



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Tchapdeu

**Respondent:** Unipart Group Limited

**Heard at:** Leicester

**On:** 10 April 2019 (Reading Day),  
11, 12, 15, 16 and 17 April 2019 (Hearing Days)  
30 April 2019 (Reserved Judgment Day)

**Before:** Employment Judge Hutchinson

**Members:** Mrs C A Patisson  
Ms K Mcleod

## Representatives

**Claimant:** Dr R Ibakakombo, Lay Representative  
**Respondent:** Mr S Willey, Solicitor

# RESERVED JUDGMENT

The unanimous judgment of the Tribunal is: -

1. The claim of direct race discrimination fails and is dismissed.
2. The claim of indirect race discrimination fails and is dismissed.
3. The claim of victimisation fails and is dismissed.
4. The hearing listed for the 29 August 2019 is cancelled.

# REASONS

## Background and Issues

1. The Claimant presented his claim to the Tribunal on 15 February 2017. He had notified ACAS under the early conciliation procedure on 19 December 2016 and ACAS had issued the early conciliation certificate on 17 January 2017.

2. The Claimant had been employed by the Respondent since 19 October 2009, latterly at Magna Park as an operations colleague.

3. His claim was of: -

- Direct race discrimination
- Indirect race discrimination
- Victimisation

4. His complaints date back to 2014. He originally described his race as black African but shortly before the Preliminary Hearing held on 6 April 2018 he changed this to black African Cameroonian.

5. His claims are set out in a revised Scott Schedule which is contained at pages 60-70 of the bundle. This schedule was prepared by the Claimant's representative. It is dated 15 June 2018. The document also contains the response by the Respondents to the allegations.

6. By this time the Claimant's claims were now said to be: -

- Direct race discrimination
- Direct disability discrimination by association
- Harassment because of the Claimant's wife's disability
- Victimisation

### **Events leading up to this hearing**

7. On 10 April 2017 my colleague Employment Judge Ahmed conducted a case management Preliminary Hearing. Having considered the papers he expressed a concern that the Claimant did not appear likely on the face of it to be able to establish sufficient facts from which a prima facie case of discrimination was likely to succeed. This related not only to the claim of direct and indirect discrimination but also the complaint of victimisation.

8. He was also concerned that the claims appeared to be presented out of time as well as having little or no reasonable prospect of success. He ordered the Claimant to prepare a Scott Schedule and that the case should be listed for a Preliminary Hearing to consider strike out of the claims or alternatively the making of a deposit order.

9. On 3 July 2017 the Claimant made an application to amend the claim to add fresh claims of direct race discrimination on grounds of race and a claim of direct disability discrimination by association and a claim of victimisation.

10. On 27 July 2017 the Claimant made a further application to add claims of direct race discrimination, direct disability discrimination by association and victimisation.

11. On 18 August 2017 the matter came before my colleague Employment Judge Blackwell. He was satisfied that the Claimant's allegations or arguments had little reasonable prospect of success and he ordered the Claimant to pay a deposit of £2.50 in respect of each of his heads of claim, namely: -

11.1 Direct race discrimination.

11.2 Indirect race discrimination.

11.3 Victimisation.

11.4 Direct discrimination by association in respect of the protected characteristic of disability.

12. At that hearing Employment Judge Blackwell declined to strike out the claims. He permitted the Claimant to amend his claims as per the applications made on 3 and 27 July 2017.

13. He said that the only allegations which were permitted to proceed were those relating to the Claimant's assertions that he was refused flexible working hours and to the associated grievance procedures. He said it was for the full Tribunal to determine whether the allegations permitted to proceed were continuing acts. All the other allegations were struck out.

14. He ordered the Claimant to provide a revised Scott Schedule having regard to his decision.

15. On 24 October 2017 the Claimant made a further application to amend his claim.

16. He now described his race for the first time as of:

"Black African – Cameroon's origin."

17. He wished to make additional claims of: -

- Direct race discrimination as per the Claimant's grievance letter dated 29 August 2017
- Direct race discrimination as per the Claimant's letter dated 6 September 2017 against the HR department
- Victimisation claims relating to the Claimant's ongoing ET1 claim and his letter of 19 August 2017
- Further victimisation claims against the HR department relating to the contents of his grievance letter dated 29 August 2017 and his letter of 6 September 2017 namely;
- Lauren Reynold
- Maranda Leach
- Korenza Rushton
- Steve Willey, the Claimant's representative

18. He also claimed indirect discrimination.

19. My colleague Employment Judge Clark at a hearing on 6 April 2018 struck out the victimisation claim against Steve Willey. The complaints against

Mr Willey related to his conduct of the case. He was satisfied that it should be struck out on the basis that the allegation was "vexatious".

20. At the conclusion of that hearing he made case management orders. He pointed out that until recently the Claimant had described his protected characteristic as black African but that it had now become black African Cameroonian. He ordered the Claimant to prepare a final Scott Schedule of his claims which took into account the recent amendment of his claim and removed the allegations that had been struck out.

