



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Mohid

v

Islamia Schools Ltd

Heard at: Watford

On: 5-13 August 2019

Before: Employment Judge Bedeau

Members: Mr D Sagar

Mr P Miller

Appearances

For the Claimant: In person

For the Respondent: Mr C Khan, Counsel

RESERVED JUDGMENT

1. The public interest disclosure detriment claims are not well-founded and are dismissed.
2. The public interest disclosure dismissal claim is not well-founded and is dismissed.
3. The victimisation claims are not well-founded and are dismissed.
4. The accrued untaken holiday claim is not well-founded and is dismissed.
5. The claim for overtime pay has not been proved and is dismissed.
6. The claim for expenses has not been proved and is dismissed.
7. The compensation claim for loss of promotion has not been proved and is dismissed.
8. There is no basis for claiming compensation for the failure to provide a statement of initial employment particulars.
9. Breach of the Working Time Regulations in respect of the denial of rest breaks, is dismissed upon withdrawal by the claimant.

10. The provisional remedy hearing listed on Friday 25 October 2019, is hereby vacated.

REASONS

1. In a claim form presented to the tribunal on 26 March 2018, the claimant made claims of unfair dismissal; public interest disclosure detriment and dismissal; discrimination because of religion or belief; accrued unpaid holiday; unauthorised deductions from wages; and breach of contract.
2. To these claims, the respondent, in its' response presented to the tribunal on 8 May 2018, denied liability and averred that the claimant was dismissed because of poor performance during his one year probationary period.

The Issues

3. Before Employment Judge McNeill QC, the claims and issues were clarified and they are now set out below.

Public interest disclosure (PID)

- (i) Did the claimant make one or more of the alleged protected disclosures set out in the paragraphs of his particulars of claim: paragraph 15, (told Ms Hasana Islam, Trustee, verbally on 20 August 2017, of fire risk; 20, (the fire risk assessment report dated September 2017, was sent to Mr Zafar Ashraf and Ms Jabeen highlighting potential fire risks); 30, (claimant informed Ms Jabeen, Mr Ashraf, Ms Khaladi and Ms Islam on 8 November 2017, of the outcome of a fire drill the previous day and the failures in safety procedures); 42, (Ms Jabeen said on or around 30 October 2017, that the respondent could not hire non-Muslims); 43, (the respondent failed to comply with a legal obligation to not discriminate on grounds or religion or belief); 55, (on 29 November 2017, the claimant verbally informed Ms Jabeen about his concerns over the safety and servicing of a boiler); 66, (the respondent did not investigate his concerns in relation to the boiler giving out carbon monoxide fumes which is poisonous); 72, (claimant verbally told Ms Jabeen on 2 November 2017, that his mobile phone number had been disclosed to a salesman in breach of data protection); 75, (on 15 July 2017, the claimant verbally disclosed to Ms Fawziah Islam, Principal, the lack of accounts for rentals and the Tuck Shop); 82, (the claimant told Ms Hasana Islam that the Food Servers had no food safety training); 87, (claimant emailed Ms Jabeen on 21 November 2017, to inform her that the water temperatures were below the legal requirement); 92, (claimant said that paying a daily rate of £50 to labourers was below the national minimum wage); 97, (claimant emailed the respondent on 24 November 2017, to inform them that the floor in a classroom was bowing and would need to be replaced as there had been a water

leak); 103, (claimant verbally informed Ms Jabeen on 13 July 2017, that gas cylinders were not stored correctly); 107, (claimant informed Ms Jabeen by email that the students were falling and stumbling in the corridors because the walkways were full of jackets and bags); and 111, (claimant verbally informed Ms Jabeen on 20 July 2017, that sanitary towels had not been collected since 5 June 2017, and were disposed of in general waste).

- (ii) The respondent accepts that some protected disclosures were made, namely paragraphs 15, 20, 30, 72, 87,97,103 and 111. In relation to others, the respondent disputes that such disclosures were made in the terms set out in the claim form.
- (iii) If and insofar as the claimant makes out any protected disclosures, did the respondent subject the claimant to any detriments? The claims relies upon the following:-
 - 1. That he was offered a promotion to Senior Site Manager which was then withdrawn;
 - 2. That the respondent failed to provide him with sufficient funds to complete the summer works' checklist so he had to use own his funds for which he was not reimbursed;
 - 3. The respondent made unlawful deductions from his pay;
 - 4. The respondent subjected the claimant to humiliating and demeaning treatment as set out at paragraphs 147-166 of his particulars of claim;
 - 5. The claimant was denied the opportunity for training;
- (iv) If and insofar the claimant makes out any of the above detriments, were they done on ground that he made one or more of the protected disclosures listed above?

Unfair dismissal – Section 103A Employment Rights Act 1996

- (v) Was the reason or principal reason for the claimant's dismissal that he had made one or more of the protected disclosures set out above?

Equality Act – Section 27 Victimisation

- (vi) The protected acts relied upon are those set out at paragraphs 41-44 of the claimant's particulars of claim, namely that he complained that the respondent was discriminating against others because of religion. The claims for victimisation are set out at paragraphs 147-166 of his particulars of claim. Does he make out the matters alleged as a matter of fact and, if so, did the respondent subject the claimant to any

detriments as set out at paragraphs 147-166 of his particulars of claim?

- (vii) If so, was this because the claimant did a protected act and/or because the respondent believed the claimant had done and might do a protected act?

Financial claims

- (viii) Is the claimant owed overtime and, if so, in what amount?
- (ix) Is the claimant owed expenses and, if so, in what amount?
- (x) Does the claimant have a claim for compensation resulting from a loss of promotion?
- (xi) What, if anything, is owed to the claimant in respect of holiday pay?
- (xii) Was the claimant denied rest breaks and, if so, is he entitled to any compensation in respect of the denial of rest breaks?

Failure to provide a written statement of particulars

- (xiii) The respondent accepts that it did not provide a written statement of particulars to the claimant and that the claimant is entitled to such statutory compensation as may be payable pursuant to statute.
4. It is not disputed that the respondent did not provide the claimant with an initial statement of written employment particulars.
5. The central issue in this case is whether or not the claimant was treated in the way alleged because he had made protected disclosures. The respondent's case is that his treatment was based on his poor performance.

