



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

A

B

REASONS OF THE EMPLOYMENT TRIBUNAL

HELD AT Manchester on 13, 14, 15, 16 and 17 of May 2019

EMPLOYMENT JUDGE Warren

Members:

Mr RW Harrison
Mrs C Clover

Representation

Claimant: in person
Respondent: Mrs Rule – Mullen Solicitor

REASONS

The claimant has requested written reasons

The Background

1. The claimant was employed by B from February 2017 as a maths tutor in the construction department teaching 16 to 18 year olds. He was dismissed without notice for gross misconduct in March 2018. He describes himself as Asian and a Muslim, and asserts that he is disabled because of stress and depression. By an ET1 presented on 13 June 2018 he alleged unfair dismissal, race discrimination, and discrimination on the grounds of religion or belief, and disability discrimination.

2. The claim of unfair dismissal was withdrawn and dismissed at the outset as the claimant did not have 2 years qualifying service as an employee.

The Issues

3. The claimant pursues a claim of discrimination under the Equality Act 2010. He relies upon the protected characteristics of race, religion and disability.
4. The claimant asserts that he had, at the material time, the impairment of depression and anxiety.
5. The issue was: -
 - a. whether the claimant had the alleged mental impairment. It was for the claimant to provide the appropriate medical evidence to support his allegation;
 - b. if so, whether the impairment had at the relevant time a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities;
 - c. if so, whether that effect is long term. In particular, when did it start and:
 - i. has the impairment lasted for at least 12 months?
 - ii. is or was the impairment likely to last at least 12 months or the rest of the claimant's life, if less than 12 months?
 - d. whether there are any measures being taken to treat or correct the impairment. But for those measures would the impairment be likely to have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?
 - e. the relevant time for assessing whether the claimant had a disability is for the period when the discrimination is alleged to have occurred. It is understood that the claimant asserts that he was a disabled person from the commencement of his employment and that the period when it is alleged that discrimination occurred is from the date he was suspended from duty, 15 January 2018.
6. The claimant asserts that:

- a. There is institutionalised racism within the respondent college evidenced by;
 - i. the fact that there are no senior managers from the ethnic minorities in a college in which there are a large percentage of students from ethnic minorities;
 - ii. the fact that the claimant made repeated applications for a lecturing post and was rejected;
 - iii. the Vice Principal was a racist
- b. the respondent relied on false and fabricated evidence to get rid of him;
- c. the respondent supported a false complaint from a learner against the claimant, who has taught 20 years in this profession without any complaint. The learner said that the claimant had engaged in unwanted contact, harassment and stalking. However, there was clear evidence that this was a fabricated allegation, clear evidence that the learner had wanted contact, that the learner continued to respond to the claimant's emails and what's app messages, and that the learner cooperated 100% with the claimant;
- d. the acts of suspension and disabling of the claimant's email account on 15 January 2018, and the decision to dismiss, were acts of direct discrimination on the grounds of the claimant's race or religion. The respondent would not have treated a hypothetical comparator, a white non-Muslim lecturer in the same way. Each of the disciplinary actions were taken by white managers without any involvement or guidance from any Asian or Muslim staff;
- e. during the disciplinary hearing Mr T bullied and harassed the claimant, shouting at him and making false allegations against the claimant. Mr T would not have treated a white non-Muslim employee in the same way;
- f. disciplinary meetings were arranged during Friday prayers when the respondent knew that the claimant would be unable to attend because of his religion. This was done deliberately to upset the

claimant, to put him under a disadvantage, to affect his right to a fair hearing;