21. At the start of the hearing it was agreed items 6-15 in the Scott Schedule which were at pages 60-2 of the bundle were out of time. We agreed that the primary time limit was 20 September 2016 and therefore all items that predate this were out of time unless we were satisfied that they were continuing acts. Dr Ibakakombo specifically agreed that his Claimant was not pursuing matters on the Scott Schedule before 4 August 2016.

22. During the hearing though the Claimant's representative changed his position and then said that the incidents on 3 August 2016 were in time and he wished to pursue these as he was alleging that these were continuing acts of discrimination.

### **At this hearing**

23. It can be seen from the above that there had been various issues about the conduct of these proceedings prior to the hearing taking place and the matters I am going to raise need to be seen in context with the events that have happened over the last 2 years.

24. During the previous hearings the Claimant had not been assisted by an interpreter. In respect of our hearing the Claimant asked for a French interpreter. This is not unusual because the Claimant is entitled to a court interpreter and one was provided. It was surprising that the Claimant needed an interpreter because he had worked for the Respondent in various capacities for more than 10 years and at no time had there been any issues in him speaking or understanding English.

25. Much of his case related to him giving evidence in an Employment Tribunal case of **Onuoha** case in 2015. We were told that he had been cross examined in that case without the services of an interpreter.

26. He had already attended two in person Preliminary Hearings in the current proceedings including giving evidence on one occasion, again, without the services of an interpreter.

27. He was the author as could be seen in the bundle of a volume of letters and e-mails which demonstrated an excellent understanding of the English language.

28. Having given evidence before the Tribunal to us it was clear that he did not need to use the interpreter who himself made a comment to the Tribunal about the Claimant not needing one.

29. At the commencement of our hearing Dr Ibakakombo requested that the hearing should be held in private. He asked for the Respondent's witnesses to leave the hearing and we discussed that. I explained to him that in England and Wales the normal procedure was to have witnesses present. We discussed the fact that it was a public hearing. I asked him if he was concerned about whether the witnesses would be dishonest and he said that he was not. I asked him if there were exceptional circumstances and he said there were none. In view of this I asked him if he wanted to proceed with his application. He conferred with Mr Tchapdeu and then decided not to go ahead with his application.

30. On the third day of the hearing an incident occurred whilst he was cross examining one of the Respondent's witnesses. He complained to the Tribunal about the conduct of Mr Willey. He had previously applied to amend his claim to include a claim of discrimination against Mr Willey which had been dismissed as being vexatious. He complained that Mr Willey was interrupting him. Mr Willey was making some point about the questions that were being asked by Dr Ibakakombo of his witness. I explained to Mr Willey that Dr Ibakakombo had not interrupted his own cross examination and that he should be careful to make sure that he only did so if it was necessary and he had a specific objection to a question. This was accepted.

31. On day 4 of the hearing Dr Ibakakombo was cross examining Alison Ringer. Mr Willey interrupted the cross examination. Whilst I was satisfied that he was only trying to be helpful Dr Ibakakombo again said that he had not interrupted Mr Willey. He said that he could not work under the pressure of interruptions and said he needed a break.

32. At that point we discussed language issues that he had. He said he was struggling to understand witnesses and they were struggling to understand him. I said I would try to assist him in framing his questions and to make sure that he put his case to the witnesses. Later that day he was cross examining Maranda Leach from Human Resources. She appeared to have difficulty in understanding Dr Ibakakombo's questions and I intervened to assist him.

33. At this point he surprised the Tribunal by saying that the hearing had been conducted unfairly. That it was just a formality. He complained that since the start of the hearing we had a mindset to dismiss the Claimant's case. He said that I was not acting fairly and that I was trying to get witnesses to change their responses to his questions. He said that I had allowed Mr Willey to interrupt him and not allowed him to ask his questions. That I was no longer impartial.

34. I responded saying that I had already dealt with Mr Willey to ensure that he did not interrupt his questions. That I had not prevented him from asking any questions at all. I had given him some assistance with framing his questions and I had tried to make sure that he didn't ask too many irrelevant questions. I had tried not to restrict his questioning of the witnesses. By that time, we were on the second day of him asking questions of the Respondent's witnesses.

I rejected his allegations and said that if he was not satisfied with my conduct of the proceedings he should make a complaint. I assured him that I would continue to deal with his case in a fair manner and I asked him if he wanted to carry on at that point or take a break. He had a 5-minute break and then concluded his questioning for the day.

35. On day 5 of the hearing Dr Ibakakombo said that he was not well. He asked for a postponement in respect of that day saying that he was under pressure. I said that I understood the pressures of conducting a case such as this and the Tribunal granted him his postponement to the following day. By the time we concluded the cross examination on day 6 the Claimant's representative had been cross examining witnesses for two and a half days.