The Evidence

6. The tribunal heard evidence from the claimant who called Mr Taru Taruvinga, Painter and Labourer. Evidence was given via live Whatsapp video link by Mr Sarjahan Ali, Labourer, and by Mr Afique Chowdhury, friend.
7. We have also taken into account the statement by Ms Sharifa Begum.
8. On behalf of the respondent evidence was given by Mrs Hasana Islam, Director and Trustee of Islamia Schools Limited "ISL"; Mr Zafar Ashraf, Executive Director of Yusuf Islam Foundation; Mrs Sdaqat Jabeen, former Headteacher; Ms Kalthoum Khaladi, Deputy Headteacher; and Mr Shabbir Ahmad, Accounts Manager. We were invited to read and to give whatever

weight we considered appropriate to the statement by Ms Hajra Fazil, Administration/Attendance Officer.

9. In addition to the oral evidence, the parties adduced a joint bundle of documents. Further documents were produced during the course of the hearing which were included in the bundle. The total number of documents was in excess of 621 pages. References will be made to the documents as numbered in the bundle.

Findings of fact

10. The respondent is the proprietor of two independent fee-paying schools called Islamia Girls School, and Brondesbury College for Boys. It provides secondary school education. The schools are on Salusbury Road, Kilburn, London. This case concerns the Girls school. References will be made to the Girls school and the school which refers to the same school.
11. At all material times, Ms Sdaqat Jabeen was the Headteacher of the Girls school and Ms Kalthoum Khalladi was Deputy Headteacher of the school.
12. The claimant applied for the position of Site Manager/Caretaker at the Girls school and was interviewed on 10 May 2017 by Ms Jabeen, Ms Hasana Islam and Ms Islam's sister, Ms Asmaa Islam Georgio, a Trustee.

Claimant's hours of work

13. One of the issues raised by the claimant was that he was not told that his working hours would be 7am to 7pm with a four-hour lunch break.
14. We find that he was required to take his break between 11am and 3pm Monday to Friday. The school would close normally around 3:30pm and he was required to be present on site prior to the pupils' departure for the day.
15. He referred to a document purporting to be his employment contract in which it stated that his hours of work were 9am until 6pm, Monday to Friday. He acknowledged, as do the respondent, that that proposed contract was never sent to him and was never signed by him or by the respondent.
16. The evidence given by Ms Jabeen was that the school needed someone on site between 7am and 7pm, excluding the four-hour break, and this had been explained to the claimant during the recruitment process. Shortly after his interview, he was required to engage in a two-day trial period. Ms Jabeen told us, and we do find as fact, that during that time she explained to the claimant the need for him to work 7am until 7pm with a four-hour break. This was supported by a letter offering him employment as Site Manager/Caretaker, dated June 2017, sent by her in which she wrote the following:

“Dear Abdul Mohid,

Following your successful interview on Wednesday 10 May 2017, we are pleased to confirm the offer of the post of site manager/caretaker at Islamia Girls School, starting from Monday 5 June 2017. This appointment is full time and on a permanent basis.

Your gross annual salary will be £24,000 paid monthly in arrears which equates to spine point SSP S5.5. Your main place of work is at the address below and any other location within the YIF group as may reasonably be required.

You will be required to work at total of 40 hours per week between the hours of 7am and 7pm, Monday to Friday.

This offer is subject to a probationary period of 1 year and conditional upon receiving a satisfactory Disclosure and Barring Service Check, the application for which will be made at the start of employment, and upon receiving two satisfactory references.....” (page 66 of the bundle)

17. We find that the claimant was told prior to commencement of his employment on 5 June 2017, that he would be required to work 7am to 7pm but with the four-hour break during those times. This was also stated in the offer letter sent to him three days after he commenced employment. We, however, are further satisfied that he was not content working those hours and said as much during his appraisal meeting on 19 June 2017 with Ms Jabeen. He and Ms Jabeen, during the appraisal, agreed that he would familiarise himself with the compliance elements of his work and regulations, to ensure that the school were fit for purpose and well maintained. In addition, he was to attend any training sessions on “any necessary legislation” and was required to have a full understanding of building maintenance and the respondent’s policies and procedures. (pages 87 – 94)
18. Notwithstanding that his hours were clarified, following on from his appraisal meeting, he sent an e-mail on the same date, complaining about what he alleged to have been a change in his working hours. (page 94a)

Disclosure and Baring Service certificate

19. One of the conditions stipulated by the respondent in its offer letter was that the claimant should provide a satisfactory DBS check. We are satisfied that he knew he was required to submit a satisfactory DBS certificate to the respondent early on in his employment, however, a DBS certificate was issued to him on 8 August 2017. In it, it gave his convictions, namely that on 27 August 2009, he was convicted at Highbury Corner Magistrates Court of wrongfully using a disabled person’s badge. He was fined £80 and had to pay costs of £80. On 26 March 2010, again at the same court, he was convicted of resisting or obstructing a police constable on 17 March 2010 and of using a vehicle while uninsured. He was fined £100 for each offence and his license was endorsed with eight penalty points. He had also had to pay costs of £100. In addition, it

recorded a caution on 20 May 2017, by the Metropolitan Police, for possession of cannabis. (101c-101d)

20. The claimant said in evidence that he informed Ms Jabeen during the initial two-day trial period that he had been cautioned for drugs being found in a vehicle, but it was someone else's vehicle he was driving at the time. He said that Ms Jabeen said to him that she would think about whether it should be taken any further. She was not told about the convictions, nor did she receive in August 2017, the DBS certificate.
21. In the Whatsapp messages we were taken to, on 29 November 2017, Ms Jabeen messaged the claimant "remember to bring your DBS form in". (page 487)
22. The claimant submitted his DBS on or around that date. We find that he deliberately failed to disclose his DBS certificate because of the convictions. We also find that had the respondent known at the time of his convictions, it would not have offered him the role. That was the evidence the witnesses gave. By withholding this information, the claimant had acted deliberately, intending to avoid the potential consequence, namely the termination of his employment.

Purchase order procedures

23. The claimant had been inducted and trained on the respondent's purchase order procedures which included a requirement to submit an order form for all purchases by or on behalf of the respondent. The procedure was explained to him by Ms Kalthoum Khaladi, Deputy Headteacher, between 5 – 20 June 2017. (Pages 67 – 68)
24. Ms Khalladi also provided the claimant with his IT login details and showed him where to access the staff handbook on the Teacher's drive, which contained all the relevant policies and procedures. She also showed him where he could access the Caretaker's Folder which stored all the relevant forms and documents he might need during his employment. She discussed with him the school's Code of Conduct as well as the behavioural and professional expectations of staff.
25. Mr Shabbir Ahmad, Accounts Manager, also met with the claimant early in his employment to explain to him the school's accounting processes, including the requirement to complete order forms and the need for the school to have supporting evidence for accounting purposes. We are satisfied that he explained to the claimant that he, the claimant, would need to complete an order form, either an educational order form or school specific request, or a non-educational order form for building work or equipment generally, and provide evidence why the request was being made and how much was the cost. The order form would then be reviewed and approved by either an operational head in relation to educational order forms, who at the material times, were: Ms Jabeen, Headteacher; a Trustee; or a Director or operational head, in relation to

non-educational order forms. At the time, the Trustee was Ms Hasana Islam.

