



# EMPLOYMENT TRIBUNALS

**Claimant:**

Mr M Angelov

v

**Respondent:**

Marston Group Limited

**Heard at:**

Reading

**On:**

16 March 2020 &  
17 March 2020 (in chambers)

**Before:**

Employment Judge Anstis  
Mrs A E Brown  
Ms H T Edwards

**Appearances**

**For the Claimant:**

In person

**For the Respondent:**

Miss L Kaye (counsel)

## RESERVED JUDGMENT

The claimant's claims are dismissed.

## REASONS

A. INTRODUCTION

1. The claimant was employed by the respondent from 21 August 2017 to 1 February 2018 as an arrest officer.
2. Arrest officers act as "authorised officers" under Schedule 4 of the Domestic Violence, Crime and Victims Act 2004 for the purposes of serving and enforcing warrants of arrest and other warrants in connection with criminal proceedings. The respondent employs 30 such officers in the team which the claimant worked in. The arrest officers operate under a contract held by the respondent with HMCTS.
3. This is plainly difficult and delicate work requiring such officers to exercise personal judgment (within the framework of legislation and their employer's policies) in circumstances where their presence is not generally welcome. The defendants they work with may be violent, unpredictable or vulnerable.
4. The claimant was dismissed on 1 February 2018. The respondent says that this was as a result of failing his probationary period. The claimant says that his dismissal was both:

- 4.1. Automatically unfair under s103A of the Employment Rights Act 1996, as the reason or principal reason for his dismissal was that he had made a protected disclosure. The protected disclosure alleged is a disclosure regarding health and safety made on 1 February 2018, which is said to qualify as a protected disclosure under s43B(1)(d) of the Employment Rights Act 1996.
- 4.2. Unlawful (direct) race discrimination, with his race or ethnic origin for these purposes being described by him as being eastern European and his comparator being hypothetical (presumably a hypothetical British comparator).
5. The respondent denies that the disclosure was a protected disclosure and denies that the dismissal was automatically unfair or a matter of race discrimination.

**B. THE HEARING**

6. Although originally listed for three days, the parties were able comfortably to complete their evidence and submissions within a day. While this is typically a case that we would have looked to give an oral decision on, in the present circumstances we decided that rather than ask the parties to travel again to attend tribunal the next day to hear the judgment we would reserve our decision.
7. The claimant's partner could not attend on the day of the hearing, but Miss Kaye said that she did not wish to ask any questions of his partner (whose evidence was largely second-hand or confined to the question of injury to feelings), so we took her statement as read.
8. The claimant had requested a Bulgarian interpreter for the hearing, but said on the day that he would prefer to work in English and would only use the interpreter if there were particular words or phrases he wanted translating. The claimant proceeded to conduct the hearing and give his evidence in English without difficulty, only consulting the interpreter for a translation once or twice during his closing submissions.
9. For the respondent we heard evidence from Steve Newman who was (at the relevant time) Group Enforcement Director, and Gary Jones, who is Group Enforcement Director (Civil & Business).

**C. THE FACTS**

10. It is not in dispute that from the start of his work as an arrest officer the claimant's work attracted more complaints than that of his colleagues.
11. Despite the difficult and sensitive nature of their work, across the respondent's workforce of 30 arrest officers a total of around 10 complaints a year would be expected. In the first eleven weeks of his work there had been five complaints raised about the claimant from various complainants including court staff.

