EMPLOYMENT TRIBUNALS

Claimant
Respondent

Mr I Gasrini	**v**	**Metroline Travel Limited**

Heard at: Watford **On**: 28-30 October 2019

Before: Employment Judge R Lewis
Members: Mr W Dykes
Mrs I Sood

Appearances
For the Claimant: In person
For the Respondent: Ms C Nicolou, Solicitor

JUDGMENT

1. The claimant's claims of discrimination on grounds of religion fail and are dismissed.

REASONS

Introduction

1. This was the hearing of a claim presented on 4 July 2018. There was a first preliminary hearing (Employment Judge Bedeau) on 14 December 2018. Judge Bedeau listed a second preliminary hearing to be held in public on 24 June 2019 and also listed the present hearing.

2. At the second preliminary hearing on 24 June 2019 (Employment Judge Tuck) parts of the claim were struck out, deposit orders were made, and the claimant was permitted to amend parts of the claim.

3. Judge Tuck's order identified, at paragraphs 6.5 to 6.8 inclusive, the four factual issues which went forward for hearing, all of which proceeded as claims of direct discrimination on grounds of religion.

Case management at this hearing

4. A number of case management matters arose in the course of this hearing:

4.1 The claimant had not served a witness statement. It was agreed that he could use as his statement the document which he had prepared for the hearing before Judge Bedeau (21A-21O) although it was not tailored to Judge Tuck's identification of the issues, and as it pre-dated the claimant's dismissal, it did not deal with that point.

4.2 The claimant had provided little evidence on remedy, and in consequence it was decided at the start of this hearing to deal with liability first, with a possible view to adjourning remedy to be dealt with at a different stage.

4.3 The claimant submitted that what he called "key evidence" was found on CCTV footage which he had seen, and which was in the possession of the respondent only. He told us on the first day that the respondent had declined to make it available to this tribunal on grounds of irrelevance. Ms Nicolou had not brought either a disc or a computer on which to play one.

4.4 In our view, the relevance of the footage was a question for the tribunal. The only way to adjudicate on the relevance was to read the evidence and watch the footage. It did not seem to us right to start hearing evidence until that had been done. The footage was not available until the second morning of the hearing, and after we had finished reading, the afternoon of the first day was therefore wasted. We watched the CCTV footage at the start of the second day. We asked to see it again at the end of the evidence on the third day, but it was not available.

4.5 There was in addition footage on the claimant's mobile phone, which we watched twice, once before the evidence, and again after the evidence.

4.6 There was a bundle of about 270 pages. All page number references in this Judgment are to the bundle. The claimant had brought loose papers which were not necessarily in the bundle. He had not brought working copies in the form of a bundle which could be used. However, he identified key items which he wanted the tribunal to read from the bundle.

4.7 While reading, we noted references to the claimant's mental health history. Before starting evidence, we asked the claimant if there was anything about his health history that he wanted to tell the tribunal, which might have a bearing on any aspect of case management. The claimant answered that he did not, and we proceeded on that basis.

4.8 The claimant had ticked the ‘other payments’ box on the ET1, but it was not clear from the claim form whether the claimant advanced a claim of contractual underpayment of wages, as well as a claim of having lost income as a result of discrimination. We attempted to explain the difference to him during case management on the first morning. The claimant was told that if on the second morning he wished to proceed with a contract based underpayment claim, he should attend with a written statement of that claim and a calculation. He did not do so, and we therefore took it that there was no such claim before the tribunal.

4.9 The claimant was the only witness on his own behalf. He gave evidence for about 2 ½ hours. His side was heard first. The respondent called three witnesses, on behalf of whom statements had been served. They were, in order of giving evidence,

- Ms Coral Johnson, HR Administrator at Cricklewood, whose evidence lasted about 25 minutes;
- Mr Carl Hiles, Operations Manager at Willesden Garage, who gave evidence for about 1 ¼ hours;
- Mr George Loughlin, Operations Manager at Willesden Garage, who gave evidence for just over one hour.

4.10 By the time of this hearing the dismissing officer, Mr Geoff Seers, had himself been dismissed. Although we saw no papers about his dismissal, Ms Nicolou, in reply to a question from the tribunal, said that she understood that his dismissal had nothing to do with the matters before us. At the respondent’s request the tribunal had issued and served a witness order requiring his attendance.

4.11 We postponed taking Mr Seers’ evidence, and asked Ms Nicolou to inform him that he was to attend at a fixed time, when his evidence would be interposed so that the inconvenience to him of attendance was minimised. Mr Seers did not attend in response to the witness order. We have advised Ms Nicolou that if she wishes his non-compliance to be taken further, she should write to the Regional Employment Judge.

4.12 In the course of the claimant’s evidence, it appeared to the tribunal that his evidence on issue 6.6 was potentially evidence of harassment, although the issue had been identified by Judge Tuck as one of direct discrimination only. It seemed to us fair and right (having regard in particular to the Equality Act s.212(1)) to allow the claim to be relabelled as either.

4.13 It became apparent during the claimant’s evidence that he had not complied with disclosure obligations. He had in particular made covert recordings of some meetings with management, despite plainly being instructed not to do so. He had not disclosed to the respondent or brought to the hearing audio copies or transcripts. We

could therefore attach no weight to any point of detail on which he challenged the respondent's transcripts.

4.14 The claimant became distressed during his cross examination of Mr Hiles, and the tribunal adjourned. After the adjournment, the Judge put a number of points of challenge to Mr Hiles, following which the claimant had no questions left for the witness.

4.15 After the completion of the evidence, we adjourned and then heard Ms Nicolou's closing submissions, which she supplemented with a clear and skilful written skeleton argument.

4.16 The tribunal then adjourned for about 25 minutes to enable the claimant to prepare his reply. He replied briefly, following which the tribunal adjourned.

4.17 After we had given our judgment, the claimant asked for written reasons.

Summary of case

5. It may make our reasoning easier to follow if we summarise the case briefly as follows:

5.1 The claimant, who was born in 1983, was employed by the respondent as a bus driver from June 2015 until his dismissal on 20 September 2018. He was based at Willesden. The claimant is a Muslim and throughout his employment wore a heavy beard, which he considered identified him on sight as a Muslim.

5.2 On a day when he was off duty, the claimant became involved in an altercation with another bus driver based at Willesden, Ms Morgan. The driver reported the event, which Mr Hiles then investigated. He referred it to Mr Loughlin, who conducted a disciplinary hearing. The outcome was that the claimant was issued with a final written warning, and was transferred to work at Cricklewood.