26. The order form and accompanying evidence would then be reviewed and compared with the budgets by Mr Ahmad in order to determine whether there were sufficient funds to make the purchase. If there were, a payment would be set up to be approved for the relevant authorised signatory who would approve the payment. The payment would then be made by a bank transfer.

Clocking in and out

27. In relation to clocking in and out, we find that the respondent had a clocking in and out machine which was situated in the reception area of the school. As a result of electrical cables being accidentally cut by a contractor, this machine was out of order from July to early October 2017. In its place was a signing in and out book in the reception area. We are satisfied that staff were required to sign in and out using the book when the machine was out of order.
28. We looked at the claimant's record of signing in and out for June 2017, and we are satisfied that he was consistently late in signing in for work. (page 123)
29. Having regard to the nature of the work of Site Manager/Caretaker, in accordance with its procedure, the respondent provided the claimant with a general payment, in advance, of £500 to cover necessary expenses, such as, the purchase materials and to carry out repairs. This payment would then either be topped up or replenished on a monthly basis on condition that there was supporting evidence.
30. We find that the claimant was provided with £500, the £300 and £200 on 7 June 2017 and petty cash vouchers were signed by him for the same amounts. (page 567)
31. He used this cash to purchase some materials totalling £498.37 and on 23 June 2017, after he had completed an order form and provided invoices, the funds were replenished with petty cash to ensure that he had £500 again for his use as part of his work. (pages 568 – 571)
32. We are, therefore, satisfied that he was aware of the respondent's purchase order, as well as its accounting procedures.

Summer Works

33. The Islamia Primary School occupied a building which is part of the Islamia Girls School complex. In December 2016, The Yusuf Islamia Foundation served notice on the Primary School to vacate some of the additional spaces that had been utilised, but which formed part of the Girls school as the school required those spaces for the forthcoming academic year. It transpired that the legal advice upon which YIF had relied and which formed the basis of the notice, was incorrect. The impact of this was that it

was realised, at very short notice, and just two weeks before the summer break, that the rooms IPS were expected to yield up would in fact not be available to the Girls school for the start of academic year, September 2017. It meant that building works became necessary at the school, which had not been anticipated.

34. The Girls' school had increased in size because of overwhelming demand for the quality of its teaching. The nature of secondary education is very different to the teaching of a primary school with the need for classrooms for almost every subject, GCSE options, and specialist accommodation, such as laboratories and classrooms for intervention and support. The news that the notice was not valid meant that there had to be immediate logistical, structural, operational changes at the school over the summer period in order to accommodate the school's needs when it resumed in September 2017.
35. The claimant, together with Mr Ahmad and Ms Jabeen, met on 20 June 2017, to discuss the finances involved in the summer works project. We are satisfied that the Mr Ahmad explained to the claimant the respondent's policy and procedures regarding the summer works which had to be completed over the summer period when many staff members were on annual leave. The claimant was informed that he would be provided with additional advance payments over and above £500. It was explained by Mr Ahmad and Ms Jabeen that in relation to the summer works:
 - 35.1 any major works should be carried out by a contractor and the school would subsequently make payment to that contractor using the normal procedure, that is, pay the invoice directly once the order form had been completed and approved;
 - 35.2 all orders or expenses over £500 required three quotations before proceeding;
 - 35.3 the advance payments could be used for smaller works, such as in-house jobs to be carried out by self-employed labourers at an agreed rate; and
 - 35.4 in relation to the hiring of equipment and sourcing certain materials, payment was to be made on presentation of an invoice or quote, and on completion of an order form.
36. It was also explained to the claimant that he would be required to fill out an order form for any advance payments and that any or all payments made out of the money advanced would need to be backed up by supporting documentary evidence. This meant that if he engaged any self-employed labourers, he would first need them to furnish him with an invoice for the work carried out before any payments could be made to them. The claimant confirmed he understood the procedures and what was required of him. We are also satisfied that the respondent agreed to pay the labourers at a daily rate of £80. (page 301)

37. At the end of the academic year 2016/17, and before the summer recess, Ms Jabeen walked the claimant around the school premises and discussed with him the suggested improvement works to be carried out during the summer period.
38. It was estimated that the cost of the works would be £24,465, broken down as £8,560 for labour; £14,055 for materials; and £1,850 for equipment. It was decided that payments would be made to the claimant in advance and in instalments on the understanding that he would provide supporting documentation, such as valid invoices before each subsequent instalment was released.
39. On 21 July 2017, however, the claimant submitted an order form and a schedule requesting advance payments to his account in the sum of £53,230 made up as follows: £5,070 for electrical works; £31,250 for the contractors; and £16,910, covering the summer works. Mr Ahmad rejected the order form in respect of £31,250 and £5,070, as these figures had neither been agreed nor estimated. He informed Ms Jabeen of his decision who in turn spoke to the claimant. Ms Jabeen signed the three non-educational resource order forms for the total sum of £53,230. (pages 310 – 312)
40. The claimant submitted an order form and schedule for £24,465 on an educational order form which was thereafter cancelled and replaced with a non-educational order form for £24,000, created by the respondent's secretary and signed by the claimant and by Ms Jabeen. The claimant was forwarded the first instalment of £6,000 on 1 August 2017. (pages 313, 318, 381a, 374 and 589)
41. The works commenced in July 2017. Mr Ahmad spoke to the claimant about invoices for the works being carried out. He was shown by the claimant handwritten receipts which the claimant had created in an invoice book. Mr Ahmad informed him that the so-called invoices were of little use as they contained limited details about who the payee was and were created by the claimant. Mr Ahmad could not determine whether the payments actually made. The claimant was informed by him that all self-employed contractors should give him, that being the claimant, an invoice before any payments were made.
42. We are satisfied that Ms Islam subsequently spoke to the claimant and showed him a template invoice for him to follow.
43. In early August 2017, the claimant requested the second advance instalment of £6,000 but Mr Ahmad had not seen any supporting evidence that the claimant had spent the first instalment, despite asking him to provide the evidence. However, Ms Islam instructed Mr Ahmad to set up the payment to the claimant and this was done on 10 August 2017. Again, without any supporting evidence as to how the second payment had been spent, Mr Ahmad was instructed to pay the claimant the third instalment of £6,000 which was made on 18 August 2017. (pages 375, 376, 590 and 591)