- g. the respondent notified Lancashire County Council of his dismissal. As a result, the claimant was suspended from his work with the Council. The respondent would not have treated a white employee the same way. This was not a safeguarding issue;
 - h. if, as alleged, the respondent notified the Disclosure and Barring Service of the claimant's dismissal then this was a discriminatory act. The respondent would not have treated a white non-Muslim employee in the same way. This was not a safeguarding issue. The learner was a friend of the claimant and was around 20 years of age. She was not part of the further education system and was studying a degree at the University Centre. The claimant had no direct teaching link with the learner;
 - i. the respondent failed to make reasonable adjustments as required under the Equality Act. A provision, criterion or practice (PCP) was applied, namely, a requirement to attend a disciplinary hearing. The claimant was too ill to attend a disciplinary hearing. He was put at a substantial disadvantage in comparison with persons who are not disabled. The respondent failed to take the reasonable step of postponing the disciplinary hearing until the claimant was able to attend and to state his case;
 - j. Mrs C was part of the disciplinary process and took part in the decision-making.
7. The respondent asserts that:
- a. The respondent investigated a complaint from a student;
 - b. The respondent would have treated any such complaint against any lecturer in the same way;
 - c. The respondent did not inform Lancashire County Council of the claimant's dismissal;
 - d. The respondent did inform the Disclosure and Barring Service as

this was a safeguarding issue – the claimant did work with learners between the ages of 16 and 18 years old;

- e. The respondent does not concede that the claimant was a disabled person within the meaning of the Equality Act 2010.

The Evidence

- 8. We had 3 agreed bundles of documents indexed to page 798.
- 9. All of the witnesses had made statements. These were taken as read and each witness was cross examined.
- 10. The claimant gave evidence on his own behalf. The respondent called the following witnesses:-
 - Mr P - assistant principal and designated safeguarding lead
 - Mr T – investigating officer and head of marketing
 - Dr M – appeal officer, principal and chief executive
 - Mr To – dismissing officer and interim vice principal.
- 11. We decided the case on the evidential test - the balance of probabilities, and applied the principles in *Igen v Wong* 2005 IRLR 258 CA and the Equality Act 2010 in considering the shifting burden of proof.
- 12. In brief, in relation to the discrimination claims, it is for the claimant to satisfy us that but for a credible explanation to the contrary from the respondent, the actions of the respondent were discriminatory. If he does so it is for the respondent to satisfy the Tribunal that their actions on the balance of probabilities were in no way discriminatory.
- 13. We found all of the respondent witnesses to be credible. The claimant made some rude and unpleasant comments about some of the respondent witnesses. They were not based on any evidence and did not further his case, nor however did they affect it.
- 14. The claimant's case of unfair dismissal was marked as withdrawn and dismissed because he did not have 2 years qualifying service.
- 15. The respondent denied that the claimant was a disabled person and denied discrimination generally.

The Facts

16. The claimant was a maths tutor from the date of his appointment on 26 February 2017 to the date of his summary dismissal on 16 March 2018, in the Further Education (“FE”) department of the respondent, B (“B”)
17. On appointment he was directed to mandatory safeguarding and other training available to him on line. After completion of induction, he received an email stating ‘please familiarise yourself with the hr policies and procedures particularly bullying and harassment, codes of conduct, codes of ethics and social media’ (page 191). He was given signposting advice to find these on the internet, along with a link to the staff handbook.
18. He gave evidence that he did not look at these policies because they had not been described as ‘mandatory’. He had been involved in teaching at FE level for around 20 years.
19. B is a College which handles 4 categories of student – FE, Higher Education (“HE”), 6th form, and vocational training. The HE students were registered with a university but taught on the B site and subject to the same provisions and rules as all students on the site.
20. The employee code of conduct (p460) is described as ‘assisting employees in the maintenance of appropriate standards’. The cited principle is that the college expects every employee to be professional in dealing with colleagues, students, parents, external organisations and clients and to exhibit a high level of professional and personal conduct in the execution of their duties at all times Standards were expected to be higher than in an industrial setting. The staff were to be role models.
21. The code continues:- breaches are to be taken seriously and dealt with under the disciplinary procedure. Employees should maintain the highest standards of professional conduct at all times and recognise that it is an educational establishment and therefore recognise that the standards expected are that which would be acceptable in the eyes of parents and employers. There is a reference to a separate code on personal relationships.
22. The employee must not in his official or private capacity conduct themselves in such a manner as to bring the college into disrepute. This includes conduct outside work.