5.3 Almost immediately after the disciplinary hearing, the claimant began a period of sick leave which extended for several months, apart from one week when he returned to work. Following a process of capability management, Mr Seers dismissed the claimant. His appeal against dismissal was unsuccessful.

5.4 The four heads of complaint identified by Judge Tuck were as follows:

5.4.1 The first (issue 6.5) was that Mr Hiles had discriminated against the claimant on grounds of religion in the manner in which he conducted the investigatory interview on 20 February 2018. The tribunal's conclusion below is that the protected characteristic of religion played no part whatsoever in any aspect of Mr Hiles' conduct of the investigation.

5.4.2 The claimant's second issue (issue 6.6) was a similar complaint about Mr Loughlin's conduct of the disciplinary interview on 27 February 2018 and the two limbs of its outcome. The tribunal finds that the protected characteristic of religion played no part whatsoever in any matter complained of by the claimant, including any aspect of the conduct of the hearing, the decision to issue a final written warning, and the decision to transfer him to Cricklewood.

5.4.3 The claimant's third complaint in chronology (issue 6.8) was that the HR function had, on grounds of religion, failed to support him in response to a grievance which he had lodged about Mr Hiles on 23 February 2018. This complaint was based, in part, on a misunderstanding of the function of HR. We accept that HR, in this setting, had no welfare or support responsibility, and that Ms Johnson, the HR Administrator in question, processed the claimant's grievance in accordance with the usual procedure, irrespective of the protected characteristic of religion. We find that the protected characteristic of religion played no part whatsoever in any aspect of how HR dealt with the complaint or grievance.

5.4.4 The final matter chronologically (issue 6.7) was the claimant's dismissal. In Mr Seer's absence, the tribunal directed itself to his notes of the dismissal meeting and the dismissal letter, and accepted that they set out the totality of the reasons for dismissal. The tribunal accepted that the protected characteristic of religion played no part whatsoever in any aspect of the decision to dismiss him.

<u>General approach</u>

6. We preface our findings of fact with a number of observations about our general approach.

7. Throughout this hearing, we heard many references to the claimant's Muslim identity, and to what he called his Muslim appearance, which was a reference to his heavy beard. We heard this case on the basis that the two were one and the same for the purposes of the Equality Act. We mean by this that unlawful discrimination covers both less favourable treatment on grounds of religion, and less favourable treatment on grounds of perceived religion. If the claimant had been discriminated against on grounds of being perceived as a Muslim, that would be unlawful discrimination, whether or not the claimant was in fact a Muslim.

8. In this case, as in many others, evidence touched on a wide range of matters. In our judgment we make no finding at all about many of those matters; and where we do make findings, we on occasion do so without going to the depth to which the parties went. Our approach in those

instances is not oversight or omission. It reflects the extent to which the point was truly of assistance to us.

9. The above comment is true of many cases. It is particularly true and important in this case, where the claimant repeatedly focussed on points which were plainly of great emotional importance to him, but which were not among the questions for the tribunal to decide. It was repeatedly necessary to intervene in his evidence and cross examination to move on from these points.

10. In this case, as in many others, the claimant approached the events before us in a binary way. By this we mean that he saw nothing right or good in the respondent's behaviour at the time in question. When asked if he thought that he had done anything wrong, or would do anything different, he said no. The tribunal does not find this approach helpful, because it rarely reflects the reality of the workplace. It did not do so in this case.

11. We bore in mind in this case the issues of hindsight. Our task was to decide about events in 2018. A long time had gone by since the events. The parties had had time to reflect. Sometimes parties become entrenched in their views or recollection. Parties' understanding and recollection may be affected by what they see as a result of disclosure, or in the other side's evidence. On a number of occasions, we had to remind the claimant to clarify if his answer gave his understanding of events at the time they happened, or at the time of this hearing. The claimant appeared to us at times to struggle to grasp the distinction between the two.

12. The tribunal is familiar with the difficulties faced by members of the public who represent themselves in the tribunal. We understand that the process is unfamiliar, and that delays take their toll on parties. While the tribunal does what it can to reduce the stresses and burdens of the process, the tribunal structure often requires discussion about events which a party finds distressing to think about. A party has the right to represent himself, irrespective of ignorance or inexperience of the legal framework.

13. All of these points arose in this case, and it was repeatedly necessary for the tribunal to intervene, so as to focus this hearing on the issues identified by Judge Tuck and no other.

14. We set out our findings by placing the chronology in a number of stages, setting out stage by stage a summary of the evidence and giving our findings of fact, and setting out our conclusions on that stage before proceeding to the next. We hope that that makes our reasoning easier to follow.

Legal framework

15. This was a claim brought under the provisions of the Equality Act 2010 and no other. It was brought, in part, as a claim of direct discrimination, harassment, or victimisation.

16. Section 13 deals with direct discrimination. Section 13(1) provides as follows:

> "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."

17. That is a general definition which gives rise of itself to no rights or liabilities. It must be read with a substantive act of discrimination. S.39 sets out a number of forms which discrimination may take. They include s.39(2)(d) which provides that an employer must not discriminate against an employee (B) "by subjecting B to any other detriment."

18. When considering a claim of direct discrimination, the tribunal must have regard to an actual or hypothetical comparator. When it does so, it should have regard to s.23 which provides,

> "There must be no material difference between the circumstances relating to each case".

19. That means that a claimant in a discrimination case who seeks to compare himself with a comparator must do so in identical, or very similar, circumstances. We explained to the claimant a number of times that that meant imagining a non-Muslim in exactly the situation in which the claimant was found on and after 8 February 2018.

20. The protected characteristic need not be the only or dominant reason for the treatment but it must be a material reason. The protected characteristic need not be the actual characteristic, or that of the claimant. The tribunal must take care in its analysis not to confuse treatment (which is what its decision must be based on) with motive.

21. Although the previous few paragraphs summarise our view of the correct approach to a claim of direct discrimination, we have well in mind that a more common sense, every day approach may be to ask what was the reason why the claimant met with the treatment which is the subject matter of the case.

22. Section 26 defines harassment. For these purposes harassment occurs if:

> "A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B."

23. Section 212(1) provides that conduct which is a detriment cannot include harassment, and has the practical effect that the same conduct cannot be both harassment under s.26 and detriment under s.13, but must be properly defined as falling under either.