44. On 28 August 2017, the claimant forwarded to Mr Ahmad a breakdown of the costings, confirming that he required further funds totalling £18,855.31. He stated that he was using his own funds to complete the works. (pages 319 – 320)
45. The fourth instalment of £6,000 was sent to the claimant the following day, following instructions from Ms Islam. (pages 376, 377 and 592).
46. On 17 September 2017, the claimant having submitted a further order form requesting payment of £10,000 which was approved by Ms Jabeen and Ms Islam, the funds were released to him. (pages 378 and 593)
47. Again, we would stress that Mr Ahmad's concern was that the request for £10,000 was made without the claimant providing to him documentary evidence in support of the works. The total paid was £34,000. He forwarded to the claimant a spreadsheet for him to complete in relation to the payments for the summer works to satisfy himself as to how the money had been spent. (pages 326, 327 – 333).

Expenses Claim

48. On 26 October 2017, the claimant provided a summary of the expenses he claimed to have incurred which totalled £48,847.17, broken down as £12,293.17 for materials, £36,554 for labour. He also asserted that he spent £14,847.17 of his own funds on the summer works.
49. The school was due to open for the new year on 4 September 2017 but as the works were not completed, it was postponed by a further week to 11 September and then by a further week, to the 18 September.
50. On 31 October 2017, the claimant provided to Mr Ahmad some invoices which appeared to be in relation to the work carried out by labourers. Having examined them, Mr Ahmad concluded that they were in the same handwritten format. He and Ms Islam decided that they were not acceptable and were of no use. If they were invoices from the labourers, they had to come from each one of them and would have a different handwriting style but that was not the case.
51. On 7 September 2017, Mr Ahmad wrote to the claimant stating that out of the total claimed expenses, only £7,969.43 pertaining to materials only, was accounted for by valid invoices. The remaining £4,323.74 for material expenses, he called into question.
52. On 15 November 2017, the claimant forwarded to Mr Ahmad further invoices in relation to labour but they were all very similar. Mr Ahmad suspected that the claimant had created them himself. In evidence the claimant admitted that he had created the invoices. Why they could not be produced by the labourers themselves was unexplained.

53. On 29 November 2017, Mr Ahmad informed the claimant that his claims for both expenses and overtime would be placed on hold as he, the claimant, had not followed the correct procedures and policies which had been explained to him prior to and during the summer works.
54. At a meeting attended by Mr Zafar Ashraf, Executive Director of YIF, the claimant, Ms Jabeen, Ms Islam and Mr Ahmad, to discuss the claimant's expenses, as well as overtime, owed by the respondent, the claimant admitted that he had created all of the invoices submitted to Mr Ahmad on 15 November 2017. He maintained that he had incurred all the expenses he submitted and had spent £14,847.17 of his funds. He was requested to list all the works carried out during the summer, giving a rough estimate of how long each job took, and how many labourers were engaged. He was also asked to provide further evidence in relation to his statement that he had spent £14,847.17 of his own funds on the works, as the use of his own funds was without authorisation.
55. On 4 December 2017, he provided a list of the works carried out in respect of his overtime claim but did not include any estimates of how long each job took.
56. Mr Ahmad had concerns about the lack of documentation regarding the claimant's alleged spending as he had observed the claimant writing the invoices in an invoice book. He also, on several occasions throughout the summer period, requested invoices and supporting evidence for the payments the claimant allegedly made. The claimant's response was to say that he was too busy and repeatedly promised to provide the evidence on a later date.
57. Mr Ahmad also became aware that the claimant was using a Trade Card which had been registered in the school's name. The card had a limit of £500.

Overtime

58. If an employee works additional hours, they are required to inform their line manager or operational head about what overtime hours they worked, when the hours were worked, and what was the reason for the overtime. The payroll process runs from the 19th until 18th of each month. Operational heads will forward a monthly memorandum to the accounts department setting out any overtime worked or deviations from the normal working hours. Once approved by the operational head, an e-mail is sent to the accounting office, copying the Trustees. Instructions are then given to payroll to process the monthly salaries.
59. As stated earlier, staff are also expected to sign in and out of the school using the fingerprint scanning device at the entrance. The biometric scanning data obtained is then used to work out overtime. The scanner was disconnected from July to September 2017 as the wiring had been cut by accident. During that time the claimant failed to follow any process in

respect of signing in and out of the school despite knowing of the procedure.

60. In June 2017 he was paid 11 hours overtime; in July 20.5 hours; August 0 hours; September 361 hours; October 0 hours; November 3 hours and December 20 hours overtime. The sum of the payments amounted to £4,787.78 which was approximately 415 hours.
61. A substantial claim for overtime was submitted by him for September/October 2017 which was put on hold as there was no evidence that he had completed the number of hours claimed. He had not clocked in and out as required. This was discussed during a headteachers' meeting on 22 November 2017. (pages 123 – 125, 130b)
62. The claimant claimed for either 561 hours or 575 hours overtime in August to October 2017 but was paid for 361 hours. His claim before this tribunal is for over 200 hours overtime.
63. He was written to on 22 October 2017 by Ms Jabeen who instructed him to complete the job sheet sent by Mr Ahmad and that he must verify all overtime. She also stated that he must clock in and out. (page 333d)
64. In relation to the spreadsheet submitted by the claimant covering his overtime for August to October 2017, the claimant said in evidence that the figures were averages. He did not want to put the actual longer hours worked as overtime because Ms Jabeen did not want that to be disclosed as it would be in breach of the Working Time Regulations. He said they, therefore, agreed that he should put down his average hours overtime.
65. This evidence by the claimant was denied by Ms Jabeen. There is no clocking in and out data that he has provided, nor is there evidence from the signing in book to confirm the hours claimed as overtime. It was unrealistic to agree his figures. (page 333e)
66. We accept the evidence given by Ms Islam when she considered the claimant's spreadsheet in respect of the overtime claimed as there were discrepancies. She stated that on 19 August 2017, he stated he worked overtime from 9 o'clock in the morning until 8 o'clock in the evening, but on the same day he sent her a message at 10:43 in the morning confirming that he was not at school and would not be in until the following day. (page 465)
67. On 1 September 2017, he worked 8am until 12 midnight but on the same day at 10:22 am, he asked Ms Islam to make a payment. If he was at school at the time, he would have been able to make the payment himself. (page 469)
68. On 10 September 2017, he worked overtime 9am until 8pm but on the same day he sent a message to her at 7.05pm, confirming he was at home. (page 472)