23. There is a College policy for safeguarding students. P.468. This states it to be a moral and statutory responsibility of college employees to safe guard all students specifically young people and adults in the college, specifying children, young people and vulnerable adults. The scope covers the welfare of all students regardless of age. P476 deals with the child protection policy.
24. There is confirmation on 12.1.2018 that the claimant was up to date with safeguarding training.
25. The claimant was only employed to teach students aged 16 – 18. He had made several earlier applications to the College and been turned down.
26. He later met a student of B who was studying at HE level. She was aged 20 at the material time. It is clear that they developed a friendship. We have seen extensive emails and Whats app messages and text messages that he was assisting her with her application for a PGCE course – particularly her personal statement. It is not entirely clear whether the claimant offered to act as a referee for her at the outset or if, as he says, the learner asked him to – there is a message (page 227) in which the cl says ‘by all means put me as a reference’.
27. The claimant then offered the learner the chance to work with him at the Library offering private tuition, so that she could gain work experience. She later became worried that the claimant had provided a fulsome and detailed reference based on 1 hour’s work experience. She was clearly very concerned that this would be ‘found out’ and affect her application.
28. The claimant reassured her that this would not happen. We noted however that as time passed and she backed away from responding to his messages, there was an implied threat in his messages that she needed to attend more sessions, because that was the basis on which he had given the reference.
29. P244 – The Whats app message 8 December 2018 – at this stage she was not responding to his messages and he says’ despite the fact I did a lot for you, you are now not answering my calls, nor do you call, we need to meet the reference criteria and you have only attended once’.
30. We found this message to be an example of several which seemed to be manipulative.

31. It is clear the learner then did start to communicate again with him after this. We do not know why.
32. The messages from the claimant to the learner became more personal with time. The claimant accepts that he did send all of the recorded What's App messages in the bundle. We noted no increasing warmth in the responses from the learner. Her replies are neutral.
33. To give examples:- the claimant begins to refer to her as 'dear', and on one occasion 'sweetheart'. There are numerous examples of messages instigated by the claimant at inappropriately late hours – in the early hours of the morning.
34. By the end of November 2017 there is evidence that the learner disengaged on several occasions, although it is fair to say that she re-engaged at times.
35. The claimant offered to ring her on 24 November and she gave reasons why that cannot happen because she is busy.
36. On 29 November at 4.32 am the claimant sent a message saying 'ok you are not going to get any assistance from myself. I am aware that I will be doing one of your references. It was nice when you called me on a daily basis and now you hardly phone or email I am just worried that you have distanced yourself and I hardly speak to you on phone or see you as I did before'.
37. On 1 December 2017 the claimant messaged a further offer to act as a referee.
38. On 3 December he wrote 'I do care for you a lot' and the learner replied 'you should stop doing'.
39. On 21 December he asked to visit her family 'in a respectable manner'. She replied, 'oh yeah, damn'.
40. He then asked that she let him know if she is free. She did not respond saying when she is free. She replied, 'to be honest I want to keep it on a professional level'.
41. On 24 December he referred to her as 'sweetheart', and asks about her favourite colour as he would like to surprise her. She replied that she wanted nothing.