12. These complaints came at a particularly significant time for the respondent as it was engaged in negotiations for the renewal of its contract with HMCTS.
13. The claimant was adamant at the time (and indeed at the time of the tribunal hearing) that he was not at fault for any of the complaints. Except in respect of one of them the respondent does not say that he broke any rules or policies. The common themes in the complaints were of the claimant being overzealous in carrying out his work – for instance, remaining at a property for five hours awaiting police support in the carrying out of his duties. The respondent's witnesses emphasised to us the need for arrest officers to exercise their own judgment in difficult circumstances – and being willing to walk away from difficult situations (with the option to return later if necessary) rather than to provoke further confrontation.
14. It is clear from the evidence we heard that the claimant believed that the respondent's position on enforcement (and being willing to walk away) was unnecessarily weak, and that he preferred to adopt a far more robust approach, emphasising the statutory powers available to authorised officers.
15. In the face of these complaints, on 23 November 2017 the respondent decided to move the claimant to work as an Investigation Agent, pending further investigation of the complaints and the claimant's work. The claimant objected strongly to this, and Steve Newman (then the respondent's Group Enforcement Director) held a meeting with the claimant the following day. In his notes from this meeting, Mr Newman praises the claimant's "work ethic" (praise of this nature for the claimant was a common theme from the respondent's witnesses) but also noted, "*I can see why he attracts complaints as he has a very rigid perspective generally*". He goes on to say, "*I do believe that with re training and a detailed review of the complaints and incidents as a learning exercise, he has the potential to undertake the arrest role more successfully than he has done to date ...*".
16. The outcome of the meeting was that the claimant was to do the Investigation Agent work for two weeks pending further discussions, with any retraining to start after that.
17. On 12 December 2017 Mr Newman held a further meeting with the claimant and Rob McLaughlin, the claimant's team leader. The notes of the meeting include the following:

*"Discussed with Milen that management were concerned re the number of complaints for Milen's attitude, behaviour and conduct in such a short time.*

*Management believe he has the correct work ethic and are therefore willing to invest in Milen.*

*Discussed with Milen [the complaints]"*

18. The notes go on to record that the claimant's probationary period was to be extended, and he would have a further four weeks training, which took the form of accompanying or being accompanied by Rob McLaughlin and two of the claimant's peers in carrying out his and their work. The notes conclude:

*"2<sup>nd</sup> January Milen to train with various officers – all would assess Milen's attitude, behaviour and conduct.*

*Final week with Rob McLaughlin who would assess that there is evidence of Milen's attitude, behaviour and conduct.*

*If any negative feedback from Rob or officer, management may terminate Milen's employment."*

19. We note at this point that the respondent appears to be making considerable efforts to retain the claimant in the role of arrest officer, despite the clear difficulties he was having with the role.
20. The claimant undertook work with two colleagues and Rob McLaughlin. Both his colleagues provided detailed feedback to Mr McLaughlin. While praising aspects of the claimant's behaviour and work, one of his peers commented:

*"My overall opinion is that Milen is making a conscious choice to deal with a warrant how he sees fit.*

*Any amount of training would not change his opinion that he will follow the 'law' and not the agreed practice between court and company.*

*It is clear that he will continue to receive complaints regarding his perceived heavy handedness as long as he continues to work in such a way."*

21. Another colleague said:

*"I spoke to [the claimant] about ... the way he stands and it appears to be aggressive to some people I said to him he needs to relax his body stance and try relaxing ... I explained to Milen some people will look for anything to have a go at you or whoever is at the door, I also think that some of the people we see don't like being told what to do and because Milen is from another country some people will use that as an excuse to shout at him. I explained to Milen that this can cause problems and I advised him to just be professional and calm. Overall Milen is a grafter and a nice person, he just needs to try and be calm, and learn to walk away however frustrating it may be, with more experience Milen will learn how to deal with different types of people, needs to learn a bit more on body language."*

22. The claimant later (following his dismissal) recorded a phone conversation he had had with this colleague in which similar comments were made (but with an emphasis on the claimant's body language and stance). The

claimant bases his race discrimination claim on the passage which starts "*because Milen is from another country*".

23. Rob McLaughlin compiled a report on the retraining and his experience working with the claimant. While praising the claimant in some respects, he concludes:

*"... I cannot recommend Milen for a position as an arrest officer as Milen has failed to show that he is willingly capable of following the policy and procedures set out within The Marston Group Limited.*

*This in turn makes any enforcement that Milen attends a potential point of confusion and misunderstanding and a very real risk of incident."*

24. It appears that this report was sent to the claimant prior to the meeting on 1 February 2018 referred to below. It was certainly compiled prior to that meeting. The significance of this is that there is a clear recommendation that the claimant's employment as an arrest officer should be ended before the date when the claimant says he made any protected disclosures.

25. On 1 February 2018 Vicky Warner (the claimant's line manager) held a meeting with him. It is at this meeting that the claimant says that he made his protected disclosures.