69. On 11 September 2017, he stated he worked 8am until 12 midnight but on the same day, he sent messages to Ms Islam at 8am confirming he was on a train and at 5:59pm he stated that he “could do with an early finish”. (page 473)
70. On 15 September 2017, he claimed he worked 8am until midnight, but on the same day he sent Ms Islam a message at 9:28pm confirming he was planning on leaving school shortly. (page 476)
71. On 10 October 2017, he claimed he worked 9:30am until 12:30am but on the same day he sent Ms Islam a message at 12:51 confirming that he was not at school. (page 480)
72. The reliability of the claimant’s evidence in respect of overtime has been cast into doubt by the above inconsistencies.

Loans

73. In support of the claimant’s claim that he had spent over £20,000 of his own money on the summer works without any documentary evidence in support, he stated that approximately £12,080 comprised of a number of loans to him in cash by Mr Afique Chowdhury. He produced as an exhibit to Mr Chowdhury’s statement, photocopies of Mr Chowdhury’s bank account, purporting to show that cash withdrawals by Mr Chowdhury were paid to him. There is no documentary evidence in support of any monies loaned to him by Mr Chowdhury.
74. Mr Chowdhury is a friend of the claimant who said in evidence that he got some of the money from his colleagues, yet there is no documentary evidence of any loans being given from named individuals in specific sums to him.
75. We also note that Mr Chowdhury’s statement in respect of monies owed to the claimant, was produced very late in these proceedings, the day before the commencement of the hearing.
76. Even from the claimant’s own bank statements, there is nothing to indicate that the withdrawals were for the summer building works. His bank balance does not show that he was in need of funds and had to ask his friend Mr Chowdhury for loans, because he was in credit. From August to November 2017 his account had an increased credit balance from £3,200 to £8,200.

Health and safety concerns

77. When Ms Khaladi returned to the school after the summer break, she was aware that the refurbishment works were substantial, but she was concerned from a health and safety point of view about the state in which the building had been left. Some of the works had been carried out after school hours and, in particular, there were dangerous tools and substances, such as chisels, paints and chemicals, including white spirit,

left lying around or unsecured; sharp nails exposed; cables running along floors; and doors where work was being carried out, left open. She spoke to the claimant about her concerns on six or seven occasions, on each occasion reminding him about the importance of ensuring students' safety. In response he would blame others who had been working at the school and apologised on their behalf. Ms Khaladi became frustrated with his lack of awareness regarding health and safety issues and began attending school 30 minutes earlier than normal to engage in a walk around the premises in order to satisfy herself that it was safe for the students. She said in evidence that on many occasions she found tools left out and doors left open. It was obvious to her that the claimant did not appear to have taken any of her concerns seriously.

78. On 14 September 2017, she became aware that Mr Babar Mirza, Headteacher of Islamia Primary School, made a complaint that a blade had been left on his school's premises, one of the students picked up and placed it in his pocket, but it was subsequently discovered. This again highlighted issues in relation to student safety.
79. In respect of that incident, Ms Jabeen spoke to the claimant, but he blamed a sub-contractor implying that it was not his responsibility.
80. On another occasion, Ms Khaladi became aware that a girl at the school had entered a room that had been left unlocked and without any warning signs that works were ongoing. She came across drilling equipment in the room at the time.
81. She and Ms Jabeen's walk around revealed again equipment being left on the school premises. Ms Khaladi also became aware of other incidents where a blade that had been used to scrape paint off the windows of the school's Mosque, had been left out, and chemicals which had been used to thin paint had been left open and unsecured. She described the chemical as white spirit and not vinegar as asserted by the claimant, as she knows the difference between the two.
82. On 21 September 2017, she became aware of a further complaint by Mr Mirza about the claimant and his attitude towards members of the primary school's staff as it appeared he attempted to supervise them and was helping himself to lunch which was for the students. He moved furniture when being asked not to do so. He was spoken to by Ms Khaladi and by Ms Jabeen who also highlighted their concerns regarding health and safety issues. At this point we make this finding after hearing the evidence, that the respondent takes health and safety very seriously and this was reflected in the "Outstanding" rating given by Ofsted.
83. In early October 2017, the school received a complaint from a third party that some waste had been dumped on an external site. It contained confidential information on the school's letterheaded paper. This caused concern because the claimant, as Site Manager/Caretaker, was responsible for arranging the safe disposal of waste but did not do so.

When spoken to, he did not accept responsibility and again blamed other contractors.

84. On 6 November 2017, a leak developed in the English room which was resolved two days later. There was further leak with steam was coming out of the radiator, but it took the claimant, according to Ms Khaladi, one week to resolve it. This was of concern to her as this should not have taken a week to resolve.

The claimant's performance review

85. In October 2017, Ms Khaladi became aware that the claimant had submitted a substantial overtime claim but again failed to follow the correct processes in clocking in and out of the school and failed to follow the purchase order procedures for the summer works.
86. There were other concerns Ms Khaladi had about the claimant which she documented when she met with him at a performance review meeting held on 28 November 2017. She raised with him the matter that tools had been left lying around the premises contrary to her instructions; that he lacked initiative; she referred to the water leak in the Arabic room which the claimant had taken some time to resolve; that he had produced different figures of estimated costs; and that another worker had to be engaged to carry out work on a Sunday at a higher rate which could have been avoided. The claimant's manner during the meeting was rude and disrespectful. He did not accept the concerns raised as being valid and stated what were owed to him for engaging in the summer works.
87. The following day Ms Khaladi reported the claimant's responses to Ms Jabeen. Subsequently, it was decided that the school would terminate his probationary period based on his poor performance.