### **Evidence**

36. The Tribunal heard evidence from the following: -

- The Claimant
- Dean Ellis, General Manager, Magna Park
- Steve Goode, Operations Manager, Magna Park
- Kyle Newell, Operations Manager, Magna Park
- Allison Ringer, Future Project Manager
- David Harper, General Manager
- Miranda Leach, HR Manager

37. There was an agreed bundle of documents and various additional documents that were handed in by Dr Ibakakombo during the proceedings.

38. Where there was a conflict in evidence the Tribunal preferred the evidence of the Respondent's witnesses. They were consistent, credible and reliable. The same could not be said for the Claimant who it can be seen has persistently changed his case. He changed the basis of his protected characteristic from black African to black African Cameroon. He tried to add additional claims and build claims out of simple events that clearly had nothing to do with his race or indeed his wife's disability.

39. Where I refer to page numbers it is from that agreed bundle.

### **The Facts**

40. The Respondents are a large employer and have 5,300 employees nationally. They offer a wide variety of services to industry. The Claimant works for Unipart Logistics which provides services to the mobile phone industry.

41. Mr Tchapeu commenced his employment on 19 October 2009. His contract is at page 113-21. At that time, he was based at Nuneaton.

42. On 12 November 2014 he applied for flexible working (page 122). He said that he was responsible for the upbringing of a child under the age of 17. He wanted to work only Mondays, Tuesdays and Wednesdays and on Wednesday to finish at 10:00 am. He made no reference to his wife's disability in his application.

43. There was a delay in the Respondents getting back to him but they did so on 7 January 2015 via Andy Latham, Operations Manager (pages 125-6).

44. On 13 January 2015 Mr Tchapeu wrote to Mr Latham. He explained that he had 3 children under the age of 16 and that his wife was suffering from back pain for years. He said that her back pain was worsening and he wanted to give her some relief by helping with childcare (page 131).

45. On that day the Claimant had a meeting with Karen Langham who was considering the request. She adjourned the meeting to obtain further information (page 132-6).

46. There was a further meeting on 21 January 2015 (page 137-40) when Ms Langham told him that they had decided that they could not support the application now. Full reasons for this were given to him including the number of requests they had received in his area and the forecasted demand and the additional costs that would be incurred. Ms Langham said she would ask other areas to see if they have scope to accommodate his request. She was prepared to review the matter in 3 months' time.

47. They met again on 22 January 2015 when they tried to agree the next step that would be taken. The Claimant told Ms Langham that he would be raising a grievance (pages 141-3).

48. On 29 January 2015 the Claimant raised a grievance (pages 146-8). His complaint was about the way in which his request had been dealt with including issues of delay and who had dealt with it and said that he had not been given adequate reasons why his application had not been granted. He did not complain that his treatment was because of his race.

49. This resulted in a grievance hearing on 18 March 2015. At the hearing the Claimant said he had not received an outcome letter dated 23 February 2015 notifying him of the outcome of his flexible working request. He was provided with a copy of that at the hearing. He was told that he would be given a further opportunity to appeal the decision provided he did so within 2 weeks of their letter of 19 March 2015 (page 193).

50. On 21 March 2015 the Claimant set out his appeal (page 194-5). He said in his letter that there had been no proper examination of his arguments and grounds and the reason for this was his assistance and help to Ikechukwu Onuoha David in the Employment Tribunal.

51. On 8 June 2015 Vince Edwards, Operations Manager wrote to the Claimant with the outcome of his grievance (pages 197 – 205). He pointed out that he had not received any reply to his letter dated 15 May 2015. He decided to uphold the grievance in part. He found that Andy Davidson, the Team Leader, had not fulfilled his responsibility as a Team Leader in relation to responding to e-mails in a timely fashion and ensuring that he was up to date with current policies. For this reason, it was Mr Edwards's opinion that his actions could be interpreted as unprofessional.

52. He also found the HR adviser had mishandled the procedure having signed a letter written by Karen Langham, Team Leader.

53. All other complaints were not upheld. The Claimant was told about his right of appeal.

54. At that time the Claimant was off sick but his wife Blanche wrote on his behalf on 9 June 2015 asking for an extension of time (page 205a). An extension was given by Lucy Sharp, HR Adviser to 22 June 2015 (page 207).

55. On that date the Claimant raised a further grievance. This time against Vince Edwards and Lucy Sharp (page 208-9). He complained that: -

- They had failed to give him the opportunity of two to three weeks to provide evidence in person during a reconvened hearing which was required because he was not well enough
- That they had done this because he was black and because he supported the case of Ikechukwu David Onuoha.

56. Also on that date he appealed against the grievance outcome (pages 211-9). The grievance appeal was heard on 7 July 2015 and the notes are at pages 221-9. The appeal was conducted by David Marsh, Head of Technical Services and the outcome of the appeal is set out in the letter from Mr Marsh dated 14 July 2015 (pages 231-9). Mr Marsh supported the conclusion reached by the end and said that the Claimant had offered no new evidence but sought to challenge Mr Edwards interpretation of events. He did not uphold any part of the appeal.

