



EMPLOYMENT TRIBUNALS

Claimant: Mr S Khan

Respondent: SIM Ventures Limited

Held at: Leeds

On: 4 to 6 February 2020

Before: Employment Judge Cox

Members: Mrs E C McAvoy
Mr W Roberts

Representation:

Claimant: In person

Respondent: Mr Malik, trainee solicitor

REASONS

1. Mr Khan presented a claim to the Tribunal against his former employer SIM Ventures Limited (“the Company”). The Company operates under franchise a BP petrol station which includes a convenience store and a Subway sandwich retail outlet. Mr Khan worked as a customer service assistant at the station/store from June 2017 until he was dismissed on 8 May 2019.

The allegations

2. Mr Khan’s allegations had been clarified to some extent at a private Preliminary Hearing for case management. At the beginning of the main Hearing Mr Khan confirmed that he did not in fact pursue a claim for damages for failure to give notice of termination because he accepted that he had been paid a month’s pay in lieu of notice. He also confirmed that he was not making a claim of victimisation under the Equality Act 2010 (EqA). The Company’s representative accepted that the claim of unfair dismissal that was dismissed at the Preliminary Hearing was Mr Khan’s claim of unfair dismissal by reference to the test of reasonableness in section 98(4) of the Employment Rights Act 1996 (ERA) (which Mr Khan had insufficient qualifying service to pursue) and that Mr Khan was entitled to pursue his claim that he had been unfairly dismissed because of a protected disclosure, contrary to section 103A ERA, for which there is no qualifying service.
3. In summary, the complaints that the Tribunal had to decide were whether Mr Khan had been subjected to detriments and dismissed because of protected

disclosures he had made, whether he had been the subject of direct race discrimination because of his Pakistani nationality, and whether he had been the subject of direct religious discrimination because he is a Muslim.

4. At the Hearing, the Tribunal heard oral evidence from Mr Khan and from Mr Naqvi, who worked in the Subway outlet at the station/store from October 2018 to July 2019. The Tribunal also considered an email from Mr Afaq Hussain and witness statements from Mr Zaheer Ahmed and Mr Ismail Ahmed, who worked at the station/store at the same time as Mr Khan. As these witnesses did not attend the Hearing, the Tribunal gave their statements less weight than it would have done had they been present to be subjected to questioning on their evidence. Half-way through the second day of the Hearing Mr Khan applied for witness orders to require Mr Hussain and Mr Zaheer Ahmed to attend to give evidence. The Tribunal refused the application in relation to Mr Hussain as it was not satisfied that the evidence Mr Khan said Mr Hussain would give was relevant to the issues the Tribunal had to decide: it related to matters that Mr Hussain, not Mr Khan, had raised with the Company. The Tribunal did, however, grant an order for Mr Zaheer Ahmed to attend to give evidence on the following day. Even though the application for the Order had been made very late, the Tribunal granted it because Mr Ahmed's evidence was relevant: it related to whether mobile 'phone use, which was one of the matters that the Company said was the reason Mr Khan was dismissed, was in fact authorised by the Company. In the event, Mr Ahmed did not attend, in breach of the witness order.
5. For the Company, the Tribunal heard oral evidence from Mr Mukthar, a director of the Company and one of its owners, and Mr Kamal, the other owner of the Company, who was not involved in its day-to-day management but dealt with Mr Khan's grievance and appeal against his dismissal. On the basis of this evidence and the documents to which the witnesses referred to, the Tribunal made the following findings in relation to Mr Khan's complaints.

Protected disclosures

6. The first issue the Tribunal addressed was whether Mr Khan had made any protected disclosures. To be a protected disclosure, a disclosure must fall within the definition of a qualifying disclosure in section 43B ERA. A qualifying disclosure is any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of a list of matters. The list includes that: a criminal offence has been committed, is being committed or is likely to be committed; the health and safety of any individual has been, is being or is likely to be endangered; or a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. A qualifying disclosure is a protected disclosure if it was made to the worker's employer (Section 43C(1A) ERA).
7. The first alleged protected disclosure related to a complaint Mr Khan said he made about a smell in the store. The Tribunal accepted Mr Khan's evidence that he did raise the fact that there was an unpleasant smell in the store orally with Mr Mukthar sometime in early November 2018. This evidence was consistent with Mr Mukthar's evidence that employees of the business were constantly raising concerns with him about various matters and also with Mr Afaq Hussain's

email in which he stated that he himself had complained to Mr Mukthar about the “very strong smell of a dead mouse” when he started work on 25 November 2018.