24. When the tribunal considers a claim under s.26, its task is first to find what facts took place. In light of those findings it must then find whether the conduct was unwanted. It must then go on to consider whether the conduct

related to a protected characteristic, before considering whether the conduct had the statutory effects.

25. In considering any claim of discrimination the tribunal must have regard to s.136 and the burden of proof, which provides:

> "If there are facts from which the court could decide, in the absence of any other explanation, that A contravened the provision concerned, the court must hold that the contravention occurred."

26. The burden rests on the claimant in the first instance to prove facts from which the tribunal could decide, in the absence of an explanation, that there had been discrimination; if he does so, it is then for a respondent to put forward an explanation which stands free of any protected characteristic or factor.

27. It is a recurrent issue in discrimination cases that it is not enough that a claimant proves the existence or presence of a protected characteristic and the existence or presence of a detriment. A claimant must, through evidence, give some indication of a cause or relationship between the two.

28. Victimisation is dealt with in s.27 which covers the situation where "A subjects B to a detriment because B does a protected act." The definition of protected act is very wide, and an act is protected, even if it does not refer expressly to the Equality Act or use legal terminology, or use it accurately.

Background findings

29. The claimant, who was born in 1983, was employed by the respondent as a bus driver from June 2015 until 20 September 2018. He is a Muslim. At the time in question he wore a heavy beard. He considered that that rendered him readily identifiable as a Muslim. He was based at Willesden Garage.

30. Another driver based at Willesden Garage was Ms Sonia Morgan. She had been in post since 1996 (86). We heard no criticism of any aspect of her work, apart from the claimant's evidence about the event on 8 February.

31. Before the morning of 8 February 2018, there was no history of dispute or disagreement between the claimant and Ms Morgan (as the claimant confirmed when interviewed by Mr Hiles, 104).

32. Reference was made at this hearing to background matters to which we attach no weight. Mr Hiles mentioned the claimant's disciplinary history before 8 February; the claimant referred to a history of alleged Islamophobia before 8 February, of which there was no relevant cogent evidence.

33. The bundle included two extracts from procedures which were relevant to the questions before us. TFL Guidance, known as the Big Red Book, contained the following (70):

> "Dealing with double or large single buggies.

> Passengers with double or large single buggies can board by the centre doors, as it is too difficult for them to get on at the front. Passengers must ask your permission first and users will still need to touch their Oyster Card / contactless payment card or show you a valid ticket."

34. It was agreed that that procedure applied to the claimant and Ms Morgan at the relevant time.

35. The bundle also contained the respondent's disciplinary procedure. Section 3.16 dealt with what it called "Interaction between disciplinary and grievance proceedings." The relevant portion reads (57):

> "Employees should note that if disciplinary proceedings are underway when a grievance is raised, it is in the hearing manager's absolute discretion whether the disciplinary proceedings are adjourned pending the hearing of the grievance or whether the manager will deal with both the disciplinary and grievance issues at the same time."

Events on 8 February 2018

36. The first stage in these events was on the morning of 8 February 2018. The claimant was off duty. It was a cold day. He was pushing his two-year-old daughter in a buggy. He went to take a 460 bus. He went to the stop at Pound Lane, which was the first stop on the route, about 50 meters outside Willesden Garage, where he himself worked.

37. CCTV footage shows that the bus, driven by Ms Morgan, stopped at the bus stop. The front doors opened and a number of passengers boarded. The centre doors were not opened by the driver when the bus stopped. The claimant did not go to the front of the bus. He pushed the buggy to the centre doors and pressed the button there. The doors did not open. The claimant did not move to the front door of the bus. The bus moved away. As it did so the claimant banged on the side of the bus, but it did not stop. Footage from the cab view CCTV showed the normal event of passengers getting on the bus. The CCTV footage is timed, and showed that the whole incident was shorter than 20 seconds.

38. The claimant was immediately, at that moment, convinced that the bus had been driven off deliberately, ie in the knowledge that a passenger with a buggy wanted to board but had not been permitted to do so; and that the driver's knowledge included that the disappointed passenger was the claimant himself, a man whom the driver knew to be a Muslim; or, in any event, a man of Muslim appearance (because of his beard). As he said in submission, the footage, in his view, showed an act of Islamophobic discrimination.

39. When speaking about the event, and in particular what he saw as its impact on his child (left on the pavement on what the claimant called a 'freezing day') the claimant, even 21 months later, became distressed in the tribunal. We saw that the emotion of the day is for the claimant at times still live.

40. After the bus had driven away, the claimant wanted to speak to the driver personally. He later said that he wanted her to apologise to him. He caught up with the 460 bus by catching the next bus from the same stop, and while in the bus, calling an Uber taxi to meet him; and then instructing the Uber driver to catch up with the bus which he had missed. A few minutes later therefore he appeared at the front door of Ms Morgan's bus and boarded it. He had his daughter and her buggy with him.

41. Like Mr Hiles and Mr Loughlin, the tribunal saw the CCTV footage of what happened next. The visual quality is very clear, but the footage has no audio. Like Mr Loughlin, but not Mr Hiles at the time, the tribunal also saw and heard the footage taken by the claimant on his phone, which had clear audio, but was less clear visually.

42. The visual shows that the claimant appeared to board the bus waving his mobile phone (he promptly said that he was filming). The driver waved back at him, wagging her finger (we heard her telling him not to film). The claimant's body language presents as hostile and he was waving his arms. He angrily challenged the driver about why she had not stopped previously, showing her his staff pass. The claimant then became engaged in conversation with another passenger whom he encouraged to complain "against her" about an alleged injury. As we had the advantage of seeing more footage than the claimant did, we were in a position to see that the other passenger's assertion that he had suffered a leg injury while trying to board was visibly false. While the claimant was not responsible for the dishonesty of the other passenger, the claimant can be seen and heard encouraging him. The claimant can also be heard telling the claimant that he would call the police.

43. Ms Morgan can be seen trapped in her cab, alone and confronted by two angry gesticulating men. The bus remained stationary for some minutes while this took place. It can be seen that the disagreements took place in the presence and hearing of the other lower deck passengers.

44. It appears that after a few minutes, the bus was able to proceed. The claimant's child apparently vomited and the claimant had to attend to her. We were told that at the end of the route, the claimant refused to leave the bus and Ms Morgan refused to start the return route with the claimant sitting on her bus. The empty bus was delayed for some 15 minutes or so. The impasse was broken by the driver of the next bus arriving at the same stand, Mr Alimahad Mohammed, who appeared to mediate between the two. The claimant agreed to travel on his bus. He got off Ms Morgan's bus, and she drove off.