57. On 6 August 2015 there was a hearing in respect of his grievance lodged on 22 June 2015. He received the outcome in respect of that grievance by way of a letter dated 13 August 2015 (pages 239c-d) and he appealed against that decision on 21 August 2015 (pages 239e-f).

58. On 22 October 2015 he was granted his flexible working request (pages 240-1). This allowed him to work 3 full days a week between the hours of 8:00 am 4:30 p.m. this was to be effective from the 22 September 2015 and was granted by Lauren Reynolds.

59. On 24 June 2016 the Claimant received a letter of confirmation that H3G had chosen to move their returns operation to an alternative provider. That provider would be based in Norwich. The letter (page 253-4) offered the Claimant the opportunity to accept a new role based in Magna Park. The letter said:

“However, UTL has offered you the opportunity to accept a new role based in Magna Park. Your terms and conditions remain the same with effect from 1 July 2016, and you have elected to stay within the Unipart Group in your role as Operations Colleague, in Receiving initially on 6.00-14.30 shift, Monday to Friday. Your continuous service date and all other terms and conditions remain the same, including all flexibility clauses.”

Although it said that “your terms and conditions remain the same” it was clear that the role offered to him was on a full-time basis, working Monday to Friday.

60. Magna Park, where the Claimant would be based, has a work force of 600 staff. The site offers a reverse logistics service. This is the opposite of a normal logistics operation, where goods are held in stock and then distributed to retailers and or customers for sale. They receive goods back after sale, either because



they are faulty or because the purchaser wished to return them.

61. They have two contracts at the site, one with Apple and one with the network operator Three. Seventy-five per cent of the staff work on the Apple contract and the Respondent receives 10-12,000 units per day.

62. Magna Park is at its practical limit for numbers of staff and has been for several years. This means that onsite facilities such as parking, toilets and the canteen are struggling to cope with demand. The Respondents have made improvements but the constant increase in services and business they are asked to supply for Apple means it has been difficult to keep up with the site services.

63. It was because of these difficulties, when in 2016 it was proposed that staff at the Nuneaton site who were displaced by the loss of the Vodafone contract, were to be offered a transfer to Magna Park, it was made clear that they could only be offered full time employment.

64. This did not mean that there were no part time staff at all but a decision was made that any staff displaced from Nuneaton would only transfer if they were prepared to work full time.

65. A significant number of the staff from Nuneaton worked part time and Mr Ellis, the general manager at Magna, made it clear that it was not possible to transfer these part time staff and he did not want to create a precedent by agreeing to one or two of these. Whilst there Mr Ellis had standardised shift patterns.

66. Steve Goode was the Operations Manager at Magna Park. We are satisfied that Mandeep Gill from Human Resources had explained to Mr Tchapeu that because of the operational issues he had to work full time. It can be seen from the email exchange at pages 262 – 4 that the claimant had a meeting with Mandeep Gill on 18 July 2016 when she explained to him that they were unable to accommodate his current working hours at Magna Park. He was not happy about this but he reluctantly accepted the position. The letter dated 19 July 2016 at page 266-7 clearly sets out the position. He signed his acceptance and agreed to this and started working his new role on 25 July 2016 on a full-time basis.

67. Mr Tchapeu's Team Leader was Jose Fragona. He reported to the Operations Manager who at that time was Kyle Newall who was deputising for Steve Goode at the time. Kyle Newall was away on holiday during that week. Mr Tchapeu wrote with a request for flexible work on 29 July 2019 which was the first Friday that he had worked. The letter is at page 268. The letter describes him requesting an implementation of his current employment terms and conditions which included flexible working. He wrote this letter in the full knowledge that he had agreed to work on a full-time basis in the new position and had understood why his transfer had been on that basis.

69. He then spoke to his Team Leader, Mr Fragona, who did not have any authority to vary terms and conditions or agree to any flexible working to say that he would be off Thursday and Friday of that week (page 269). Mr Fragona referred the matter to Human Resources and persuaded the Claimant to maintain his position of working full time. Mr Fragona clarified his position in his e-mail of 3 August 2016. Mr Fragona had been misled by the Claimant who had indicated that it had already been agreed with HR as part of the relocation process that he

could work part time. He had not.

70. There was a meeting between Mr Tchapdeu, Mr Newall and Mr Fragona on 3 August 2016. The minutes of that meeting are at page 270-1. It was made clear to Mr Tchapdeu that:

“As discussed with HR we cannot accommodate flex work/part time hours, I will need you in Monday to Friday 6:00 am – 2:30 pm as stated in the letter written to you on 19 07 2016 which you printed and signed on 19 07 2016.”