26. What the claimant says in that meeting (as regards protected disclosures) is recorded in the notes of the meeting as follows:

a. *"In terms of my safety with regards to arresting people, in my opinion we need to do more, if someone were to change their mood and attack me I don't feel secure as there is an opportunity to be hurt, or for them to hurt themselves. If this then goes to court who will take responsibility?"*

and

b. *"I picked up this quiet guy, we spoke over the phone and I would give him a surrender date on Friday, he said yes I will attend, and then called me and said he wanted to go now ... Once in the car he then stopped talking so I did not try to talk any further. When we were in front of the court we got out of the car and his eyes were red and started swearing at me ...*

*I asked him if he had anything on him which could cause harm. If he had something I would not know because we are not allowed to search and he could have hurt me. The court would ask if I had searched him and I would say no because my company said I can't, they would then ask about hand cuffs to which we are not allowed. I would then get the blame for this."*

27. Shortly after (b), Vicky Warner adjourned the meeting, and on reconvening it is noted as saying to the claimant:

*"I have to say again that your capability is not in question here and that you are more than capable of the job role. Your work ethic is not in question here either. What I and the company is concerned with is the number of complaints that you receive. In your first 3-4 weeks you had 4 complaints, another one came in last week too. You have this number of complaints already considering that the whole team of 30+ officers get around 10 over a year. That is a major concern to me along with the types of complaint ... it's too much of a risk to keep you."*

28. The claimant was dismissed by Vicky Warner at the meeting, his dismissal being confirmed in a letter dated 2 February 2018 which says:

*"having taken all the facts and circumstances into consideration, the company has taken the view that you have failed your probationary period and has terminated your contract with effect from 1 February 2018."*

29. Following this the claimant appealed against his dismissal. The appeal was dismissed – although during the appeal the claimant was offered an alternative role which he declined. Nothing in the claimant's claim turns on the appeal (except in relation to the phone call noted above).

D. DISCUSSION AND CONCLUSIONS

**Did the claimant make protected disclosures?**

30. Point (a) is not a protected disclosure. There is no meaningful information disclosed. This is at most an allegation or a suggestion that things could be done better.
31. There is more to point (b). The claimant is specifically saying what is wrong – the powers of the authorised officer in relation to search (and possibly restraint) are not being exercised. This is a matter that could relate to health and safety of an individual and be in the public interest. This was a protected disclosure.

**Were they the reason (or principal reason) for his dismissal?**

32. We have no doubt that the protected disclosure was not the reason (or principal reason) for the claimant's dismissal. He was dismissed for the reason given by the employer: his behaviour during his work attracted a disproportionate number of complaints and he failed to moderate his approach following the period of retraining. He took an overzealous approach to enforcement, which was unnecessarily strict, and was not the approach required by the respondent. We note, and were impressed by, the extensive efforts that the respondent went to to allow him to demonstrate the necessary qualities for the role, but the clear opinion of those who he went out with during his retraining period was that he was not suitable for the job.

33. Even during the tribunal hearing the claimant insisted that he was in the right and that his employer's approach to enforcement was wrong. His employment as an arrest officer could not continue when he had such a view of matters.

**Was the dismissal race discrimination?**

34. The claimant's complaint of race discrimination, as he described it in his evidence, was not that Vicky Warner had been personally motivated by his race or national origins in making her decision to dismiss him, but that (relying on the comments noted above) his race or national origins made him more likely to be complained against (in comparison to a British employee) and that in turn had led to his dismissal.
35. This comes from the note that: "*because Milen is from another country some people will use that as an excuse to shout at him*".
36. We accept Mr Jones's explanation that, in dealing with difficult people in difficult circumstances, people will often seize on personal characteristics and use them as points of abuse. However, we see nothing to suggest that the excessive number of complaints against the claimant were to do with his race or national origin. Mr Jones explained that other officers may have personal characteristics that are equally used as points of abuse by people, but there is nothing to suggest that they had significant numbers of complaints made against them. We also note that in the feedback given concerning the claimant by the individual who raised this point by far the most significant item appeared to be the claimant's stance, and we accept that matters of body language can have a significant effect on the way in which the people officers are dealing with may respond to them. The claimant's dismissal was not in any sense a matter of race discrimination.

**Conclusion**

37. The claimant's claims are dismissed.

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**Employment Judge Anstis**

Date: 17 March 2020

Sent to the parties on: 15 April 2020

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For the Tribunals Office

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