The claimant's termination

88. On 6 December 2017, Ms Khaladi reconvened the review meeting with the claimant at which notes were taken. The claimant was reminded that he was on probation for one year and that the school was reviewing his performance. She said that the school did not have any confidence in him. He responded by saying that the meeting was not a probationary meeting but a step towards dismissal. Ms Khaladi informed him that she was unable to work with someone who did not have an eye for health and safety and referred to what she had observed on her rounds.
89. The claimant asserted that she was making excuses. Ms Khaladi responded by saying that a decision had been taken and that he was going to be given one week's notice. He alleged that he had been sacked on false grounds and that he had not seen the evidence to support the allegations made by her. He stated that the respondent wanted a "puppet" and that it was questioning his professionalism. Ms Khaladi said that as a manager, she could only make comparisons with previous caretakers and how they would have dealt with the situation. The respondent did not have

to tell them what to do as they used their own initiative. The claimant said that the whole meeting was a farce and that Ms Khaladi was making false allegations. He told her not to stain his character. Ms Khaladi responded by saying that the school was not happy with him, his accuracy, efficiency and timing and found it hard to communicate with him. (pages 131 – 133)

90. After the conclusion of the meeting Ms Khaladi wrote to the claimant by letter dated 8 December 2017, in which she confirmed his dismissal. We were satisfied, having heard her evidence, that she was unaware of his protected disclosures when she terminated his employment. She wrote:

“I write to confirm the content and outcome of the probationary review meeting which took place on 6 December 2017. The meeting was chaired by myself and Ms Nusrat Rahmatullah attended the hearing as notetaker.

The meeting was held in accordance with your contract of employment. I explained to you that the purpose of the meeting was to review your performance and determine whether we would continue to employ you or terminate your employment on notice. We reviewed your performance and allowed you to make representations. After considering all of the evidence available to me and your representations, I decided to terminate your employment on notice because of your poor performance, in particular your level of efficiency, attention to detail, quality and accuracy of work, and communication. You have not met the required standard and therefore we are terminating your employment with one week’s notice.

You must return any property, including the keys and fobs/cards belonging to Islamia Girls School in good condition by 13 December 2017.

If you have any questions regarding this letter please contact me.” (page 135)

91. The claimant subsequently commenced a period of sick leave. His final day at work with the respondent was the 13 December 2017.

Mr Taru Taruvinga

92. Mr Taruvinga is a friend of the claimant who was engaged by him on or around 10 August 2017, to carry out painting and general labouring work during the summer works. He is African and a Christian of the Catholic faith. He speaks fluent English and is quite capable of writing out any invoices covering his work. He said in evidence and we do find as fact, that in early September 2017, the claimant had spoken to him about a position of Assistant Caretaker, to assist him as he was engaged in discussions with Ms Islam about being promoted to the position of Senior Caretaker, covering both the Girls and Boys schools.
93. Mr Taruvinga said that he was also spoken to about taking on temporary driver position but could not do so as he did not have the relevant driving license.
94. The claimant alleged that Mr Taruvinga was denied the opportunity of being offered the Assistant Caretaker position and the post of driver because of his Christian beliefs. This was denied by Ms Jabeen.

95. There was no evidence that anyone from the respondent had engaged in discussions directly with Mr Taruvinga about the Assistant Caretaker position. No such offer was made to him by the respondent's senior staff. All the information about the position came from the claimant which was conveyed to Mr Taruvinga.
96. We find that there were discussions between Ms Islam and the claimant about his relevant skillset for a proposed position of Senior Caretaker. We are, however, satisfied that Ms Islam wanted the matter to be decided at a higher level and that there were the funds to pay for the post. By the date of the claimant's dismissal, this proposed position was not agreed to at a much senior level, nor was there any exploration by the respondent on whether it had the funds available to pay for that post. No firm offer of the post was made to the claimant.
97. In either December 2017 or January 2018, Mr Taruvinga received a document from the claimant. It stated the following:

"To Taru

I am really sorry that the job offer to be my assistant was withdrawn.

I appreciate all the help you gave me and effort you put in while working for me in the school.

As you are aware, the job offer was authorised by Hasana Islam and her sister Asma Georgiou. They told me you were to be trained immediately but Ms Jabeen has taken the decision not to employ you.

As you know I am not happy about her decision, especially due to the reason for not wanting to employ you. I have made my thoughts very clear about that to her but she is still not willing to employ you for any available vacancy.

I know you have made many sacrifices for the position and you feel as I have let you down and put you in this position but I can assure you I couldn't foresee this situation happening. I am truly sorry to put you through this.

I have tried to call you but I understand why you don't want to speak to me. That is why I've taken the decision to hand deliver this letter to you instead.

Please give me a call when you are ready to talk. I wouldn't want this to ruin our relationship.

Regards" (page 300A)

98. In this document there is no reference to Mr Taruvinga's religion being the reason for, allegedly, not offering him the Assistant Caretaker position. It is difficult to see how the respondent could offer such a position to him without formally interviewing him beforehand to assess whether or not he would be suitable.

Protected Disclosures

99. We have considered the alleged protected disclosures in relation to fire risk assessment; Mr Taruvinga's dismissal; disclosure regarding electrics; charity accounts; food safety; minimum wage; senior site manager role.

We accept that the claimant's role necessitates making disclosures of a health and safety nature to the respondent and that during the course of his employment he had made protected disclosures. We adopt the respondent's position in relation to those disclosures and take the view they were protected disclosures.

100. We do not find that the claimant had asserted to Ms Jabeen that she, on behalf of the respondent, was discriminating against Mr Taruvinga based on religion and we do not accept that such conversations took place. The evidence points to the claimant only telling Mr Taruvinga what he said the respondent had allegedly said to him.
101. In relation to holiday pay, the claimant did not provide any dates when he accrued unpaid holiday.

Credibility of the claimant

102. Having heard the claimant's evidence, we have come to the conclusion that his credibility is in issue and do not accept his evidence as being credible. As someone experienced in construction work, he would be well versed in the requirements for documentary evidence to support of any purchases. He would be and should have been familiar with the request to order equipment and in claiming overtime as well as expenses. He had been repeatedly told of the need to provide documentary evidence in support, particularly by Mr Ahmad. There is no corroborative evidence in support of his overtime claim, nor in support of his expenses claim. The invoices for labourers were, in the main, completed and signed by him. There is no documentary evidence of loans being paid to him by Mr Chowdhury or that he had given money to Mr Chowdhury in support of any alleged loans. We simply do not accept that Ms Jabeen had agreed that he should put down average overtime hours worked because disclosing the actual hours worked meant that the respondent would be in breach of the Working Time Regulations 1998. The challenges Ms Islam made in her evidence to his overtime claim, we have accepted. Mr Chowdhury's evidence was produced the day before the hearing and both he and the claimant had time to consider his evidence. The claimant deliberately failed to disclose his DBS certificate until 29 November 2017, which was at a time when concerns were raised about his performance. He deliberately withheld that information in the full knowledge that his convictions would be disclosed. We find that he knew that he was going to work in an environment where safeguarding is a paramount concern and that he was at risk of having his employment terminated fairly early on if he disclosed his DBS certificate.
103. For all of the above reasons, we do not accept his evidence and have rejected it where it conflicts with the evidence given by the respondent's witnesses.