71. Having been told this the Claimant then applied for flexible working again on 4 August 2016 (page 274-7).

72. Mr Tchapdeu then raised a grievance against Mandeep Gill dated 6 August 2016 saying that she had subjected him to less favourable treatment on grounds of his race, national origin and because of his support of Mr Onuoha. (Pages 278 – 9). He made many allegations in that letter that we are satisfied were untrue. He accused Mandeep Gill of changing her statement by telling him that Magna Park does provide part time but could not accommodate the days and hours that he requested. This was untrue. Mandeep Gill had always maintained that the work at Magna Park was offered on a full-time basis to all staff who are transferring from Nuneaton. He also accused Mandeep Gill of having a “well planned agenda to act in breach of my family well-being because of his support of Ikechukwu David Onuoha”. This was also untrue. We are satisfied that he knew from the start that if he agreed to transfer to Magna Park it would be on a full-time basis.

73. Kyle Newall and Steve Goode then had informal meetings with Mr Tchapdeu on 9 and 10 August 2016. These are referred to in Mr Tchapdeu’s e-mails on those dates (pages 281-2). Mr Tchapdeu wanted to discuss his ongoing issue of flexible working. They were not part of any formal assessment and only brief discussions about the issues. At that time, they had not received the new request from Mr Tchapdeu.

74. Following the meeting on 9 August 2016 Mr Newall and Mr Goode asked HR for guidance as to how they should deal with Mr Tchapdeu’s insistence on being allowed to change his working hours. They were advised that any new request he made would be dealt with as part of the grievance he had raised and they did not therefore need to respond to it. They advised Mr Tchapdeu that this is what would happen and had no further discussions with him about it.

75. Allison Ringer who was Future Projects Manager based in Burton-on-Trent was asked to hear his grievance. She had had no previous dealings with the Claimant.

76. Ms Ringer met with Mr Tchapdeu at Magna Park on 16 August 2016. The notes of the meeting are at pages 283-8.

77. At the meeting Mr Tchapdeu presented several documents. He told her about the grievances that he had raised whilst he was at Nuneaton and that he was eventually granted part time working. He told her that he had supported a former colleague who had brought a claim of racial discrimination to the Employment Tribunal and that he had given evidence on behalf of that colleague but that the case had been dismissed. He felt that his support had been held

against him. Ms Ringer had no knowledge about this.

78. He told Ms Ringer that it was his expectation that he would be allowed to continue working part time once he arrived at Magna Park but that this had not happened and he had been “forced” to move to full time hours. He complained that he felt that he had been misled about his working hours at the time he agreed to move to Magna Park. He also said he believed that part time work was available there but it had been denied to him because of his race. He said that he wanted to be able to resume part time working and be free of discrimination at work.

79. Ms Ringer then conducted her investigation by interviewing: -

- Mandeep Gill (pages 293-5)
- Kyle Newall (pages 299-300)
- Jose Fragona (pages 301-3)

80. The allegation that Mandeep Gill had discriminated against him because of his race and victimised him was a serious allegation. From her investigations she was satisfied that Mandeep Gill had not done anything improper. She had been liaising between Nuneaton and Magna Park to relocate a sizeable number of people who were displaced by the loss of the Vodafone contract they had worked on. She had done her best to find suitable alternative work for as many people as possible.

81. It was not Mandeep Gill’s decision, but Dean Ellis, who had decided that they could not grant new part time working arrangements. Mandeep Gill had done her best to locate a part time role for Mr Tchapeu but had been unable to do so. Mr Tchapeu had then decided to accept the role on a full-time basis.

82. Not only did she find that Mandeep Gill had done nothing wrong but that none of her actions were in any way because of the Claimant’s race or because he had been involved in a Tribunal claim. She decided to reject the allegations and wrote to the Claimant with her decision on 22 September 2016 (pages 305-9).

83. On 3 October 2016 the Claimant went off sick and he has not returned to work since then.

84. On 17 October 2016 the Claimant appealed against Allison Ringer’s decision (page 316). He now accused Allison Ringer of racism because he was “black African” and said that his grievance had been rejected without good reason. He referred to “institutional racism”. He said:

“It is racial discriminatory for Allison Ringer not to find that I have been racially discriminated.”

85. David Harper was appointed to deal with the appeal and he met with the Claimant on 2 November 2016. Notes of the meeting are at pages 322-50. The meeting started at 2:00 pm and ended at 5:15 pm. Mr Harper identified 3 broad areas that Mr Tchapeu wanted him to consider which were: -

85.1 Whether he had been treated differently because of his race.

85.2 Whether his involvement in the case of a former employee who he

had supported had impacted on the decision and;

85.3 whether the company had followed its own processes properly.

86. Mr Harper knew nothing about the case of Mr Onuoha and deliberately chose not to read any of the paperwork in respect of that. He noted that Allison Ringer had also said that she was unaware of it and that there was no record on Mr Tchapeu's personnel file about his involvement.