42. On Xmas Day, in another message, he referred to dreaming of her and being in her home and that 'something is going to happen it is destiny'.
43. On New Year's Eve the claimant attended her house. The day before he had indicated that he might call the following day and she had said it would not be convenient.
44. Regardless the claimant accepts that he did attend outside of her house. He texted her 'when would it be convenient to see you'? – she did not reply.
45. He attended in the evening and she rang him and said he could not come in.
46. He messaged that he had a gift for her and she could have opened the door to him as he knew her dad was there and he would not do anything silly. He went on to say 'I am not going to back out'.
47. The learner made a complaint to the police. The police eventually decided on no further action. The claimant accepts that the police rang him and told him to have no contact with her and he has not done so since.
48. It is clear from the police report that they concluded no further action was therefore needed. There is nothing in the report to suggest that this was on evidential grounds and appears to have been on public interest grounds as he had been compliant.
49. The learner also complained to B. Whilst she was an HE student for whom the claimant not directly responsible, the internal policies covered all students.
50. Mr T was asked to investigate. At the end of Mr T's evidence in Tribunal the claimant thanked him and described him as 'a good bloke'. We found Mr T to be entirely credible. His evidence was measured, corroborated by the written evidence, and he justified his investigation and his recommendation to proceed to a disciplinary hearing.
51. The claimant was suspended on 18 January 2018, as was his e mail account with B. The suspension was reported to the LADO (local authority designated officer). The claimant asserted it was not required because he had not placed any under 18 year old at risk. The issues

revolved around a 20 year old student. The college felt under a duty to notify the local LADO because of the potential risk to 16 to 18 year olds as a result of the claimant's behaviour with an older student. The LADO reported the suspension on to the LADO at Lancashire County Council, who then suspended his work for them.

52. Mr T held an investigatory meeting with the claimant who was represented by his union officer. In the presence of the claimant, the union representative thanked Mr T for a fair investigation. During the interview the claimant admitted that whilst the first 90% of the messaging had been entirely professional, by implication the rest was not. In his evidence, the claimant has said that Mr T shouted at him in the meeting, and argued with his union representative. We did not find that credible in the light of the claimant's own recognition of Mr T as 'a good bloke', along with his union representative's assertion that the investigation had been fair. The impression given was that this had been developed by the claimant at some point after the meeting.
53. On 9th February the claimant rang a member of HR and asked to apologise for his behaviour. His union representative had told him he would be dismissed. He appreciated that what he had done was wrong. The College had supported him very much, and given him training and he was very worried.
54. The investigation report recommended disciplinary action for harassment of the learner. Mr T believed the learner's account over that of the claimant. We noted that the learner was, like the claimant, Asian and Muslim.
55. The claimant received Mr T's report – and responded in writing through his union representative (page 523) saying that the report was comprehensive and the investigation was fair. The claimant's letter added that there was a change in the relationship in December when the learner apparently did not want the contact to continue. He became attracted to her and expressed this in a 'clumsy and ill- considered way'.
56. The letter added a personal statement from the claimant (p525) the claimant said 'I was perhaps infatuated by this young lady which may have led to these events'. He denied harassment and stalking. He offered to take an unpaid suspension until the learner finished her course. He culminated by saying that aspects of his behaviour in hindsight were not acceptable. He attributed them to his poor emotional health. The first evidence of poor emotional health (after an entry in

2012), is however 2 weeks after his suspension, when he visited his GP and was described as having low mood.

57. The claimant attended a disciplinary hearing with Mr To. In Tribunal he called Mr To an institutional racist. Mr To accepted (as did Dr M) that the College executive consisted of white men. He did point out that overall there were 30 to 40 % ethnic minority employees within the college including team leaders and middle management, which ran at 9% - slightly over the national average for similar colleges.
58. The date for the disciplinary hearing was originally set for a Thursday which was inconvenient for the union representative. It was moved to the next day to suit the union representative. Mr To had it entered into his diary by his personal assistant without reference to him.
59. The meeting was set at a time which would conflict with the claimant's attendance at Friday prayers. Mr To was unaware that the claimant was Muslim saying he had learned over the years not to make assumptions from names.
60. There appears to have been no attempt made ahead of the meeting to change the day or time, by the claimant or his representative. Mr To said that he would have agreed such a change and there is nothing to suggest to the contrary. In particular there is no evidence that he deliberately set the meeting to conflict with the claimant's attendance at prayer.
61. At the meeting he offered the claimant the chance of a break to pray and that was refused.
62. The claimant provided medical evidence in a GP's letter which explained that the claimant had a history, in 2012, of depression. The claimant confirmed in his evidence that this was only triggered again by his suspension. The GP letter dated 5 March explained that the claimant was now suffering with anxiety and depression and that the claimant asked that his mental health be taken into account. Mr To saw the letter for the first time at the disciplinary hearing.
63. During the disciplinary meeting the claimant again made the point that the majority of communication with the learner was wanted and could not be harassment.