Discussion

45. Our discussion of the events of 8 February is as follows. We find that the claimant missed the bus on the morning of 8 February 2018. That is a frequent irritation and an everyday incident. We accept that it is a more significant incident in bad weather, and / or for a vulnerable passenger, such as a child or wheelchair user.

46. At the time, and ever since, the claimant was convinced that Ms Morgan had driven off both deliberately (ie in the knowledge that he was hoping to board) and because the boarding passenger was either a Muslim individual whom she recognised from her workplace; and/or a person whom she identified as a Muslim because of his beard. When asked why he had formed this conclusion, the claimant's answer was that there was no other explanation for her both not opening the centre doors and not waiting for him to move from the centre doors to the front door, before she drove off the bus.

47. We did not hear the evidence of Ms Morgan, although we read the report which she wrote the same day to which we come below (83). We do not consider it open to us to reach a conclusion as to the reason why she did not enable the claimant to board. She could have done so either by opening the centre doors when she stopped the bus; or by waiting a few seconds for him to come to the front door of the bus.

48. Mr Hiles gave a number of possible explanations for the event which had occurred to him during his investigation. We attach considerable weight to Mr Hiles' evidence. He had over 35 years' service with the respondent, including service as a driver, and maintained his PSV licence as current. He said that he undertakes about 80 investigations a year. He estimated that since working at Willesden, he has undertaken some 500 investigations.

49. Mr Hiles' possible explanations, which were unrelated to the protected characteristic of the claimant, included that the incident was very short (probably less than 15 seconds in all). As it was the first bus stop on the route, there were no passengers getting off, so the driver had no automatic reason to open the centre doors. The driver knew (as did the claimant, as an experienced driver) that the correct boarding procedure was to ask the driver to open the centre doors, while showing the driver a valid ticket or pass: that had not been done. It was possible that the driver had not seen the claimant, as the footage suggested the possibility of her vision being momentarily obscured by other pedestrians. It was possible that the centre doorbell had been rung accidentally, which Mr Hiles considered a frequent event in this model of bus. It was possible that the passenger (the claimant) had realised that this was not the bus he wanted to board, as the same stop serves a number of routes, and it is a frequent event for a passenger to have mistaken the number or route of a bus.

50. As stated, this tribunal cannot and does not decide the reasons why Ms Morgan acted as she did. The tribunal accepts that there were potentially many reasons and explanations. It rejects the claimant's contention that there was no reason other than a discrimination reason. We find that there was no evidence to support the claimant's conclusion that Ms Morgan's actions can only have related to his religion or appearance.

Reports after 8 February

51. We now go to the evidence about the events which arose over the next few days. The claimant, at this hearing, repeatedly said that there was 'no evidence' of any wrongdoing or about the event. In fact, there were five separate stands of evidence.

52. The first was that later the same morning Ms Morgan completed an Occurrence Report (83). We found that important. It was the first written record of the incident, written when it was fresh in her mind. It was written for internal management, not to be pored over in a tribunal nearly two years later. She reported "Verbal abuse and threatening behaviour". While the document should be read in full, her statement wrote,

> "I did not open the exit doors but left the front door open. He did not approach the front door so I left on my journey".

53. She went on to describe what happened when the claimant caught up with the bus, implying that it was not until he touched his pass on the Oyster Reader, and the reading showed Staff Pass, that she understood the claimant to be a colleague. However, we make no finding on that point.

54. Ms Morgan wrote that the claimant was "very angry". She wrote that he had recorded her on his phone. She wrote that he had said that the police should be called. The claimant did not dispute these three points, all of which were apparent on the CCTV or phone footage. Ms Morgan also wrote that he had called her "scum". The claimant denied this, and we make no finding on the point. Ms Morgan wrote (84-85),

> "I was very frightened and was trap in the cab … This was very upsetting to be spoken to like this, especially by a staff member…. This is the first time I felt so threaten and upset and trap in my cab".

    Her report was passed to Mr Hiles to deal with as a management issue.

55. The second piece of evidence was an email sent to the TFL complaints portal by Sophia Hussain, a passenger member of the public, who wrote to report the driver, and provided an account which was broadly supportive of the claimant (92). Mr Hiles emailed back to her on 15 February asking for more information (93) but received no reply. It was suggested in the course of the investigation that Ms Hussain was not a real person, but a name used by the claimant or by a person on his behalf. We make no finding on the point.

56. On 15 February, also through the TFL portal, the claimant made a formal complaint, including a complaint of "the discriminative and bullying actions of this bus driver" (94). TFL acknowledged both the portal complaints and passed them to the respondent to deal with.

57. Ms Morgan had mentioned Mr Mohammed as a colleague who had been involved at the end of the incident. Mr Hiles emailed him and on 18 February he wrote a more detailed account of what he had seen at the bus stand (99). Finally, Mr Hiles had access to the bus CCTV which he viewed.

58. On 17 February Mr Hiles wrote to the claimant to tell him that the respondent had decided to commence an investigation into his actions, to consider if he was “verbally abusive and your behaviour was threatening towards a Metroline employee” (97).

Discussion

59. The claimant had four main points about this stage. He reiterated that there was “no evidence” to warrant investigation, or no evidence other than Ms Morgan’s word. We disagree. Mr Hiles in particular had the CCTV footage. Mr Mohammed’s statement corroborated what had been said about the later part of the incident. Mr Hiles noted that despite the heat and anger of the incident the claimant had waited a full week before complaining to TFL. He also noted that the word “discriminative,” which is not a standard word or correct usage, was used in separate emails sent by the claimant and by Ms Sophia Hussain.

60. The claimant contended, although it was not necessarily a pleaded issue, that he had been treated less favourably than Ms Morgan because no investigation was launched into her actions. We agree with Mr Hiles’ evidence to us, which was that there was no evidence before him against Ms Morgan which would have warranted investigation against her.

61. We add for sake of completeness that Mr Hiles said in evidence that he subsequently gave Ms Morgan “advice and guidance” to the effect that she could and might have waited a few seconds longer at the stop, to be quite sure that the passenger with the buggy did not approach the front door of the bus to board. His evidence was that he regarded that as a less serious matter than the subject of investigation about the claimant. We accept that that was his genuine view.