8. Then on 27 November 2018 Mr Khan sent Mr Mukthar two texts, at 2.10 am and 6.24 am. The 2.10 am text read:

“the smell has gotten worse in the shop customers are complaining about it and I am feeling sick due to it half the shop from the chilled section is giving a disgusting odour this is making me sick and its hard to work please do something about it tomorrow if this smell is still there tomorrow I will not come to work Let me know if you have dealt with the smell if I don’t receive a reply I will assume it’s not dealt with and will not come to work as the smell is not good for my health”.

9. The 6.24 am text read:

“I just got home and I am feeling ill from the smell of dead rats in the store I am not in a financial situation to not work but health is my top priority and these issues regarding rats which have been causing problems for staff and customers alike for more than 3 weeks are becoming a health hazard which need to be dealt with on urgent basis so I can carry on my shifts on Tuesday and Wednesday night”

10. In these texts Mr Khan was making clear that a bad smell has been present in the store for three weeks, it was leading him to believe that his own health was at risk because he thought it might be due to dead rats and it was causing problems for the staff and for customers. The Tribunal heard no evidence from Mr Khan expressly confirming that he made this disclosure in the belief he was making it in the public interest, despite the Tribunal asking him open questions about what was in his mind when he made it. The Tribunal was nevertheless prepared to infer that he did believe he was making the disclosure in the public interest, because he mentioned in his second text that customers had been raising concerns, indicating that he had the public interest in mind, in the form of the risks to the health and safety of the customers at the store, as well as his own health and unwillingness to carry on working in what he believed was an unsafe environment.
11. The Tribunal also accepted that, given Mr Khan perceived the smell to be strong and obnoxious, he had a reasonable belief that the health and safety of not just himself but of others was likely to be endangered, because of his concern, which was reasonable in the circumstances, that the origin of the smell was dead vermin and the store sold foodstuffs.
12. As the texts were sent to Mr Mukthar, a director and owner of the Company, this was effectively a disclosure by Mr Khan to his employer. The Tribunal concluded that Mr Khan’s oral complaint to Mr Mukthar about the smell and his texts on 27 November 2018, taken together, amounted to a protected disclosure.
13. Mr Khan also alleged that he had made multiple protected disclosures when he raised oral complaints about the fact that he was being expected to sell products that did not have a bar code and for which the proceeds of sale were not being put through the till.
14. Mr Khan’s evidence was that he raised this issue multiple times orally with Mr Mukthar from shortly after the Company took over the franchise of the station/store in May 2018, that is, from around June or July 2018 onwards. Mr

Mukthar's evidence, on the other hand, was that Mr Khan did not raise these concerns with him directly until after his dismissal.

15. Mr Khan's colleague Mr Ismail Ahmed had raised a grievance. During the course of a meeting to discuss that grievance on 28 December 2018 he had raised concerns about items not being put through the till. In support of his position he submitted an email that Mr Khan had sent him in which Mr Khan said that he had refused to sell products without a bar code and had queried why some products were not being put through the till. The email concluded: *"If you need any evidence regarding this issue feel free contact me."* The Tribunal accepted that by means of this email the Company was informed that Mr Khan was concerned about products not being put through the till. There was no evidence before the Tribunal that Mr Khan sent the email in the reasonable belief that he was making a disclosure of information in the public interest: it was sent to support Mr Ahmed in his grievance. Further, it was not made to Mr Khan's employer, since it was addressed to Mr Ahmed. It could not, therefore, amount to a protected disclosure.
16. The Tribunal was not convinced that Mr Khan had been raising his concerns about sales not going through the till directly, continuously and on multiple occasions with Mr Mukthar since June/July 2018. Mr Khan's evidence was that he was concerned about being told to sell products illegally because of the damaging effect that might have on his immigration status as a Pakistani national. His leave to remain in the country needed to be renewed every three years and could be endangered if he were involved in criminal activity. From the evidence Mr Khan gave and the tone and content of the texts he wrote to the Company, the Tribunal was satisfied that Mr Khan is a very assertive and well-informed individual. If Mr Mukthar had in fact ignored the concerns Mr Khan was raising on multiple occasions, Mr Khan would have put those concerns in writing. He had been willing and able to do so in his email to Mr Ahmed and in relation to his concerns about the smell in the store.
17. Mr Khan emailed Mr Mukthar on 9 May 2019 in response to his dismissal on 8 May. In that email he said:

"Your behaviour with me has been quite bad ever since I advised you against selling product past their expiry date and asked you on multiple occasions to deal with the many problems at work due to which you have been biased with me".
18. There was no mention here of concerns about products not being put through the till. He then sent Mr Mukthar a grievance letter on 14 May 2019. The first paragraph of that letter ends as follows:

"Ever since you have taken over as operator I have had several issues with how you have handled management. One of the issues which started all of this was selling of products missing bar code illegally without usage of the till. Due to my refusal of this you started to create problems for me at work."
19. Whilst this letter implies that Mr Khan had raised concerns about not putting products through the till before he was dismissed, the Tribunal did not accept that that was in fact the case, for the reasons set out above. Mr Khan was now, however, raising this matter and the Tribunal accepted that this was in the reasonable belief that this information tended to show that the Company was acting in breach of the law, in that it was taking money for products without putting them through the till and therefore knowingly and dishonestly avoiding tax on that

income. The Tribunal did not accept, however, that at the time he made this disclosure Mr Khan was doing so in the reasonable belief that he was raising it in the public interest. The Tribunal asked him open questions about what was in his mind when he was raising this issue and his evidence was clear: he was raising it in the belief that it might involve him in unlawful activity that could adversely affect his immigration status. That was clearly a matter of importance to him personally but not a matter that involved the wider public interest.

20. In summary, the Tribunal did not accept that the disclosure Mr Khan made on 14 May amounted to a qualifying disclosure because it did not accept that Mr Khan made it in the reasonable belief that he was making it in the public interest. Further, even if it had been a protected disclosure, the alleged detriments and Mr Khan's dismissal could not have been done on the ground of or by reason of that disclosure, because they pre-dated it.

Detriments

21. The Tribunal then considered whether Mr Khan had been subjected to detriments on the ground of a protected disclosure. It is unlawful for an employer to subject an employee to a detriment by any act or any failure to act done on the ground that the worker has made a protected disclosure (section 47B ERA). In a complaint of detriment on the ground of a protected disclosure, it is for the employer to show the ground on which any act, or deliberate failure to act, was done (Section 48(2) ERA).

22. Mr Khan alleged that on 28 November 2018 Mr Mukthar removed him from a shift that he was due to work because of his disclosure about the smell in the store.

23. As set out above, Mr Khan raised his concerns about the smell in texts at 2.10 am and 6.24 am on 27 November. At 7.31 pm he sent Mr Mukthar another text saying:

"I did not received any update regarding the rat issue. Please confirm whether you have dealt with the smell or not. If the smell has been dealt with let me know so I can come to my shift or else I can not come to work as I have been ill all day today because of exposure to hazardous odour yesterday which has spread in the shop".

24. At 8.00 pm Mr Mukthar replied:

"Further to your message I can confirm I have been unable to address the situation so late in the day but confirm that I have arranged for the relevant company to come out to address the situation as a matter of urgency tomorrow. I therefore confirm that it is your choice as to whether you attend work tonight but I will contact you tomorrow to confirm the situation has been resolved, in readiness for your Wednesday night [28 November] shift. Please contact me on [mobile 'phone number] should you wish to discuss further."

25. At 8.13pm: Mr Khan replied:

"you should know this issue as it's been known for 3 weeks. If you are advising me to not come it's your job to provide me with another shift as I don't want to loose my shift as well as my health as I am already ill from last night".

26. On the following day, 28 November, at 6.45 pm Mr Mukthar texted and emailed Mr Khan as follows:

"Thank you for raising your concerns regarding the smell of rats within the shop. Following this concern, we called in pest control to conduct a full and thorough investigation of the premises. During their visit they have failed to find any rats within the shop and there is no evidence of any other issues. Therefore, you are required to return to work. If you could let me know if you are coming in for your shift this evening as we would need to make the appropriate cover".

27. At 7.46 pm, not having heard from Mr Khan, Mr Mukthar texted him as follows:

"Hi Sameed can you confirm your shift please?. If not we would need to arrange the appropriate cover".

28. At 7.48 pm Mr Khan sent Mr Mukthar an email, not a text, as follows:

"what bothered me was the smell not the rats. I will come to work as required of me but if the smell is unbearable I will let you know and go home as I am already on medication from my doctor and she has advised me not to work in an unhealthy environment. If the smell makes me sick I will let you know".