87. Mr Harper was satisfied that there was no evidence that Mr Tchapeu had been subjected to discrimination because of his race or that Allison Ringer had been influenced by his race in the way she had handled the grievance or the conclusions she had reached. He was satisfied that Ms Ringer's findings had been based on the facts of the case as they should have been.

88. Mr Harper rejected the Claimant's theory that Ms Ringer had been guilty of race discrimination because she had rejected his allegations of race discrimination against Mandeep Gill. His logic was that by rejecting criticism of Mandeep Gill, Ms Ringer had been tainted by racism herself. He understandably rejected that theory.

89. He was satisfied that Mandeep Gill had not made any decision relating to Mr Tchapeu. She had simply supported many staff being displaced by the loss of a contract on which they were employed. Several staff, including Mr Tchapeu, had elected to move to Magna Park and the question of who moved and where exactly they moved to and on what terms were decided by managers, not by Mandeep Gill.

90. All this had been explained previously to Mr Tchapeu who would not accept that explanation.

91. Mr Harper explained that whilst there might have been some misunderstanding at the time of his transfer to Magna Park this had been quickly resolved and no one had set out to deceive him and in fact the business was making strenuous efforts to preserve the employment of a substantial number of people who might otherwise have been made redundant.

92. He was satisfied that Mr Tchapeu's actions in giving evidence on behalf of Mr Onuoha had played no part in the decision the business took about it.

93. Like Ms Ringer he agreed that there had been some confusion in the mind of Mr Fragona when they discussed the Claimant's wish to work part time. This had not been helped by the fact that Mr Tchapeu had shown Mr Fragona a flexible working request which had dated back to his time at Nuneaton. Whatever, Mr Fragona did not have the authority to agree a new flexible working request and such a request had to go to Mr Newall. Mr Harper found that Mr Fragona believed Mr Tchapeu had been granted flexible working before he had moved to Magna Park and that in fact as Mr Tchapeu knew very well he had agreed to transfer on the basis that he would have to work full time.

94. He found that Mr Tchapeu had caused the confusion himself, an example of which was his letter at page 268 which was worded in a way that implied that a flexible working arrangement was already in place when he knew that those arrangements related to his time at Nuneaton and would end when he transferred to Magna Park.

95. He was satisfied that Allison Ringer had been entitled to make the findings that she did and he rejected the grounds of appeal. His conclusions were then set out in a letter to Mr Tchapdeu (pages 351-5) dated 18 November 2016.

96. On 19 December 2016 the Claimant contacted ACAS and presented his claim to the Tribunal on 15 February 2017. The Claimant continued in the employment although he was absent from work through illness. He made further requests to work part-time but these were rejected the same business reasons as before. An occupational health report was obtained dated 18<sup>th</sup> of January 2017 pages 358 – 358AA. The advice contained in the summary section was as follows;

“this is a management issue and will only like resolved by allowing flexible working”.

The report does not advise the respondent to grant the claimant’s flexible working request.

97. The claimant made a further request for flexible working on 5 May 2017 (page 377) which was refused for the same reasons as before. The Claimant also raised further grievances that letter accusing Mr Goode of discriminating against him and victimising him. This was repeated in another letter dated 25<sup>th</sup> of May 2019 (page 379). The Respondent advised the claimant by letter dated 31<sup>st</sup> of May 2017 (page 380-1) that they would not hear further grievances from him which related to matters which had already been dealt with, all of which were then subject to the tribunal proceedings. This was repeated in a letter dated 13<sup>th</sup> of October 2017 (page 417) and in an email dated 18<sup>th</sup> of October 2017 (page 420) and in a further email to the claimant dated 19 October 2017 (page 421). This decision was made because the Claimant’s continuing complaints was taking up substantial resources by dealing with repetitious grievances. Because of this decision the Respondent’s did not further correspond with the Claimant and his representative.

## **The Law**

### Direct Race Discrimination

98. Section 13 of the Equality Act 2010 (“EQA”) provides: -

“(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

As Mr Willey points out in his skeleton argument the Claimant relies on his race as a protected characteristic. This he initially classified as black African but subsequently he clarified it as being black African Cameroonian.

99. Mr Willey referred us to: -

- **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285
- **Nagarajan v London Regional Transport** [1999] IRLR 572

Indirect Race Discrimination

100. Section 19 EQA provides: -

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if:-

(a) A applies, or would apply, it to persons with whom B does not share the characteristic;

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it;

(c) it puts, or would put, B at that disadvantage, and;

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

101. In this case the Claimant referred me to the case of **British Airways Plc v Starmar** IRLR 862.

102. As Mr Willey says indirect discrimination means that the Respondents have applied a provision, criterion or practice (PCP) which puts the person in question at a disadvantage compared to people to whom the PCP is applied but who do not share the relevant person's protected characteristic and who do not in consequence suffer that disadvantage.