62. The claimant said a number of times that the respondent had placed weight on Ms Morgan’s feelings at the time (as she described them); but no one seemed to attach any comparable weight to how he had felt when left on the pavement with his child. While we can see the emotive force of that argument, we accept that Mr Hiles saw the two situations as quite different from each other; and that assessing each objectively, he formed the view that Ms Morgan’s complaint was the more serious of the two, and that he was concerned that Ms Morgan had felt under threat at work.

63. The final point to which the claimant returned was that at the time of the event he was not on duty, and was in fact a passenger, and the claimant appeared to imply that it was therefore not appropriate to initiate a disciplinary investigation against him in that situation. We disagree, and find that the events in question were sufficiently proximate to the claimant’s employment to warrant engagement with the respondent’s employment procedures. The claimant’s related point was that the respondent does not, or would not, take action against an abusive passenger who was not an employee. While that might be true (short of criminal prosecution) the claimant was, as an employee, subject to the management authority of the respondent; ordinary passengers are not.

64. Our conclusion is that Mr Hiles was reasonably entitled, on the totality of the material before him, to form the view that the claimant had done something which warranted an investigation in accordance with proper procedure. Our finding is that in reaching that conclusion, the protected characteristic of religion played no part whatsoever.

Meeting on 20 February

65. At the next stage, the claimant attended an investigatory meeting with Mr Hiles on 20 February. The notes of the meeting are extensive (101-114) and we accept them as an accurate summary, though not a complete transcript. The claimant, who was not a union member, was accompanied by a colleague, Mr Thomas.

66. The notes indicate that Mr Hiles read out Ms Morgan's Occurrence Report, and showed all the relevant CCTV footage, which was longer than that shown to the tribunal. The claimant was asked to give his version of events. Mr Hiles questioned him.

67. While the document should be read in full, we note that in overarching respects, the claimant answered Mr Hiles in a manner similar to his approach to the tribunal. In particular, he was concerned to justify his actions, and made no admission of fault or wrongdoing. He showed no empathy or insight in to the concern which might be felt by a woman driver in her cab, confronted by two angry men. We note for example (103),

Q: "Mrs Morgan stated that she was very frightened by your actions and felt trapped. Do you think any employee should be put in a situation where they are made to feel like that?

A: "If she felt like that you should ask her that"

68. We note that when he found a question to be challenging, the claimant avoided a direct answer. That was also a feature of his evidence in the tribunal. For example, the following (106):

Q: "Did you ask Mrs Morgan for her permission to record her?"

A: "I was in a public place and I was recording for my own reference. I did tell her I am recording at the beginning of the video."

We note in similar vein (110):

Q: "Mr Mohammed stated that he saw two people shouting at each other, were you shouting at Mrs Morgan?

A: "How people phrase the report is nothing to do with me."

69. At the end of the meeting, and after a brief adjournment, Mr Hiles gave his decision, which was that there was a case to answer at a disciplinary hearing (112). The allegation to be answered was described as 'Conduct –

verbal abuse, threatening behaviour, intimidation and harassment towards a Metroline employee on 08/02/18' (113). The notes record at seven bullet points his reasons. The disciplinary hearing arrangements were made then and there.

Discussion

70. As issue 6.5 Judge Tuck identified a number of points which the claimant said constituted religious discrimination in the conduct and questions at the meeting with Mr Hiles. As the claimant appeared unable to question Mr Hiles about these points, the Judge with reference to paragraph 7 of the claimant's statement (21E) and to the appropriate quotations in the meeting notes, asked Mr Hiles in relation to eight specific questions, why the question had been put, and whether the question had been put because of the claimant's religion.

71. For example, the first discriminatory question alleged to have been asked by Mr Hiles was, "Don't you think it might seem threatening and offensive to have someone point a mobile phone at them and record them against their will?" (21E). That question is taken verbatim from the notes of the meeting (106). On its face, the question has no relationship whatsoever with the protected characteristic of religion. When asked by the Judge why he had asked that question Mr Hiles answered, "I wanted to understand if the claimant thought recording might be offensive".

72. The last question was "Do you think it is fair that other passengers had to suffer avoidable delay simply because you felt you were owed an apology?" The question is taken verbatim from page 112. On its face, the question has no relationship whatsoever with the protected characteristic of religion. When asked by the Judge why he had asked that question, Mr Hiles said "I wanted to get back to the effects of the claimant's actions. He wouldn't get off the bus at the end of the route."

73. Our conclusions on this portion of the case are the following. The evidence indicates that Mr Hiles conducted the investigation meeting fairly and in accordance with good employment practice. The claimant was given advance notification of the subject matter, he had the right of accompaniment, and a meeting of two and a half hours suggests that ample time was taken. The written evidence was read to him and the CCTV footage was shown to him.

74. We find that the questions asked by Mr Hiles were relevant, and asked in language which was clear and appropriate. We find that Mr Hiles asked questions which were reasonably open to him to ask for the purposes of a fair and proper investigation.

75. We also find that Mr Hiles' conclusion that the matter warranted disciplinary hearing was reasonably open to him, particularly in light of the claimant's apparent lack of insight into his own actions, and his failure to show any understanding of the perspective of his colleague.

76. We find no evidence that a protected characteristic played any part whatsoever in any aspect of Mr Hiles' investigation, the meeting, his questioning, or the outcome. Our finding is that a non-Muslim driver who had conducted himself, or herself, in materially the same way as the claimant would have been treated in the same manner by Mr Hiles. We find that the claimant has, on this point, made a bare assertion of a detriment, but has shown nothing which links it in the slightest with the protected characteristic. He has not caused the burden of proof to shift. If he had, we would unhesitatingly accept the respondent's explanation, which is wholly untainted by religion or belief. It follows that Issue 6.5 fails and is dismissed.

Letter of 23 February

77. By the time he left the meeting on 20 February the claimant knew that he had been invited to a disciplinary meeting on 27 February at which he was at risk of dismissal. On 23 February he sent a letter to "Metroline Head Office". It was addressed "To whom it may concern" and the heading was "Discriminatory and disproportionate actions." The letter is lengthy, and the word "discrimination" or its variants appear many times. The emotive heart of the letter, and perhaps of this case, may be caught in this sentence (118):

> "On the CCTV presented by Metroline, it is very clear that the bus driver intentionally avoided picking me up on more than one occasion and I still did not get an apology or a valid reason apart from racist Islamophobic discrimination."

78. Although the letter did not say that it was a grievance, it was submitted in accordance with the respondent's grievance procedure, and it plainly was a complaint about the conduct of the investigation by a fellow employee. It was also, on its face, a protected act for the purposes of s.27 Equality Act.