Mr Islam Chowdhury

104. We have referred earlier to Mr Chowdhury's evidence but there have been further developments. On 23 August 2019, the respondent's representatives wrote to the tribunal on notice to the claimant, informing us that Mr Chowdhury, who gave evidence before us while he was appearing before Blackfriars Crown Court, was convicted by jury on 15 August 2019, on two counts:
- 104.1 conspiring to conceal criminal property; and
 - 104.2 conspiring to receive stolen goods.
105. They applied for his convictions to be admitted in evidence notwithstanding that evidence and submissions have been given. They relied on the case of Robin Foster and Others v Action Aviation Ltd [2013] EWHC 2930 (QB) in support of their application.
106. In that case it was held that a court, hence a tribunal, has the power to admit evidence after the hearing but before judgment. Factors to take into account are: (i) the reason why the evidence was not offered earlier; (ii) value of that evidence; (iii) the need to do justice between the parties; and (iv) the prejudice to the opposite side.
107. In relation to the first point, they submitted the evidence only came to light after the tribunal hearing.
108. As regards the second point, evidence is relevant to the claimant's breach of contract claim as Mr Chowdhury's convictions for dishonesty offences undermines his credibility as a witness. The claimant seeks money from the school to repay Mr Chowdhury for monies allegedly loaned to him. The convictions go to credibility as they indicate dishonesty in a general sense and, more specifically, a record of involvement in theft or conspiring in theft.
109. In relation to the third point, admitting the evidence does justice between the parties as it corrects a misleading impression given at the hearing by Mr Chowdhury that he did not have any convictions for dishonesty. His convictions correct that misleading impression.
110. As regards the final point, there is no prejudice to the claimant as the convictions are a matter of public record.
111. There was no response from the claimant.
112. On Friday 4 October 2019, the tribunal discussed the application and the reasons given by the respondent's representatives, and it was allowed. We had doubts about Mr Chowdhury's evidence as there was no documentary in support of him either borrowing money from others, or of lending claimant £1000 or indeed any other sum. His witness statement

was only disclosed the day prior to the start of the hearing. The convictions add further doubts to his credibility.

Submissions

113. We have considered the submissions made by the claimant and by Mr Khan, counsel on behalf of the respondent. We do not propose to repeat their submissions herein having regard to rule 62(5) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, as amended.

The law

114. In relation to public interest disclosure, we have taken into account sections 47B and 103A Employment Rights Act 1996 on detriment and dismissal respectively.

115. Section 47B(1), Employment Rights Act 1996 provides,

“A worker has the right not to be subjected to any detriment by any, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.”

116. A protected disclosure means a qualifying disclosure as defined under section 43B made by a worker in accordance with sections 43C to 43H, ERA 1996, section 43A.

117. Section 43B defines what is a qualifying disclosure. It provides,

“(1) In this Part a ‘qualifying disclosure’ means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following -

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.”

118. What is a detriment under section 47B is not defined in the legislation. In this regard the judgments of their Lordships in the case of Shamoon-v-Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285, will

apply. It is whether or not the worker was put at a particular disadvantage having made a protected disclosure? The disadvantage could be either physical, such as being instructed to engage in degrading work; or denying them benefits such as a company car, medical cover or membership of a sports or social club; being denied the opportunity of promotion, or a delay in addressing an issue. It may also be psychological, financial or not being offered employment, amongst other things.

119. The qualifying disclosure must be a disclosure of information, that is conveying facts, Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38, a judgment of the Employment Appeal tribunal.
120. A reasonable belief is assessed objectively taking into account the particular characteristics of the worker in determining whether it was reasonable for him/her to hold that belief, Korashi v Abertwe Bro Morgannwg University Local Health Board [2012] IRLR 4, EAT.
121. In the case of Fecitt and Others and Public Concern at Work-v-NHS Manchester [2011] EWCA Civ 1190, the Court of Appeal held that the causal link between the protected disclosure and suffering a detriment under section 47B, is whether the protected disclosure “materially influenced”, in the sense of being more than a trivial influence, the employer’s treatment of the whistleblower.
122. In a breach of a legal obligation case, the tribunal should identify the source of the legal obligation and how the employer failed to comply with it. Actions could be considered wrong because they were immoral, undesirable or in breach of guidance without being a breach of a legal obligation, Eiger Securities LLP v Korshunova [2017] IRLR 115, EAT.
123. Section 103A ERA provides that, “An employee who is dismissed shall be regarded for the purposes of the Part as unfairly dismissed if the reason or principal reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.” It is for the employer to prove the reason for the dismissal. Where the employee lacks the relevant qualifying period of service the burden will be on the employee to prove the reason for the dismissal was by reason of making a protected disclosure, Kuzel v Roche Products Ltd [2008] ICR 799.
124. A claim under section 47B must be presented within three months beginning with the date of the act or the failure to act, section 48(3).
125. This time is extended under section 207B where there has been conciliation before the presentation of the claim, section 48(4A).
126. Section 48(4) provides that time could be extended if it was not reasonably practicable to present the claim in time, Section 48(4) states,

“For the purposes of subsection 3 -

- (a) where an act extends over a period, the “date of the act” means the

last day of that period, and

- (b) a deliberate failure to act shall be treated as done when it was decided on.”

127. In the case of Arthur v London Eastern Railway Ltd [2006] EWCA Civ 1358, the Court of Appeal held, Mummery LJ giving the leading judgment, that,

“Section 48(3) is designed to cover a case which cannot be characterised as an act extending over a period by reference to a connecting rule, practice, scheme or policy, but where there is some link between the acts which makes it just and reasonable for them to be treated as in time and for the claimant to rely on them. In order for the acts in the three-month period and those outside to be connected, they must be part of a “series” and acts which are “similar” to one another.”

123. If a detriment claim is well-founded the tribunal can make a declaration to that effect and award compensation, section 49(1) Employment Rights Act 1996. The claimant is under a duty to mitigate, section 49(4), and the tribunal can consider whether the claimant either caused or contributed to the act complained of, section 49(5). Compensation is assessed on the same basis as a discrimination claim and can include an injury to feelings award, Virgo Fidelis Senior School v Boyle [200] IRLR 268.