29. At 8.05 pm Mr Mukthar texted Mr Khan:

"Your shift is covered so please come to your next shift. Many thanks."

30. Then at 10.22 pm Mr Mukthar emailed Mr Khan and said:

"I tried to contact you in different ways but didn't get a reply from you. So I arranged somebody to cover your shift. so please come to your next shift. thank you."

31. In spite of Mr Mukthar's text and email Mr Khan turned up to work and found that there was somebody else in post to cover for him, as he had been told there would be. At 11.46 pm he texted Mr Mukthar:

"Tonight on 28 November 2018 I came to do my nightshift at 11pm but upon my arrival I was really surprised when you told me to go back home as my shift was already covered by someone else. This week I have had a loss of 2 shifts. Yesterday and today's shift in which I have had no fault. Please make sure that company pay me for both these shifts".

32. At 11.49 pm Mr Khan sent Mr Mukthar an email in identical terms.

33. The Tribunal heard no direct evidence on the time at which Mr Mukthar read the email that Mr Khan sent him at 7.48 pm in which he said that he would come to work but would go home again if the smell was too bad. Given the lapse in time between Mr Khan's email and Mr Mukthar's next email, which was 10.22 pm, it was more likely than not that Mr Mukthar did not read Mr Khan's email immediately and arranged cover for Mr Khan when he did not text his confirmation

that he was available in response to Mr Mukthar's text of 7.46 pm. In any event, the Tribunal accepted Mr Mukthar's evidence, which was consistent with the contents of all the texts and emails, that the ground upon which he made his decision to replace Mr Khan on the shift was because Mr Khan had failed to confirm that he would be working his shift. Even Mr Khan's email of 7.48pm did not give his unequivocal assurance that he would work his shift. The Tribunal was satisfied that Mr Mukthar did not remove Mr Khan from the shift on the ground of his protected disclosure about the smell. This conclusion is supported by the undisputed facts that Mr Mukthar paid Mr Khan not only for the shift on which he went home because of the smell but also for the shift for which he turned up even though he had been told that cover had been provided. That is inconsistent with Mr Mukthar having a desire to penalise Mr Khan for his complaint in any way.

34. Mr Khan also alleged that the Company had cut his hours on the ground of his protected disclosures. His evidence was that he had been working around 40 to 50 hours a week or around 160 to 200 hours a month and this had been reduced to his minimum contractual hours of 96 a month. He said that he was offered fewer hours in retaliation for raising his concerns about the legality of taking money for products without it going through the till. The time at which he alleged that these reductions began changed during the course of the Hearing. Initially, he said that his hours were reduced after January 2019. Later in the Hearing he said his hours were reduced after he raised his concerns about selling products without them going through the till, which he said he did from June or July 2018. At another point in the Hearing, he said his hours were reduced at the end of September 2018.
35. As explained above, the Tribunal found that Mr Khan did not in fact raise his concerns directly with the Company until after his dismissal. In any event, Mr Khan's pay slips were provided in evidence at the Hearing and these showed no pattern of a reduction in his hours. In 2018, Mr Khan worked 48 hours in May, 161 hours in June 2018, 160 hours in July, 191 hours in August, 172 hours in September, 64 hours in October, 152 hours in November and 96 hours in December. In 2019, he worked 96 hours in January and 122 hours in February. In March he worked 84 hours but also had 48 hours' holiday. In April he worked 62 hours but also had 75 hours' holiday.
36. In summary, the Tribunal did not accept that this alleged detriment had in fact occurred. This part of Mr Khan's complaint would therefore have failed even if the Tribunal had accepted his evidence that he had made protected disclosures about sales not being put through the till from June or July 2018.

Dismissal

37. The Tribunal then considered Mr Khan's allegation that the reason or principal reason for his dismissal was a protected disclosure.
38. As explained above, the Tribunal found that there was only one disclosure that pre-dated the decision to dismiss Mr Khan and that was the protected disclosure he made in November 2018 about the smell in the store. It was not until 8 May 2019 that Mr Khan was dismissed. That lapse of time in itself indicated to the Tribunal that it was unlikely that the reason for Mr Khan's dismissal was the protected disclosure, made several months previously. Further, the Company's response to the protected disclosure at the time was to pay Mr Khan for the two

shifts that he did not work after raising his concerns and to bring in Rentokil to investigate the source of the smell. These facts do not indicate that the Company was harbouring any hostility towards Mr Khan because he raised his concerns.