79. We note that the claimant's reaction to the investigatory process was in overview no different from his reaction to missing the bus on 8 February: he immediately concluded that the only explanation for the adverse event which he had experienced was discrimination. On both instances, he showed a lack of understanding of the possibility of other explanations or perspectives.

80. Ms Johnson gave evidence that she was then a newly appointed HR Administrator, working in an office with two HR professionals, who between them provided an HR service to a company employing 5000 people. She explained that the HR role was not that of providing welfare or a support service, as it might be on other HR models, but essentially a paperwork role. Her evidence was that she received the letter, skim-read it, identified broadly that it was a complaint, scanned it and sent it to Mr Dalby, who was the senior manager at Willesden. He told her that he had passed it to Mr Loughlin, because Mr Loughlin was dealing with the claimant's disciplinary, and Mr Dalby formed the view that the grievance should be dealt with by Mr Loughlin in accordance with paragraph 3.16 of the Disciplinary Procedure which has been set out above.

81. It was common ground that the claimant was not told that this had been done until Mr Loughlin had started the meeting (121).

Discussion

82. Issue 6.8 was that HR failed to respond to the claimant's request for help or support. Much was made at this hearing of the fact that none of Ms Johnson, Mr Dalby or Mr Loughlin formally told the claimant before the disciplinary hearing on 27 February that the hearing would also deal with his complaint of 23 February, in accordance with the respondent's procedure. Mr Loughlin said that with hindsight that was the one thing that he would do differently in this sequence of events.

83. Our conclusions are simple. We suspect that this part of the claim has been brought in part on the basis of a misunderstanding by the claimant about the role of HR. The mistake is understandable, even though the claimant had four years' service. We find that Ms Johnson dealt with the claimant's 23 February grievance in accordance with standard procedure, which was set out at paragraph 3.16 of the respondent's disciplinary procedure. Mr Dalby and Mr Loughlin did the same.

84. We find that a complaint made by a non-Muslim driver in the same material circumstances would have been dealt with in the same way. The material circumstances are that the complaint was about the handling of an investigation which had led to a disciplinary meeting. We accept the respondent's concession that it failed to communicate the position to the claimant. We find that the manner in which HR dealt with the matter, ie the decision to refer the complaint to Mr Loughlin to deal with, and the failure to notify the claimant that this had been done, were each separate steps in which the protected characteristic of religion played no part whatsoever. We do not find that the claimant has caused the burden of proof to shift; but if he had, we would accept the respondent's non-discriminatory explanation of its actions. Issue 6.8 therefore fails.

Meeting on 27 February and 4 June

85. The next stage was that the claimant attended a disciplinary hearing on 27 February 2018. There were only two people present, the claimant and Mr Loughlin. The latter's notes are clear and comprehensive, and record that the meeting, with breaks, lasted nearly three hours (121-128).

86. Mr Loughlin read out a number of the key documents, which no doubt lengthened the meeting. Mr Loughlin had seen the CCTV, and we accept that in the course of the meeting he saw and heard the claimant's mobile phone footage.

87. Early in the meeting Mr Loughlin asked the claimant a number of questions about his 23 February letter, in which he had complained about Mr Hiles. The notes for example record him asking why he had written that the

meeting with Mr Hiles was illogical, discriminatory, a witch hunt, and had used words such as fearmongering and frame.

88. It appears from the notes, and we accept, that it was not an amicable meeting. Mr Loughlin was robust in challenging the claimant's account and assertions, and his interpretation of events. The claimant asked for an adjournment and for the matter to be dealt with by another manager.

89. Although the meeting lasted nearly three hours, it was cut short because the claimant was suddenly required to undertake a driving duty for which there was no cover. Mr Loughlin adjourned to enable him to do so, but the claimant felt unwell and went home. The claimant was then off sick for a considerable period (we deal with the detail below) and the meeting did not reconvene until 4 June.

90. There was no further enquiry or fact find at the meeting on 4 June. The purpose of the meeting, which was 15 minutes long, was for Mr Loughlin to convey the outcome, which was that he found the charges against the claimant proven. Mr Loughlin set out a detailed finding of fact (183-185) about the events of 8 February, including that the claimant had used the word "scum" to Ms Morgan, and concluded:

> "You have behaved in a way which is unacceptable to a fellow employee and whether you were just a passenger that or not the fact is that you should be even more acutely aware of the pressures of the role as a fellow driver and how people can harass and abuse drivers on a daily basis."

<u>Mr Loughlin's conclusions</u>

91. Although Mr Loughlin's conclusions recorded that the claimant was at that time on a live written warning for collisions, and had in January 2016 received a final written warning (expired by 4 June 2018) "because of your attitude and demeanour towards a controller", he did not dismiss the claimant. He took the view that this was a one-off incident, not a sustained action. He also made allowance in the claimant's favour for the distress caused to any parent by an incident involving his child. Those were generous-spirited considerations.

92. The outcome was a final written warning for 12 months from 4 June 2018. The claimant was also directed to be transferred to work from a different garage base, Cricklewood, which was about two miles away from Willesden. The reason for the transfer was (185),

> "I am concerned that you will not be able to work together in the same garage without issues therefore in the interests of employee harmony, I am transferring you."

93. The outcome was confirmed by letter the same day (187-188). We record for the sake of completeness that the claimant appealed, and his appeal was dismissed by letter of 5 September (236). However, there was no issue before us about the appeal.

Discussion

94. Our findings and conclusions about Mr Loughlin's involvement parallel those about Mr Hiles. We accept the respondent's concession that the claimant could and should have been told in writing that one and the same meeting would deal with his complaint and the disciplinary matter. While that was an aspect of these events which might have been handled better, it was not alleged, nor do we find, that that particular failing was an act of discrimination.

95. We find that Mr Loughlin asked the claimant questions that were reasonably open to him, and that his conclusions about transfer and sanction were fair, proportionate, and conclusions which he reasonably could reach. At this hearing the claimant asked Mr Loughlin why he had not decided to transfer Ms Morgan rather than him. Mr Loughlin explained that there was no disciplinary procedure in train against Ms Morgan, so no factual basis for transferring her, and that Ms Morgan had not been found to have been at fault. We find that no proper comparison can be made for s.23 purposes between the claimant and Ms Morgan, because the circumstances of their two situations were materially different. We comment that the claimant's question was another indication of his lack of insight.

