that they are good historians or that their evidence is generally reliable. That is the general impression I have formed; it is not the case in relation to all the specific matters I have had to address.

The claim, response and case management

7. The claimant was summarily dismissed on 6 July 2018 by a short letter from Mr Rehman and Mr Ali having been employed on 4 September 2017 or thereabouts. These facts that are not in dispute. In view of the difficulties in resolving the factual cases in this hearing, the content of the pleadings and case management documentation is instructive.
8. The claimant's claim presented on 25 July, and within 3 weeks of his dismissal, asserts that he met Mr Ali on 12 July and was told that the reason for his dismissal was because he had spoken against certain people in Friday sermons, and that people disliked him, and that that was the reason to break off his contract. The claimant names other people who were present in that meeting on 12 July and notes the purported connection between the claimant's dismissal and his sermon, or sermons. The claim goes on to make allegations about members of the mosque and discusses what the claimant has or has not included in his sermons. He then makes an allegation that the reason for his dismissal was whistleblowing, and he has also indicated in a box in the claim form, that other payments were due to him.
9. The respondent's response form, presented on or around the middle of August, was presented by Mr Rehman, having taken some lay advice as to its content. In that response he set out that a series of warnings had been given to the claimant, and that there had then been an incident or altercation, around Tuesday 26 June, between Mr Rehman, and the claimant. On or around Friday 29 June, the claimant had delivered an unacceptable or offensive sermon, he said. There had then been a hand delivered letter to the President from the claimant, and that letter too had caused offence and it was, along with these other matters, part of the reason for the claimant's dismissal. This is Mr Rehman's response.
10. On 18 August, in a document prepared for the case management hearing, the claimant said "I have been dismissed unfairly" and he mentioned fighting against the 'Axis of Evil'. He did not mention in his preparation for that pre-hearing review any complaint about having to pay back monies (or indeed having made the protected disclosures that he now relies upon). During the case management hearing on 18 August before Employment Judge Lancaster, his complaint about being owed "other payments" was clarified as an allegation

that he had been made to pay back some of his salary. The claimant was ordered to provide details of the alleged disclosures on which he relied.

11. On 8 October the claimant provided some documents to support his case and asserted for the first time that there had been oral disclosures made to the President in September 2017, and again on 22 June 2018. He then relied on an email of 30 June, said to have been sent to Mr Rehman's business email account. That email says: "I drew to your attention time and time again the financial malpractices in the mosque, pecuniary affairs being topsy turvy and so on, 3 years ago you told folks that the project would be completed within 18-24 weeks and the mosque had sufficient resource to carry it out". On the claimant's case that email was also printed by him and put within an envelope and hand delivered to the President, Mr Ali. This statement was said to contain the disclosures.
12. Also on 8 October, the claimant provided a number of other documents said to be relevant to his case. On 9 December 2018, the claimant provided further documents in support of his case, which included a letter allegedly sent by the President and Secretary in December 2014 ("the 2014 letter") which is said to be evidence of the mosque remitting funds to Kashmiri fighters. If the contents were authentic and true, it would so suggest. The claimant relied on this document, in reality, to establish the sincerity of his alleged disclosures and their likelihood, as well as being under the impression that the Tribunal had jurisdiction to condemn or rule on such matters. I indicated to him that such matters ought properly to be reported to the police (that is allegations of the funding of terrorism) and that the Tribunal's jurisdiction was confined to the issues and matters above. His reliance on the 2014 letter took matters way beyond the alleged June email, in that a disclosure concerning financial malpractice had become an allegation of funding of terrorism.

#### Findings concerning the allegation of unlawful deductions

13. The documentary evidence in relation to this matter included the bank account statements of the claimant and of the respondent charity, and also a large number of receipts from the cash receipt books of Mr Rehman, recording cash donations to the mosque. Mr Rehman was subject to cross examination by the claimant on these matters and the claimant was subject to cross examination on the matters in his bank statement by Mr Green.
14. I accept that the claimant asked to be paid electronically to his bank account at the outset of his employment. There was no doubt that his contract of employment provided for him to be paid a gross annual salary of £20,000. I will come on to the way in which other members of the mosque's support team or staff were remunerated. From the documents, many of which are not in dispute, I can conclude that from the commencement of his employment, once his net monthly salary of £1407.16 was paid into his account, the claimant regularly withdrew large sums in cash, soon after each occasion on which he was paid.
15. The exception in this monthly pattern was one occasion where he evidenced a bank transfer of £700 to his wife's account, and in that respect his oral evidence was that he made a bank transfer to his wife, and then his wife gave the £700 or so to him in cash, to give back to the mosque. I accept his evidence and explanation. Mr Green made much of the transfer to wife (the claimant having

asserted he drew out cash each month), but it was one departure from 8 or 9 episodes of the claimant drawing cash out himself personally.