64. During the disciplinary hearing (p.552) there was no denial of the incident by the union representative who spoke for the claimant. He accepted that the learner may have interpreted the claimant's actions as intimidation, but he was just clumsy. He 'acted like a div and he's not the first man to have fallen for a younger woman'. He said the claimant was not being entirely honest with himself. During the relationship he had developed feelings for the student, she didn't reciprocate.
65. Further the claimant apologised and admitted that he had 'overstepped the mark' (p.554).
66. Reference was made to 2 particular messages which apparently upset the learner and gave Mr To cause for concern.
67. The first (p.556 para 96) sent by the claimant: 'we will drown together, you can hold on to me' and the learner replied 'no thanks'.
68. And a second on 18 November from the learner saying 'you are getting the wrong end of the stick and you are starting to sound a bit stalkish'.
69. The union representative wrote to the college subsequently (p558) to say that there had been interpersonal relationships through the Muslim prayer room and the magazine published by the claimant, which were more likely to offer opportunities for interactions, in reply, to a query about this from Mr To.
70. Mr To concluded that even knowing that the claimant was going through a difficult time mentally, had other mitigating features, none of them were sufficient to outweigh the claimant's behaviour.
71. Although the claimant only worked with 16 to 18 year olds, the learner was a student who was protected by the college polices, and he could not be sure that the claimant understood the full implications of his conduct.
72. That being the case he considered that it fell within the category of 'other harassment' within the guide to gross misconduct and dismissed the claimant summarily.
73. He also recommended referral to the Disclosure and Barring Service, not because the student was under 18 and a child, but because he no longer had trust and confidence in the appropriateness of the claimant's conduct which could have impacted on his work within the protected group. The

outcome letter is at p.560 it sets out in detail the reasons for the dismissal which he considered were supported by the documents available to him, in particular the transcripts of the messages.

74. The claimant appealed to Dr M the principal. Dr M is also a qualified mental health professional. He upheld the decision after a full hearing at which the claimant remained represented. Dr M could find no reason to overturn the decision, and provided a 12 page reasoned decision which took account of all of the claimant's mitigation.
75. The claimant criticised the college investigation for not obtaining the outcome of the police investigation. It is clear from the evidence that there was no investigation by the police, merely a call to him immediately following the complaint, asking him to desist. This was later reviewed, he had desisted, and so no further action was taken.
76. He was cleared by the Disclosure and Barring Service to continue teaching.

The Law

77. Section 13 Equality Act 2010 provides that a person (A) discriminates against a person (B) if, because a protected characteristic, A treats B less favourably than A treats or would treat others. The provisions protecting those in employment are contained in section 39 in the Act.
78. Section 136 contains the burden of proof provisions namely that if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provisions concerned, the tribunal must hold that the contravention occurred.
79. In Igen Ltd V Wong 2005 EWCA Civ 142 the Court of Appeal considered and amended the guidance contained in Barton v Henderson Crosthwaite Securities Ltd 2003 IRLR 332 on how to the previous similar provisions concerning the burden of proof.
 - (1) It is for the claimant who complains of discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful .These are referred to as “ such facts”
 - (2) If the claimant does not prove such facts the claim fails