96. When considering each limb of issue 6.6 identified by Judge Tuck we find that the claimant has not caused the burden of proof to shift. He has asserted detriments, but there is no evidence whatsoever which objectively relates any detriment to the protected characteristic. If the burden had shifted, we would accept the explanations given by Mr Loughlin. If we approach the matter through the s.26 definition of harassment we find that the respondent's conduct was not in any respect whatsoever related to the protected characteristic of religion. Issue 6.8 fails.

Dismissal

97. We now turn to the claimant's dismissal, which was issue 6.7. This issue was added by amendment by Judge Tuck. The amendment post-dated the claimant's witness statement, so there was no evidence in the claimant's statement about his dismissal, and the response was not amended to reply to the point. The pleaded claim in totality was (24),

> "He says that this was an unfair dismissal and it was a discriminatory dismissal because of his religious appearance."

98. The issue of unfair dismissal was not before the tribunal. As set out above, the claimant attended a disciplinary hearing on 27 February. After some hours it was found that a driver was needed to take over a duty immediately, and the disciplinary hearing was adjourned. The claimant was asked to take over the duty but said that he was not well enough to do so and went home. He reported in sick.

99. There was an initial dispute as to whether or not the claimant was on unauthorised absence. He was regarded as self-certificated until 7 March.

On that day his GP issued a two-week sick note for "Anxiety with depression" (145). That was followed by another two-week note with the same diagnosis (158). On 5 April the GP issued a note for three months, stated to be for "Moderately severe Depression" (167).

100. The claimant made a short return to work at Cricklewood in the second week of July 2018, but on 13 July was signed off for a month with "Depression" (210). A further monthly certificate with the same diagnosis were issued on 16 August (224). The final sick note in sequence was dated 14 September, for one month, for 'Anxiety with depression' (242). We saw therefore that there was a period of over seven months certificated absence, save for a one-week gap half way through. During this period, the claimant's disciplinary hearing was initially on hold, until, as said above, 4 June, when he met Mr Loughlin.

101. During the claimant's absence, managers dealt with the process of capability review, remaining in contact with him, and meeting when possible to ask about his health. On 16 July (203) that process was taken over by Mr Seers, who then dealt with the matter until the claimant's dismissal.

102. During his absence, the claimant was referred to Occupational Health advisers. On 2 May Dr Remington of Medigold reported to Mr Loughlin that the claimant was on medication, physically fit, not able to complete the disciplinary "due to his state of mind", not fit to work as a driver, and that the doctor was unable to place a date or a timetable on the claimant's return, repeatedly using the phrase "state of mind" to describe the obstacle to his return (177).

103. Mr Loughlin wrote to Dr Remington to query this report, and although his email was not in the bundle, it was quoted in Dr Remington's reply (181). Mr Loughlin had written,

> "The whole report is full of generic vagaries and it doesn't help the company position at all with regards to the individual's management."

104. Dr Remington replied that while he could understand the frustration of an employer, the position was as he had previously described it. He wrote (25 May, 181):

> "He has a history of depression in the past requiring treatment and he currently gives an account of disordered thinking and behaviours as well as depressive symptoms which have led his GP to start him on a powerful combination of medication and advice on talking therapy.
>
> He expresses with strong emotion his view that his management are prejudiced against him and that does not feel willing to take part in the disciplinary process as a result. Due to his state of mind and heightened emotion of the time of our meeting I did not feel he was competent either to return to his substantive role or engage in constructive dialogue with his employer."

105. The claimant questioned Mr Loughlin on the phrase "help the company position". His point was to probe whether the role of Occupational Health was to treat the individual employee, or facilitate his dismissal. Mr Loughlin replied that the role of Occupational Health was to provide the medical foundation for management decision making. That was in keeping with Mr Loughlin's full phrase, which was 'help the company... with regards to the individual's management.' This discussion about the role of Occupational Health, not unusual in tribunal cases, seemed to us to have little bearing on any discrimination issue.

106. The claimant was given a further Medigold appointment on 6 August, which he did not attend (215). He did attend on 17 August. He was certificated unfit for work, with restrictions on driving and on safety critical tasks (225). The adviser wrote (225):

> "He describes a recurrence of a serious mental health problem and is not well at present. I suggest he should not be called into the workplace without appropriate preparation and should always be accompanied by an advocate or trusted colleague."

107. We understand that the doctor, on that occasion, drafted a report. On 21 August Medigold informed Mr Seers that the claimant had exercised his right to refuse consent to it being sent to the respondent (226). The claimant however did attend Cricklewood Garage on 30 August for his disciplinary appeal. By letter of 5 September he was told that the appeal had failed (236).

108. Meanwhile, Mr Seers asked the claimant to attend a sickness review meeting on 10 September, which he did not attend. He did attend a review meeting on 14 September. In the absence of Mr Seers from this hearing, the tribunal accepts that the two letters of that day from Mr Seers to the claimant, and the handwritten notes of the meeting that day (238-241 and 243-245) properly record the content of the meeting.

109. We accept therefore that the claimant spoke to Mr Seers about having had suicidal thoughts, including suicidal thoughts related to his work. As Mr Seers pointed out to the claimant, the respondent did not have the benefit of the OH report of 17 August. Mr Seers alerted the claimant to the possibility that the position had become unsustainable, and invited him to attend a meeting on 20 September which could lead to termination of employment.

110. There was what we understood to be a possible peripheral issue about the 17 August OH consultation to which the claimant returned a number of times. The position, as we understand it, is that on that occasion the doctor asked the claimant about his mental health history. The claimant told the tribunal that he had told the doctor, truthfully, that in the past he had had an episode of self-harm. The doctor in that context asked a question or questions about what the claimant told the tribunal was a scar on his hand. Although we did not probe the matter, we understood the scar to be the result of the self-harm, and we understood, in broad terms, that in the

course of asking the claimant about suicidal thoughts, the doctor asked about the scar.

111. Mr Seers recorded later (238) that the claimant felt "misrepresented" by the report which he did not agree to be released (and which therefore no one involved in this case had seen except the claimant). At the capability meeting on 20 September the claimant, when asked about the report, repeated his refusal of consent and is recorded as stating, "I believe this doctor is racist and biased" (248).

112. The claimant attended the capability hearing on 20 September. A colleague was present as a companion and Mr Seers was accompanied by a management observer. We again had the benefit of detailed notes (246-251). They were signed by Mr Seers, and in his absence from this tribunal, we accept them as an accurate summary.