16. In the mosque's accounts, in the space of this hearing, it is not possible to reconcile or have any real sense of the extent to which the extensive receipts of Mr Rehman tally with the cash sums donated to mosque. One would not expect them to entirely reconcile, given that many of the mosque's donations are as a result of normal cash collections arising at regular worship, to be expected in any place of worship, on a weekly basis and not subject to receipts. On the other hand, there are large payments in cash both in and out of the mosque's account. One or two such payments in coincide very closely in time and amount with the sums that Mr Ehsan said he was paying back on each occasion, and other larger payments in are sufficient to be inclusive of such sums, without it being apparent from whom that money was received. At the time of the claimant's allegations in 2018 the respondent's treasurer was also abroad and Mr Rehman was having to do far more cash handling.
17. In determining this allegation and the facts that underpin it, I also take into account that the claimant asked to be paid into a bank account, which is typically a transparent and easy way to track funds. He did so knowing that others within the mosque were being paid by cash: the other minister or Imam was paid £175 a week, which is an approximate salary of about £9,000 per annum; he was paid those amounts in cash, along with other staff; I cannot make any findings about the extent to which he or they were subject to tax or national insurance deductions or accounting. I was told by Mr Rehman that these matters are addressed by the mosque's accountant. I do take into account that the claimant was paid a salary in respect of duties which it appears were not that much more onerous than that of the other Imam, but the claimant's salary was considerably greater (more than twice as great in gross terms).
18. I also take into account that the mosque has been, in Mr Rehman's words, 'careless' in its observance of the charity commission's requirement for accounts to be filed annually, and for detailed books or accounts to be kept and maintained, and understood. Any objective observer would understand the mosque's position to be far worse than careless given that the default had gone on for so long (several years).
19. I consider it likely in circumstances in which large amounts of cash are exchanging hands through a charity's bank account, which has defaulted on the required public submissions and scrutiny, that the claimant was being paid a salary electronically as support his visa application, but in reality he was paid much less: his actual earnings were more akin to those of the other Imam's much lower salary paid in cash. I accept the claimant's evidence that he was required to give back a total sum of £5800 over the relevant period (a greater some in the first few months which he then sought to reduce). Those sums were evidenced by the cash withdrawals he made, and a sum he obtained via his wife, and were then paid back into the mosque's accounts. I do not consider that those cash withdrawals were used by him to pay his rent, or other living costs, as was put to him by Mr Green. I consider on the basis of the bank account evidence before me that, contrary to the claimant's case, the sums were not being pocketed by Mr Rehman personally, the sums were going back into the mosque's bank account.

20. There is, as Mr Green submitted, some difficulty in the relationship between the claimant's wages case and his protected disclosure case: the claimant said that he was the 'whistle blower' of financial malpractice at the mosque, while at the same time being a participant (in the sense of returning cash sums which were, on his case, at risk of being deployed to support terrorism). I asked him that question and his answer (which differed slightly from his submission today) was, in simple terms, that educational and other provision for his autistic son in Pakistan was considerably worse, and for that reason he wishes to remain in England, notwithstanding that there is family wealth and support in Pakistan. His son's disability means that remaining here is paramount. I accepted that evidence.
21. In all the circumstances I have to decide whether the sums paid to the claimant on any occasion were less than the sums properly payable to him (the question posed by Section 13(3) of the Employment Rights Act 1996). I have to decide whether the respondent has made a deduction from the wages of the claimant, which is prohibited in Section 13(1). There was nothing in a written contract of employment which identified that the claimant would give back a proportion of his wages in cash to the mosque; nor did he sign any separate agreement to that effect. Clearly, the respondent mosque paid the claimant's contracted wages every month electronically and appeared to process PAYE tax and national insurance in respect of those sums. The respondent's case was not that the claimant made private and voluntary donations to the mosque of his own accord and free will. It was that he had not made such donations. In view of the mosque's inability to establish its factual case, and my finding to the contrary, I am also clear that the claimant's paying back was not the exercise of his free, and charitable, will. It was an arrangement imposed on him, in my judgment, as a condition of his employment, and as a quid pro quo for the higher salary, necessary to support his visa, which in turn was necessary to secure his son's position, as he saw it. In these circumstances I consider such an arrangement is properly to be identified as a deduction, akin to where some employers issue payslips to identify sums having been paid, but in fact make payments of lesser amounts in cash. For these reasons this complaint succeeds. The respondent must repay the claimant the sum of £5800.

#### Unfair dismissal findings and conclusions

22. I have indicated the history of the parties' accounts of the dismissal and it is apparent (and in this respect I accept Mr Green's submission) that the claimant did not say anything about the protected disclosure part of his unfair dismissal case in his claim form. His witness statement contained allegations of three conversations on 8 September 2017, 22 June and 3 July 2018 which he said contained protected disclosures. To that he added an allegation that he had provided the 30 June email, the day after he had taken part in a sermon which had produced some reaction, I was told. The suggestion of such disclosure first arose at the case management discussion.
23. In these circumstances, that is where the claimant has less than two years' service, he has to prove the principal reason for his dismissal. I have therefore determined that principal reason first, based on the parties' cases in their original pleadings and subsequent amended cases.
24. As to the sermon I make these findings: the sermon was delivered in Urdu; it was around 40 minutes long; around 20 minutes into the sermon, the claimant's

tone becomes far more robust and impassioned in its mode of delivery; the subjects being discussed were historic stories from religious texts, including those referring to the severing of the heads of Jewish people and the rendering of their women as slaves, and indeed, that Jewish people cannot be trusted, or words to that effect, and that they are always looking for opportunities.

25. The claimant's evidence about his delivery of this sermon was that he did not necessarily give contextual advocacy: he was not clear to the congregation that these were historic tales which needed to be sharply distinguished from today's values and beliefs. Nor did the claimant give any reason for speaking to the congregation about this particular subject matter at that particular time.
26. Having heard the tone and now understood the contents of this part of the sermon I am clear that complaints were likely.
27. The chain of events that had evolved that week was that the claimant and Mr Rehman had had a disagreement in the mosque on Tuesday which had resulted in a minor falling out over a spiritual issue; the claimant had come to deliver his sermon on the Friday and after it there had been comment and complaint from some attendees to the effect that he should not say such things.
28. I accept Mr Ali's evidence that he then received a handwritten envelope at his home address containing a handwritten letter from the claimant in Urdu. He did not receive the printed, 30 June email, in that envelope: I accept his oral evidence about that. The claimant's case is that the copy of the letter in the Tribunal's bundle had been concocted by the respondent, in an effort to defend this claim. I reject that evidence because in translation, the letter relays very faithfully and comparably the claimant's position, and the undisputed position between the parties about their disagreement, which had evolved at that stage. The claimant's 'beef' or "complaint", was, in effect, that Mr Rehman, a lay person was seeking to pull rank, or have his way, in relation to a spiritual issue, when the claimant was the minister of religion and employed as such. The letter is expressed in terms and in language, which even in translation appeared to me to be of the colourful, elegant and sometimes laboured kind that the claimant has demonstrated in these proceedings, not least in his claim form. I cannot be certain but in my judgment, it is more likely than not that the claimant wrote that letter in Urdu and delivered it.
29. The letter included the following (in English translation) "I am a black belt in Karate and had I wanted I could have dealt with him in such a way that the rest of his life he would not have been able show his face to anyone". In making that comment he was referring, of course, to Mr Rehman, albeit the letter was addressed to Mr Ali. Again, it is entirely likely having written such a letter than Mr Ali and Mr Rehman would be unhappy with the claimant's employment.
30. I find that there was a disagreement with Mr Rehman on the Tuesday, as a result of which the claimant wrote in colourful terms to Mr Ali. As to the respondent's alleged warnings (which appeared in the Tribunal's bundle and were allegedly given to the claimant), on this matter I do not accept Mr Rehman's evidence. I consider it unlikely, frankly, that the respondent would not have kept a signed copy of any conduct warnings, had these matters been addressed at the time. Mr Rehman's explanation was that he could have easily signed these afterwards and presented them as such, if he had wanted to mislead the Tribunal. That is a matter which I consider, but on balance it seems to me that even if these warnings were given to the claimant, and I am wrong,

the subject matter is unrelated to giving a sermon in the terms that were given, or including the problematic words in the letter to the President. The warnings were general and about time keeping and the like and they add very little to the respondent's case.

31. I consider both Mr Rehman and the claimant in this case are prepared to create documents for their own advantage and to some extent, there is a sense of tit for tat in that respect. My task has been to try identify the genuine.
32. Whether or not the claimant sent the email on 30 June to Mr Rehman's business email address, as the claimant asserted, or had the conversations he alleged in 2017 and 2018, the principal reason for his dismissal was the sermon which produced complaints, and the contents of the letter to the President, both of which had caused offence. Had the claimant had two years' service there would perhaps have been some kind of disciplinary hearing. Instead the mosque held a meeting and the respondent's Mr Ali and Mr Rehman took the view that the claimant's employment was to be terminated without delay on 6 July and summarily and they wrote in those terms to him. Their principal reason for doing so was, as I have indicated the content of the claimant's letter and the sermon, in the context of the falling out with Mr Rehman.
33. Having identified the principal reason for dismissal, the claimant's case must fail. The hearing encompassed many other matters and I would simply comment on those for completeness as follows.
34. As to the email allegedly sent to Mr Rehman, this is not the right forum to determine matters of criminality or indeed to make findings that might be prejudicial to that kind of determination. It seems to me that the technology is such that when matters are allegedly so serious, as they are in this case, the parties and the Tribunal would be assisted by expert evidence, such as forensic document examination, which I have not had in relation to any of the relevant challenged documents. That might have been commissioned, had it been proportionate. Nor have I had, in relation to the allegations of non disclosure or fraud in electronic communications, which all parties have put to each other, the best available evidence from a technology expert. I have therefore had to do my best to determine the facts necessary to decide this case.
35. What I can draw from the screen shots with which I have been provided, of the business email inbox of Mr Rehman, is simply this: they do not help me very much, one being an "archive", and the other being an "inbox", from two separate dates. They do not conclusively establish that Mr Rehman's account was not the recipient of the email sent by the claimant. Equally, as to the claimant's evidence of a printed "gmail" sent at 00:00, I am similarly not persuaded that that is conclusive evidence that the email was sent. In the event it is unnecessary for me to make a finding as to whether that email was sent, for this reason: if it was sent to Mr Rehman, albeit it was addressed to Mr Ali, the claimant had visited Mr Ali's home with an envelope which I have found to contain a personal and handwritten letter and which, together with his sermon, was causative of the claimant's dismissal. An email to the business email address of Mr Rehman in the following terms, "*I drew to your attention time and time again the financial malpractices in the mosque, pecuniary affairs being topsy turvy and so on, 3 years ago you told folks that the project would be completed within 18-24 weeks and the mosque had sufficient resource to carry it out*" is not, in my view, disclosing information to the employer, which in the



reasonable belief of the claimant tended to show the respondent had been in breach of a legal obligation, much less could the claimant demonstrate that he reasonably believed he was making that disclosure in the public interest rather than as part of his personal and spiritual dispute with Mr Rehman. It was not the reason for his dismissal.

36. Similarly it is not necessary for me to determine whether the claimant made the comments he alleges in September 2017 (to the effect that it was unlawful for Mr Ali to ask him to seek donations to the mosque to fund an extension project, when in fact the monies were intended for fighters in Kashmir); or 22 June 2018 (alleging financial impropriety in the accounting of donations); or 3 July 2018 (resisting fundraising and alleging financial impropriety in seeking donations some of which would be pocketed and some of which would be sent to “Jihadis”).
37. The background about which I heard was of a building project for which the claimant was asked to seek donations, and had been so asked during his employment, by Mr Rehman and Mr Ali. The fact of a building project at the mosque over some years was not in dispute. The fact that large sums were to be seen in and out of the mosque account was not in dispute. The fact that the project was delayed and incomplete was not in dispute. The conclusions the claimant wished me to draw, without the sort of evidence to which I have referred, included that in these circumstances it was likely he raised the funding of terrorism in conversation (such that he could report them word for word some months or more than a year later).
38. I consider it unlikely that he did so; his alleged email is so much less inflammatory; if he genuinely held these beliefs and sought to disclose them in the public interest he would have reported matters to the police and the charity commission. The oral disclosures were unlikely to have been made and the email disclosure did not amount to a protected disclosure for the reasons I have explained.
39. I am very clear for the reasons that I have announced that the principal reason for the dismissal cannot be the making of disclosures and that the complaint therefore has to be dismissed.

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**Employment Judge J M Wade**

1 April 2019

Sent to the parties on:

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For the Tribunal:

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