- (3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination, even to themselves.
- (4) In deciding whether the claimant has proved such facts it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inference it is proper to draw from the primary facts found by the tribunal.
- (5) It is important to notice the word “could”. At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage the tribunal is looking at the primary facts proved by the claimant to see what inferences of secondary fact could be drawn from them and must assume that there is no adequate explanation for those facts. These inferences can include any inferences that may be drawn from any failure to reply to a questionnaire or to comply with any relevant code of practice. It is also necessary for the tribunal at this stage to consider not simply each particular allegation but also to stand back to look at the totality of the circumstances to consider whether, taken together, they may represent an ongoing regime of discrimination.
- (6) Where the claimant has proved facts from which inferences could be drawn that the respondent has treated the claimant less favourably on the proscribed ground, then the burden of proof shifts to the respondent and it is for the respondent then to prove that it did not commit, or as the case may be, is not to be treated as having committed that act.
- (7) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities that the treatment was in so sense whatsoever on the proscribed ground. This requires a tribunal to assess not merely whether the respondent has proved an explanation for such facts, but further that it is adequate to discharge the burden of proof on the balance of probabilities that the proscribed ground was not a ground for the treatment in question.
- (8) Since the facts necessary to prove an explanation will normally be in the possession of the respondent, a tribunal will normally expect cogent evidence to discharge that burden of proof. In particular a tribunal will need to examine carefully explanations for failure to

deal with the questionnaire procedure and/or any relevant code of practice.

78. The tribunal has applied the guidance offered by the Employment Appeal Tribunal in Laing v Manchester City Council 2006 IRLR 748 and Network Rail Infrastructure v Griffiths-Henry 2006 IRLR865. The reasoning in the former decision has now been approved by the Court of Appeal in Madarassy v Normura 2007 IRLR 246 CA.

79. The Equality Act 2010 provides that:

Section 6

(1) A person (P) has a disability if –

- (a) P has a physical or mental impairment, and
- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities.

(2) A reference to a disabled person is to a person who has a disability.

(6) Schedule 1 (disability: supplementary provision) has effect.

Schedule 1

Paragraph 2 The effect of an impairment is a long-term effect if –

- (a) it has lasted at least 12 months;
- (b) the period for which it lasts is likely to be at least 12 months; or
- (c) it is likely to last for the rest of the life of the person affected

Paragraph 5

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day to day activities if –

- (a) measures are being taken to treat or correct it, and
- (b) but for that, it would be likely to have that effect.

(2) "Measures includes, in particular, medical treatment and the use of prosthesis or other aid.

80. Harassment section 26 Equality Act 2010 as relevant in this case
- (1) A person (A) harasses another (b) if –
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct had the purpose or effect of
 - (i) violating B’s dignity or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B
 - (4) In deciding whether conduct has the effect referred to in (1)(b) each of the following must be taken into account -
 - (a) the perception of B
 - (b) the other circumstances of the case
 - (c) whether it is reasonable for the conduct to have that effect.

The Conclusions

81. The claimant has not satisfied us that at the material time he was a disabled person. The first suggestion of him being mentally unwell came 2 weeks after his suspension, and the GP letter gives no indication that this is a disability that would have a substantial impact on day to day living, or was likely to last any particular length of time. In any event, having become ill after suspension there was no medical evidence that the claimant required a delay in the proceedings as he now asserts, as a reasonable adjustment. There is no evidence that the claimant asserted at the time that he was too unwell to proceed (we noted that he was well represented) and that Dr M, a qualified mental health practitioner saw no evidence to suggest a need for delay in the appeal hearing. The claimant asked that his mental health be taken into consideration and both Mr To and Mr M gave credible evidence that they did. The claimant’s assertion that he had suffered with depression since the last recorded incident in 2012, simply did not ring true and was not supported by any medical evidence. It seemed clear that he had suffered a bout of depression in 2012, which recurred 2 weeks after his suspension and for which there was no indication that it would last at least 12 months.