113. The claimant told Mr Seers that he felt 'ok' and fit to return to work, although not to full time driving. He agreed that he had nothing from his GP to confirm that he was fit for work (247). We add: at that early stage of the meeting, the claimant knew, but Mr Seers did not, that six days previously the claimant had been signed off for another month, to 14 October, with "Anxiety with depression" (242). When asked about the point, the claimant said, "I have another certificate but I will need to get it changed to say that I am fit for part-time work." We were not told of any medical basis for the claimant asserting that he was fit for part-time work.

114. Mr Seers showed the claimant a copy of the OH certificate of 17 August, quoted above (225). There was then discussion of the Occupational Health meeting, and the report which followed from that day. Mr Seers asked the claimant about his past mental health history. The notes record the following (248):

    Mr Seers: "What mental issues have you suffered with in the past?"

    Claimant: "It is irrelevant"

    Mr Seers: "Well it isn't because as a bus driver there are certain issues that are reportable to the DVLA."

115. The claimant told the tribunal that that was not an accurate note and that in fact, when asked about past mental issues, the claimant had asked, "Is that relevant?" to which Mr Seers had answered, "Well it isn't" thereby indicating his agreement with the claimant. The claimant said that he had recorded the meeting (contrary to instructions), and that his version would be confirmed by his recording.

116. We reject the claimant's account for two reasons, and therefore do not go on to make any finding about the relevance of the point. First, Mr Seers' answer as a whole, in which he referred to the DVLA obligation, is coherent and consistent, as well as professionally sound in the context of bus driving.

Secondly, the claimant was making a secret recording of the meeting. If this discrepancy were provable, the tribunal (or indeed his appeal against dismissal) might have been asked to listen to the relevant recording. The claimant had not disclosed the recording, or produced it in evidence.

117. The notes record a further exchange about the claimant's past medical history. We accept that the claimant was unwilling to discuss it. The notes record Mr Seers as stating that he needed more information, given the safety critical nature of the industry. The notes state (248):

> "[IG] You are asking me about my previous health, and I decline to give you answers as I believe it is irrelevant. At this point Mr Gasrini became agitated and started to accuse Mr Seers of discriminatory behaviour. He then stated that he wanted an adjournment and have another manager deal with the case. He then declined to continue with the meeting."

118. Mr Seers told the claimant that he would continue in the claimant's absence if he left. The claimant at that point produced the medical certificate of 14 September, showing that he was signed off till 14 October, and left.

119. Mr Seers wrote a detailed note of his deliberation and thought process, recording the history of management interaction and setting out a number of concerns about the claimant's potential for returning to work, including erratic and aggressive behaviour, admitting to suicidal thoughts, and the recurrence of a previous serious issue. Accepting, prudently and thoughtfully, that the claimant probably fell within the Equality Act definition of disability, Mr Seers recorded that he could not identify reasonable adjustments, given the safety critical nature of the claimant's work and the absence of an Occupational Health report. He therefore came to the conclusion that dismissal was the appropriate sanction and wrote to confirm that the same day (248-251 and 252-253). We add for the sake for completeness that the claimant appealed against his dismissal and was notified on 5 November that his appeal had failed (260).

<u>Discussion</u>

120. We attach considerable weight to the portion of the notes quoted above. Mr Seers records the claimant as first declining to engage with the questions which Mr Seers considered necessary; responding to challenge with accusations of discriminatory behaviour against the doctor, and against Mr Seers; and then withdrawing from the process.

121. That demonstrated a recurrent theme in this case. We noted that on 8 February 2018, the claimant's bus drove off before he had boarded; he at once concluded that this was because of his religious appearance. On 20 February, Mr Hiles asked questions, then decided that the claimant had a disciplinary case to answer; on 23 February the claimant repeatedly wrote that Mr Hiles' actions were discriminatory. On 17 August, the OH physician asked about the claimant's scarring: the claimant later told Mr Loughlin that the doctor was racist. On 20 September, when asked about his mental

health, the claimant said that Mr Loughlin's questioning was discriminatory, and he left the meeting.

122. The claimant's assessment of each event had not changed by the time of this hearing, in October 2019. In each case, the claimant experienced an event which he identified as adverse; his response each time (twice on the spot) was to allege discrimination. He gave no thought, at the time or since, to any other possible, legitimate explanation of the other person's words or actions, even one which he strongly disagreed with. He did not consider that a manager, or a physician, might have his or her own legitimate professional reason for asking questions which the claimant found difficult.

123. We find on issue 6.7 that the claimant has made a bare assertion that his dismissal was because of the protected characteristic of religion. We find no evidence which links one with the other. The burden of proof does not shift. If it did, we would, even in Mr Seers' absence, accept the respondent's explanation for the dismissal, set out at length at 249-253.

124. In our judgment, the notes and letter signed by Mr Seers are sufficient evidence that the protected characteristic of religion played no part whatsoever in the decision to dismiss the claimant. We find that the meeting notes and dismissal letter accurately set out the matters taken into consideration by Mr Seers when dismissing the claimant. They were objective, job related matters, which were supported by the evidence of the claimant's history of absence, GP and Occupational Health information, and interaction with management. Particular weight is to be attached to the safety critical and regulated nature of the bus industry, in the management of a driver who has given some information about a history of serious mental illness, and has admitted to suicidal thoughts related to his work tasks and the workplace, but who has withheld the most recent medical information.

125. The claimant in evidence told the tribunal that he regarded his dismissal as "pre-planned" and the plan was one shared by the group of managers who had dealt with him. He named Mr Bennett, Mr Hiles, Mr Loughlin and Mr Seers. He said that he was on a hit-list since his start date, and that he had been the subject of dislike because of his beard. Mr Hiles and Mr Loughlin denied the existence of a hit-list and denied being part of a plan. The claimant also said that managers had ganged up on him, and that Ms Morgan, who had been based for many years at Willesden, was a personal friend of all or some of the managers who were part of the plan. These were potentially serious allegations, and there was no evidence to support any of them. The claimant's theory meets the first, obvious objection that Mr Loughlin had the opportunity to dismiss on 27 February, but instead issued a final written warning. We accept that Mr Hiles, Mr Loughlin and Mr Seers each made independent decisions in the exercise of management discretion on the information before each of them, and that each had independent authority to do so.

126. We dismiss Issue 6.7. It follows that all the claimant's claims fail and are dismissed.

____
Employment Judge R Lewis

Date: ……13.11.19…………..

Sent to the parties on: ....29.11.19....

....
For the Tribunal Office