39. More significantly, the Tribunal accepts Mr Mukthar's evidence, which was consistent with all the documentary evidence that the Tribunal saw, including the letter confirming Mr Khan's dismissal, that the reason for Mr Khan's dismissal in fact related to Mr Mukthar's concerns about his conduct.
40. There were various aspects to this. First, Mr Mukthar was concerned that on 29 April 2019 Mr Khan had taken an extended break. The Tribunal saw the stills from the Company's CCTV footage which indicated that Mr Khan took more than the 20-minute break provided for in his terms and conditions. The footage showed that he was on a break from 0.35am to 1.08am, at least 15 minutes more than he was authorised to take.
41. The second matter of concern to Mr Mukthar related to Mr Khan's failure to wear the Company's authorised uniform. Mr Khan accepted in evidence that, on the CCTV footage that Mr Mukthar had seen, Mr Khan was wearing tracksuit bottoms whilst at work on 7 May 2018. Mr Khan also accepted that that was in breach of the Company's rules that he should be wearing plain black trousers. The Tribunal saw a text the Company sent to staff on 18 April 2019 reminding them that they should be wearing the correct uniform, including plain black trousers.
42. Thirdly, Mr Mukthar was concerned that Mr Khan was using a mobile 'phone at work. Stills from CCTV footage, which the Tribunal saw, confirmed that on 29 April and 7 May 2018 Mr Khan was using his mobile 'phone at work. The Tribunal saw a text that the Company sent to staff on 18 April reminding them not to use any electronic devices whilst on shift unless authorised by management to do so. Mr Khan told the Tribunal that Mr Mukthar had authorised staff to use their mobile 'phones to check number plates of customers on a software application that could confirm whether the number plate was false. In his witness statement, Mr Zaheer Ahmed said that, with the permission of "the owners", staff were allowed to use their phones, but he did not say who gave that permission. He also said that staff used their phones to check number plates, but he did not say that this use was authorised. The Tribunal preferred Mr Mukthar's evidence, which was clear and unequivocal, that he himself had not authorised staff to use mobile 'phones for this purpose. This was significant because it was Mr Mukthar who made the decision to dismiss Mr Khan.
43. Finally, Mr Mukthar was concerned that on 29 April Mr Khan had allowed Mr Naqvi, an employee of the Subway outlet, to go behind the BP counter and use the till belonging to the BP part of the business. The Tribunal accepted Mr Mukthar's evidence, which it found clear and convincing, that Subway and BP staff needed different training because the nature of the businesses within which they were operating was different and the tills of the different parts of the business worked differently. In his evidence to the Tribunal, Mr Naqvi confirmed that he had learnt to use the till on the BP side of the business by being taught by the other employees outside work time and without being paid for it. This supported Mr Mukthar's evidence that he did not know about Mr Naqvi's use of the till and it had not been authorised by him.
44. Mr Khan said that the Tribunal should not believe Mr Mukthar's evidence on the reason for his dismissal because Mr Mukthar had treated him differently to the

way he had treated various other employees. So, for example, in relation to Mr Naqvi being behind the till, Mr Khan pointed out that his colleague Mr Zaheer Ahmed was also behind the till on the evening in question and he was not disciplined. The Tribunal accepted Mr Mukhtar's evidence that as far as he was concerned Mr Ahmed was not as culpable as Mr Khan because it was Mr Khan's till, not Mr Ahmed's till, that Mr Naqvi was using.

45. In relation to the extended break, Mr Khan pointed out that Mr Naqvi and Mr Zaheer Ahmed were also present when Mr Khan was taking his break. Mr Mukhtar had no evidence, however, that Mr Ahmed was taking a break during this period rather than working. Mr Naqvi, who had joined Mr Khan during his break, had done so in his own time, having already finished his shift.
46. Further, the Tribunal accepted Mukhtar's evidence that he believed Mr Khan to be guilty of several disciplinary offences and it was the totality of these offences that caused him to decide to dismiss Mr Khan.
47. In summary, the Tribunal was satisfied that the reason for Mr Khan's dismissal was not any protected disclosure he had made but various other aspects of his conduct.