82. We dismiss the allegation of disability discrimination as the claimant was not at the material time a disabled person.
83. We heard no credible evidence in support of the claimant's assertion that there was institutional racism in the college. The fact that the executive did not have any ethnic minority members may not reflect the local community, but it would appear to be the same UK wide in further education, from the statistics we saw. It was clear that the college want to improve the ethnic mix of the executive and is taking positive steps to improve this situation.
84. We make no comment on the claimant's previous failed applications -such claims would be out of time, and the history is unknown to any of the witnesses other than the claimant. His assertions in this regard did not form part of his pleaded case. The background we accept is that he had applied for work with B on a number of earlier occasions. There is no evidence of the claimant complaining of race or religious discrimination at the time, and no evidence of why he was rejected.
85. We heard no evidence to support the contention that the Vice Principal was racist. There was simply no evidence other than the assertion by the claimant that he was.
86. We found no evidence on the papers of false or fabricated evidence other than a reference by the learner to having met the claimant at the library 3 times. She was clearly worried about the reference he had already given her, being based on 1 meeting only.
87. We do not find the act of suspension, or suspension of his email account to be a racist act. The union representative had plenty of opportunity to address this at the time when he was thanking the college for the fair investigation. It makes no logical sense. In cross examination the claimant confirmed that he did not consider the suspension of his email account to be discriminatory. He was suspended because of a credible complaint made about him that he had breached B's policies.
88. The respondent was entitled to believe the learner's assertions over the claimant – the physical evidence of the messages supported her account of unwanted conduct and the claimant's admissions supported it., the fact that she was a Muslim and Asian as well makes it inherently unlikely that her behaviour in complaining was racist, or based on his religion. In believing the learner, the investigating officer, disciplinary officer and appeals officer were believing one Asian Muslim over another, reinforced

by the physical evidence of messages, and the claimant's admissions and apology.

89. The claimant asserts that different decisions may have been made if a 'culturally appropriate' person had been consulted. It is clear from the evidence that the three white males involved in the decision making had no reason to consider the claimant's race or religion. His actions and admissions breached B's policies and caused his dismissal regardless of race or religion.
90. The claimant specifically praised Mr T at the end of his evidence calling him a 'good bloke'. The union representative had also thanked him for a fair investigation. The union representative has not given evidence that Mr T shouted at the claimant in the investigation hearing. There is no record of the union representative arguing or protesting with Mr T in the meeting., We have concluded it did not happen.
91. We are satisfied that the disciplinary meeting was set up without regard to the claimant's faith as a practising Muslim. But we are equally satisfied that had he or his representative made it known that he was a Muslim and sought to pray on Friday lunchtime, the College would have rearranged the meeting. When it became known that he was a Muslim he was offered the chance to pray and rejected it.
92. We have found on the evidence that the claimant is wrong in his assertion that the College referred his suspension to Lancashire County Council. It is clear that the local LADO referred it to the LADO at Lancashire as required. The claimant misunderstood. The report was made to the local LADO because the college felt that the claimant may place the 16 to 18 year old students at risk because of his conduct with an older student. Potential risk has to be reported.
93. We heard no evidence to support the contention that Mrs C took part in the decision making. Both the dismissing officer and the appeals officer made it very clear that this was their decision and theirs alone.
94. Taking all the above into consideration and looking at the evidence overall the claimant has not on the balance of probabilities satisfied us, that but for an explanation from the respondent, there has been any racial or religious discrimination or harassment.
95. The claims of religious and race discrimination are ill founded and are dismissed.

The Restricted Reporting Order pursuant to section 12 of the Employment Tribunals Act 1996 and Rules 50(1) and 29 of the Employment Rules of procedure 2013 and the Anonymisation order made by Employment Judge Porter on 3 September 2018 are extended sine die.

Employment Judge Warren

Signed on 5 February 2020

Judgment sent to Parties on

6 February 2020