124. As regards victimisation, we have taken into account section 27 Equality Act 2010.

“27 Victimisation

- (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.”

125. For there to be unlawful victimisation the protected act must be the reason for the treatment, Nagajan v London Regional Transport [1981] IRLR. It must have significantly influenced the detrimental treatment relied upon by the claimant.

126. In the case of Waters v Commissioner of Police of the Metropolis [1997] ICR 1073, Waite LJ, in the Court of Appeal stated that:

“The allegation relied on need not state explicitly that an act of discrimination has occurred- that is clear from the words in brackets in section 4(1)(d). All that is required is that the allegation relied on should have asserted facts capable of amounting in law to an act of discrimination by an employer.”

127. Section 1 Employment Rights Act 1996, states that an employer must provide to the employee within two months from the beginning of that employee’s employment, a statement of initial employment particulars. Section 4(1) is the requirement on the part of the employer, to provide a statement of changes to the employment particulars.
128. Breach of either section 1 or 4(1) entitles the employee to claim compensation of two or four weeks’ pay, section 38 Employment Act 2002, “EA 2002”. This is, however, subject to the employee pursuing one or more claims under schedule 5 of that Act. Breach of either section 1 or section 4(1), on its own, does not entitle the employee to be compensated under section 38 EA 2002.
129. A claimant is entitled to pursue a breach of contract claim of up to £25,000 if the claim arises or is outstanding on termination of the employment, article 3, Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

Conclusions

Public interest disclosure detriments

130. The claimant’s credibility being in issue and that of his witness Mr Chowdhury renders much of their evidence unreliable.
131. The claimant’s evidence on his alleged qualifying and protected disclosures covered virtually all issues he claimed to have raised with the respondent’s senior staff during his employment. The detriments were what he allegedly suffered as a result and were wide-ranging.
132. The respondent accepted he made protected disclosures in respect of paragraphs 15, 20, 30, 72, 87, 97,103, 107, and 111, which we have summarised in paragraph 3(i) earlier in this judgment under The Issues. The remainder have either been mischaracterised, paragraphs 82-83, or were never disclosures made by the claimant, paragraphs 42 to 43, 55, 61, 66, 75, and 92 as these have been denied by the respondent.
133. The respondent accepted that there were nine protected disclosures referred to above, though their precise circumstances are not admitted. Having heard the evidence, we would accept the respondent’s contention in relation to these admitted protected disclosures. The others relied upon by the claimant were vague as to the circumstances of their disclosures, but more importantly, even if they were protected disclosures, there was no causal link between them and their alleged detriments.

134. As regards the respondent's nine admitted protected disclosures, the claimant asserted that he suffered a detriment as he was denied promotion. We have come to the conclusion that there is no causal link between the protected disclosures and the respondent not offering him the Senior Caretaker position. Such a post had not been fully approved by it and was subject to funding being available. In any event, the respondent was entitled to withdraw that offer even if there was a genuine offer, because of the claimant's poor performance and his failure to complete his probation.
135. In relation to the failure to provide him with sufficient funds to complete the summer works, the respondent's procedure is that an advance payment must be supported by evidence on what the money will be used for and, subsequently, documentary evidence detailing how the money had been spent. When the claimant requested an advance payment, it was provided to him, but Mr Ahmad consistently reminded him of the need to provide evidence in support of what the funds were going to be used for and how they had been spent. We were not satisfied that the claimant had taken his own funds to pay for some of the summer works as there was no documentary evidence in support this contention.
136. The claimant had not established that there had been unauthorised deductions from his pay.
137. We do not accept that he was subjected to any humiliating or demeaning treatment as he alleged in his claim form from paragraph 147 to 166. The respondent had responsibilities towards the pupils of the school in managing charitable funds and was entitled to raise issues of concern with the claimant. Health and safety was a major concern.
138. In relation to the claimant being denied opportunity of training, this was training which he was due to attend in January 2018 but could not do so as his employment had been lawfully terminated.
139. We have come to the conclusion that the claimant's public interest detriment claims are not well-founded and are dismissed.

Automatic unfair dismissal – Section 103A Employment Rights Act 1996

140. We have come to the conclusion that the reason or principal reason for the claimant's dismissal was his poor performance during the probationary period. The evidence was overwhelmingly in support of his poor performance. His dismissal had nothing to do with protected disclosures or any protected acts under the Equality Act 2010. This claim is not well-founded and is dismissed.

Section 27 Equality Act 2010, victimisation claim

141. The claimant asserted that he had raised as an issue, the treatment of Mr Taruvinga as being discriminatory on religious grounds. We have found no such protected act was made by him as no discussions took place

between him and the respondent regarding the treatment of Mr Taruvinga being discriminatory on religious grounds. Even the claimant in his letter of apology delivered to Mr Taruvinga, made no reference to religious discrimination. Accordingly, the alleged detriments referred to in paragraphs 147 -166, cannot be causally linked. This claim is not well-founded and is dismissed.

Overtime

142. We are not persuaded that there was cogent and probative evidence the claimant provided in support of his claim for overtime pay. There was no documentary evidence produced in support of the sums claimed. The figures changed from 206 to 243, then to 561 hours. His evidence was inconsistent, and we accepted the discrepancies in his overtime spreadsheet referred to by Ms Islam. This claim has not been proved.

Expenses

143. We make the same findings and come to the same conclusion in respect of the claim for expenses. Simply put, there was no documentary evidence in support of this claim. This claim has not been proved.

Loss of promotion

144. This is also put by the claimant as a free-standing financial claim. We have already come to the conclusion that there was no evidence that the Senior Caretaker position was a firm offer made to the claimant with supporting funds being approved and made available for that post. In any event, the respondent was entitled to withdraw such an offer, even if it was made, because of the claimant's poor performance. This claim has not been proved.

Accrued unpaid holiday

145. The claimant has not produced any documentary evidence in support of his claim for two days' accrued untaken overtime. He based his claim on the number of hours overtime owed but as we have found that could not be substantiated. Accordingly, this claim also has not been proved.

Failure to provide a statement of initial employment particulars

146. The failure to provide written employment particulars can only be compensated on the back of another claim as it is a "piggyback" claim. As we found that the claimant's claims have neither to have been well-founded nor proved and are dismissed, he is not entitled to compensation for the failure to provide him with a statement of initial employment particulars.

Employment Judge Bedeau

Date:9 October 2019.....

Sent to the parties on: ...14 October 2019

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For the Tribunal Office