Direct Disability Discrimination

103. Again Section 13 EQA applies as above. In this case the Claimant does not have a disability himself. As Mr Willey says the case of **Coleman v Attridge Law** [2008] IRLR 722 applies.

104. The Tribunal must be satisfied that the Claimant's rejection to work reduced hours amounts to less favourable treatment of him because of his wife's disability. The Claimant not only has to show that he has suffered less favourable treatment but also that it is because of his wife's protected characteristic.

Victimisation

105. Section 27 EQA provides: -

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because: -

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

- (2) Each of the following is a protected act: -
- (a) bringing proceedings under this Act;
  - (b) giving evidence or information in connection with proceedings under this Act;
  - (c) doing any other thing for the purposes of or in connection with this Act;
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act.”

106. In this case it is not in dispute that the Claimant has committed a protected act. We have to be satisfied that: -

106.1 The employer has subjected him to a detriment and in particular;

106.2 that he was subjected to the detriment because he did the protected act.

#### Burden of Proof

107. Section 136 EQA provides: -

“(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

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

108. The case of **Ayodele v City Link Limited** [2018] IRLR 114 reaffirmed the position in respect of burden of proof that had previously been set out in the cases of: -

- **Hewage v Grampian Health Board** [2012] IRLR 870
- **Igen Limited and Others v Wong and Others** [2005] IRLR 258
- **Khan and Another v Home Office** [2008] IWCA CIV 578
- **Laing v Manchester City Council** [2006] IRLR 748
- **Madarassy v Nomura International Plc** [2007] EWCA CIV 33

109 The case law is clear. In discrimination claims brought under the EQA the initial burden of proof lies with an employee as it always had done under the earlier legislation.

110. It is therefore initially for the Claimant to prove facts in support of his claim to have suffered the discrimination in question. Unless he does so the Respondent will not need to advance a non-discriminatory explanation for the facts established by the Claimant.

111. As described by Mr Willey in practice and in most cases the Tribunal will be able to establish with relative ease whether the facts offered by the Claimant would, if proved, show that a breach of the act had taken place. It then applies

the normal (civil) standard of proof in assessing the evidence as to whether the facts are proved.

112. If those facts are established then and only then does the burden move to the Respondent to show that the conduct in question was in no sense at all related to the relevant protected characteristic of the Claimant (in this case race).

### Jurisdiction

113. Section 123(1)(a) EQA provides: -

“1) Subject to section 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of: -

- (a) The period of 3 months starting with the date of the act to which the complaint relates, or
- (b) Such other period as the Employment Tribunal thinks just and equitable.

(3) For the purposes of this section: -

- (a) Conduct extending over a period is to be treated as done at the end of the period;
- (b) Failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something: -

- (a) When P does an act inconsistent with doing it, or
- (b) If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

114. We were referred to several cases namely: -

- **Bexley Community Centre v Robertson** [2003] EWCA CIV 576
- **Hendricks v Commission of Police for the Metropolis** [2002] EWCA CIV 1686
- **Lyfar v Brighton and Sussex University Hospitals Trust** [2006] EWCA CIV 14548
- **Cast v Croydon College** [1998] IRLR 318
- **Sougrin v Haringay Health Authority** [1992] IRLR 416

115. Dr Ibakakombo makes much in his legal submissions of the case of **Cordell v Foreign and Commonwealth Office** UK EAT/0016/11/SM. That case emphasises the two questions that the Tribunal must ask: -

115.1 Has the Claimant received less favourable treatment than an actual or hypothetical comparator? And;

115.2 was the reason for that treatment the person's protected characteristic?



## Our Conclusions

116. We agree generally with Mr Willey's submission that this case is "remarkable for the almost complete lack of any supporting evidence for the Claimant's claims". Whilst Mr Tchapeu and even more so Dr Ibakakombo are firmly of the view that the Claimant has suffered the discrimination alleged, there is in our view no evidence to support that contention. None of the facts have been presented to us point to the reasons for any treatment that he has received being because of his race or because of his wife's disability or because he had undertaken protected acts.

117. We are satisfied that allegations numbered 6 to 15 are all out of time and that the Tribunal does not have jurisdiction to deal with these claims. The Claimant notified ACAS of his claims on 19 December 2016 so on the face of it any claims made before 20 September 2016 are out of time. Dr Ibakakombo on behalf of the Claimant accepted at the commencement of the hearing that these were out of time and we are satisfied that they are and no reason has been put forward why there should be an extension of time on a just and equitable basis.

118. The allegations which are in time and which could form part of a continuing act relate to his request for flexible working and grievances he has raised in respect of them.

### Direct race discrimination

119. The Claimant says that all matters that he complains of amount to direct race discrimination i.e. because he is black African Cameroonian. The alleged less favourable treatment is set out in the schedule.