Race discrimination

48. Direct race discrimination arises when an employer treats an employee, because of his race (which includes his nationality), less favourably than the employer treats or would treat others (Section 13(1) EqA). For the purposes of that comparison, there must be no material difference between the circumstances relating to each case (Section 23(1) EqA).
49. Mr Khan alleged that the decision to dismiss him was, in part at least, because of his Pakistani nationality. In his evidence to the Tribunal Mr Khan clarified that he believed that Mr Mukhtar felt able to dismiss him because he knew that his immigration status meant he was vulnerable: as a Pakistani national, he would not feel secure enough to challenge his dismissal because he did not have a guaranteed right to live and work in the UK.
50. Even if the Tribunal had accepted that that was the reason Mr Mukhtar felt able to dismiss Mr Khan or had influenced his decision-making, it would not have accepted that that amounted to direct discrimination against Mr Khan because of his Pakistani nationality. In Onu v Akwivu [2016] ICR 756 the Supreme Court confirmed that treating somebody badly because of their vulnerable immigration status is not the same as treating them badly because of their nationality.
51. In any event the Tribunal was satisfied from the evidence it heard that neither Mr Khan's nationality nor his immigration status played any part in Mr Mukhtar's decision-making when he decided to dismiss Mr Khan. There was clear and convincing evidence, summarised above, that the reason Mr Mukhtar dismissed Mr Khan related to his conduct alone. There was no evidence that Mr Mukhtar treated, or would have treated, an employee who had committed the same disciplinary offences but was not of Pakistani nationality any differently to the way in which he treated Mr Khan.
52. For those reasons the Tribunal did not accept that Mr Khan's dismissal amounted to direct discrimination because of his Pakistani nationality.

Religious discrimination

53. Direct religious discrimination arises when an employer treats an employee, because of his religion, less favourably than the employer treats or would treat others (Section 13(1) EqA). For the purposes of that comparison, there must be no material difference between the circumstances relating to each case (Section 23(1) EqA).
54. Mr Khan's final allegation was that Mr Kamal's decision not to postpone a hearing of his grievance on 31 May 2019 was taken because he is a Muslim.
55. On 14 May 2019 Mr Khan raised a grievance. On 17 May Mr Mukthar wrote to him to tell him that there would be a meeting to discuss the grievance on 23 May. On 20 May Mr Khan told the Company that he could not attend on that date because it had not provided him with the relevant documents, including its grievance procedure. On 22 May Mr Mukthar emailed Mr Khan and purported to attach the documents that he needed but in fact those documents were not attached. On the same date Mr Khan replied and pointed out that there were no documents attached. Mr Mukthar agreed to re-arrange the date of the grievance meeting. On 23 May he wrote to Mr Khan fixing 27 May for the meeting. On 25 May Mr Khan said he could not attend on that date because it was Ramadan and so it was not possible for him to attend or to arrange for a colleague to come with him. He asked for the meeting to be held after 10 June.
56. On 30 May Mr Mukthar wrote to Mr Khan:
- "Unfortunately, your reason to postpone the meeting due to Ramadan is not a reasonable reason, as this would have been during your normal working hours should you have been an employee and we are trying to resolve your issues of concern."*
57. Mr Mukthar confirmed that the meeting would now be held on 31 May, at the Community Centre venue suggested by Mr Khan. On 29 and 31 May Mr Khan emailed to say he could not attend on that date because it was Ramadan and everyone was busy with religious activities including himself and he could not find somebody to accompany him. He again asked for the meeting to be held after 10 June. On 30 May Mr Kamal confirmed to Mr Khan that the meeting would go ahead on 31 May. Mr Khan did not attend.
58. Mr Kamal's evidence, which the Tribunal found clear and credible, was that the reason he did not agree to postpone the meeting to be held on 31 May was because the meeting had already been postponed twice and he did not in any event accept that Mr Khan's observance of Ramadan was a good reason for him not to be able to attend the meeting. If Mr Khan had wanted to observe Ramadan he would have needed to be at the mosque at night and so would have needed time off work, because he worked night shifts. Under the Company's holiday procedure, he would have needed to have requested that time off eight weeks in advance and he had not done so. Further, Mr Kamal took the view that it was possible for Mr Khan to attend a meeting in the daytime even while observing Ramadan. Mr Kamal is himself a Muslim and was observing Ramadan at this time; it did not prevent him from conducting a grievance meeting in the daytime.

59. There was no evidence before the Tribunal to indicate that Mr Kamal would have reacted differently to any employee, of any religion or none, who was resisting attending a grievance meeting for a reason that Mr Kamal did not accept as valid.
60. As the Tribunal did not accept that the reason Mr Kamal decided not to postpone the hearing on 31 May was because of Mr Khan's religion, this aspect of Mr Khan's claim also failed.

Employment Judge Cox

Date: 18 March 2020