120. We are satisfied that his request for flexible working was rejected not because of his race but because of issues at Magna Park which led to a decision being made that those transferring from Nuneaton would have to transfer to Magna Park on a full-time basis. We are satisfied that this provision applied to all employees and that the Claimant was not singled out in any way or suffered any different treatment. We have heard the Respondent's explanation as to why they made their decision and accept that this was the reason for them doing so, namely issues over the facilities at Magna Park.

121. Allison Ringer's rejection of his grievances was because there were no grounds for his grievance. She knew nothing of the Claimant prior to being appointed to consider his grievances and her rejection of those grievances was perfectly proper and not motivated by his race at all.

122. David Harper was also someone who knew nothing about the Claimant and nothing about his involvement in other cases. He rejected the Claimant's appeal not because of the Claimant's race but because there were no grounds for it.

123. After the Claimant presented his claim to the Tribunal the company took a strategic decision to not consider any further claims but for these matters to be dealt with by the Tribunal. Again, this was a business decision and not motivated by race.

Indirect Race Discrimination

124. The provision, criterion or practice relied on in this case is rejecting claims and grievances. We are satisfied that there was no provision, criterion or practice to reject his grievances. There was no lack of a proper examination of complaints and grievances. All matters were looked into carefully by those responsible, i.e. Allison Ringer and David Harper. The Claimant has not established any basis for any such complaint.

Victimisation

125. We are satisfied and the Respondent's accept that the Claimant undertook various protected acts, namely: -

125.1 Accompanying of a colleague to a grievance hearing.

125.2 Appearing as a witness in January 2016 in a Tribunal claim of discrimination.

125.3 Lodging a grievance alleging racial discrimination.

125.4 Submitting various letters alleging racial discrimination.

125.5 Bringing these proceedings.

126. In this case the Claimant says that he has suffered various detriments because he had undertaken those protected acts, namely: -

126.1 Requiring him to work full time at Magna Park.

126.2 Giving him incorrect information at the time of transfer.

126.3 Continuing to refuse him part-time working in August 2016

126.4 Failing to properly consider the new request for flexible working in August 2016

126.5 The rejection of his grievance dated 6<sup>th</sup> of August 2016

126.6 The rejection of his appeal against that outcome in November 2016

126.7 The withdrawal of an offer of part-time working in July 2017

126.8 The failure to provide him with information about 2 fellow employees he wanted to cite as comparators in his direct discrimination claim in mid-2017

126.9 Failing to provide him with employment tribunal case papers relating to a former employee Davinder Singh

126.10 Failing to implement flexible working arrangements during 2017 while he was off work sick

126.11 Failing to acknowledge and respond to letters of grievance during

2017, and

126.12 Failing to provide him with information relating to internal rules and procedures relating to the handling of grievances during 2017.

127. We are satisfied that the claimant;

- Agreed to work full-time at Magna Park.
- He was not required to work full-time at Magna Park.
- He chose to accept the transfer on that basis.
- He was not given incorrect information by Mandeep Gill.
- The Respondent did not continue to refuse to allow him to work part-time.
- The Respondent considered properly his request for part-time work at all stages and his grievances and the appeals that followed those grievances were dealt with professionally and without a hint of discrimination.
- There was no withdrawal of an offer of part-time work in July 2017.
- There was no failure to provide him with information or case papers that had anything to do with his race or that could possibly amount to any victimisation.
- There was no failure to implement flexible working arrangements during 2017 while he was off sick
- there were good business reasons why the respondent decided to not respond to letters of grievance during 2017.
- There was no failure to provide him with information relating to internal rules and procedures.

128. We are satisfied that none of the acts complained of were because of these protected acts. Allison Ringer, David Harper and Jose Fragona, we are satisfied, were not aware of his involvement in the Tribunal claims until he told them about it. They were not involved in the claims. None of the people who he complains of were motivated in any way by the protected acts complained of.

### Institutional Racism

128. In this case in an almost desperate attempt to make some sort of claim Dr Ibakakombo accuses the Respondent of institutionalised racism. Saying that the Respondents by not hearing his new grievances and complaints were motivated by widespread racism which permeates the business. He cannot accept what we accept that this was simply a business decision undertaken by the business.

129. Allison Ringer and David Harper had carried out thorough investigations into the allegations that the Claimant has made and came to entirely appropriate conclusions that he had not been discriminated on grounds of his race.

130. We are satisfied that there were no misdeeds with regards to the witness statements. The amendments made were simply to address the new race discrimination claim that the Claimant had been discriminated against because he was black African Cameroonian. There is no evidence in this case at all that the Claimant has suffered any type of discrimination.

131. We are satisfied that he has been treated fairly and properly by his employers' and the allegations of discrimination against them are entirely without foundation.

132. In the circumstances all the claims fail and are hereby dismissed and the provisional remedy hearing listed for 29<sup>th</sup> of August 2019 is hereby cancelled.

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Employment Judge Hutchinson

Date 19 July 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE