EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr C S Ali	**v**	**The Home Office**

Heard at: Watford (by CVP) **On**: 14 & 15 June 2021

Before: Employment Judge R Lewis
Mrs S Hamill
Mr D Sagar

Appearances

For the Claimant: In person
For the Respondent: Mr D Randle, Counsel

JUDGMENT

1. The respondent did not discriminate against the claimant on grounds of race and his claims are dismissed.

REASONS

Procedure

1. These reasons were requested by the claimant when judgment was given.

2. This was the hearing of a case presented on 21 June 2019. Day A was 20 May and Day B was 20 June. The claimant has at all times acted in person.

3. The claim had a slightly tangled procedural history. It was served on 12 July 2019. The respondent applied for an extension of time to serve its response, which was refused. On 20 October the Tribunal issued notification in accordance with Rule 21 debarring the respondent.

4. An application for extension of time for the response was refused by Employment Judge Jack on 27 November 2019.

5. On 9 January 2020 then Regional Employment Judge Byrne reconsidered the matter and gave directions. A preliminary hearing took place before Employment Judge Manley on 28 April 2020 (39) at which she listed for case management and for a two day final hearing in January 2021. Her order set out the issues (40-42).

6. The case management hearing was postponed and came before Employment Judge McNeill QC on 18 November 2020 (51-55). She struck out the claimant's claim for victimisation and refused his request for leave to amend by adding a claim for indirect discrimination. She also made further case management orders.

7. The listing for two days in January 2021 could not be maintained due to the covid pandemic. The hearing was adjourned to the present dates. There was further correspondence thereafter in relation to case management.

8. At the start of this hearing it was not clear that formal permission to defend had been granted for today's purposes. The judge proposed of his own initiative why it appeared in the interests of justice that such permission should be granted, which the claimant readily agreed.

9. The hearing proceeded remotely, with only the Judge and Mr Sagar present in the Tribunal room. The claimant was the only present witness on his own behalf. He had submitted an unsigned statement from his wife, Mrs H Ali, which went mainly to remedy; and from Mr M Hasnain, which related to the claimant's preparation for interview and potentially to remedy.

10. The respondent called four witnesses. In order of evidence they were Ms I Petelova, SEO, who had interviewed the claimant; Mr J Burkitt, Head of Recruitment, who had investigated the claimant's complaint; and two security officers, Mr S Pasha and Mr S Gomes. In addition the bundle contained an unsigned statement from Ms J Popat, who had interviewed the claimant with Ms Petelova, and who we were told was now retired and unavailable.

11. The Tribunal bundle exceeded 770 pages and was available both in hard copy and on pdf. We read a modest selection. The claimant gave evidence for a large part of the first day. The respondent's witnesses gave evidence for an extended morning session on the second day. Mr Randle's closing submissions were largely set out in writing and he spoke to them briefly, following which the claimant declined the offer of an adjournment and replied immediately. The Tribunal was able to give judgment the same afternoon.

12. After an adjournment we met the parties at 3.30pm on the second day to give the outcome, after which the judge began to give an outline of the reasons. After a few moments, after being told the outcome of the case, the

claimant told the Tribunal (for the first time) that he had a childcare commitment, requested written reasons, and withdrew from the remainder of the hearing.

The framework

13. The definition of issues by Judge Manley was clear and concise. The case related to the events at a job interview on 22 February 2019 and to the claimant's interaction with security staff as he left the building. He complained of direct race discrimination at the interview and its outcome; and of harassment on grounds of race by the security staff. The claimant identified as British Pakistani.

14. This was a claim brought under the provisions of s.13 and s.26 Equality Act 2010. It was a claim of direct discrimination (in relation to the interview) and of harassment in relation to the security sign out. On the first heading, the tribunal must decide whether the claimant has shown facts which, in the absence of explanation, are such that the tribunal might infer that discrimination has taken place. The tribunal need not find race to have been the main or sole factor, only that it was a relevant or material factor.

15. The claim of harassment arises under Section 26 of the Equality Act 2010, when read with sections 4 and 10. Section 26 provides so far as material the following. The question for the tribunal is to find what took place as a matter of fact, and to ask was it unwanted, and was it related to race, and did it have the purpose or effect set out below:

> "(1) A person (A) harasses another (B) if (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has 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 subsection (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."

Findings of fact

16. The claimant was born in 1976, and his CV indicates that he has worked for many years in security. He obtained an Honours Law Degree in about 2016, after which he worked as an immigration advisor in a legal setting. In 2017 he applied for employment in the Home Office. We understood that he was interviewed but was unsuccessful. No issue relating to that application was before the Tribunal.

17. In January 2019 the Home Office launched a recruitment for 25 posts of Litigation Caseworker at EO Level (171). The post was to be based in West London and was in short involved in dealing with a number of legal issues and complaints in relation to immigration issues. The role requirements were set out at length (172-177) and included a minimum requirement of a 2.2 law degree equivalent or comparable experience as a litigation caseworker (176).

18. The application form was based on demonstration of competencies. The claimant's application (194-198) set out the conventional personal information, an employment history, and examples of demonstrating competencies in collaborating and partnering; making effective decisions; delivering at pace; and managing a quality service.

19. The claimant's application passed the paper sift stage and he was invited for interview. His interview was on February 22nd 2019 at Bedfont Lakes, Feltham. A day or two before his interview he went to the venue just to check practicalities and parking arrangements, and had a casual chat with Mr Pasha, whom he met by chance. Mr Pasha had been employed as a security officer by the Home Office for many years.

The interview

20. The claimant was interviewed by Ms Petelova and Ms Popat. They were both experienced interviewers; Mr Burkitt told us that Ms Popat had interviewed on over 200 occasions. We accept that both were competent and experienced interviewers, and that both had undergone training in equality and diversity, and in the conduct of interviews. They had a copy of the claimant's application form (194-198) and a template score sheet (199-203). The score sheet set out the four competencies, and provided for questions and follow up questions. It contained tables for the scoring.

21. The standard structure, for all interviewed candidates, was that the interviewers asked each candidate a standard question about the competence; in light of the answer, an interviewer might then ask a follow up question or questions. The follow up questions were called 'probing' questions. At the end of the standard questions, the interviewee was offered the opportunity to ask his or her own questions.

22. The claimant's interview sheets were left blank by both interviewers, save for the scores and for the conclusion (203). Rather than write on the interview sheets, both interviewers made notes on A4 sheets (204-206 in the case of Ms Petelova, 207-210 in the case of Ms Popat). We accept that the interviewers followed standard procedure in the claimant's case. They asked standard competency-related questions, made notes of his answers, and then each made a judgment as to whether any further or probing question was necessary. It was common ground that the claimant was not asked any probing or follow up questions. Ms Petelova was asked why not, and explained that the claimant's answers were so 'low level' and 'basic' that no further probing was required. We accept that that was the judgment of both interviewers at the time.

23. When offered the opportunity to ask his own questions, the claimant asked technical questions about immigration law, which the interviewers answered by saying that neither was a specialist in the field, and which they could not answer. The claimant was taken aback by this information, and asked the interviewers more than once to confirm the positions which they held, and that they worked within the Home Office. The interviewers confirmed that

that was the case. We note (as the claimant did not) that the competencies on which all candidates were questioned were generic skills.

24. The claimant repeatedly raised in evidence the issue of whether writing interview notes on separate A4 sheets, rather than on score sheets, was good practice or best practice. Ms Petelova's answer was that she found it easier to write on A4 sheets and had more space to do so, and, more importantly to the tribunal, that she did so in all interviews which she conducted. Disclosure of a large number of interview notes in the same campaign indicated that that was very common practice.

25. If we are asked to decide (and we are not) whether the use of A4 sheets is good or common practice at interviews, our finding is that it is common practice and we can see nothing wrong with it. We can most certainly see nothing in the practice which engages any issue of race or discrimination.

26. After the interview, each interviewer scored each candidate individually on each competency. The interviewers then discussed the candidate and their scores, and recorded a single agreed score on each competency. There were four competencies, each with a maximum score of 7, leading to a maximum interview score of 28. Both interviewers agreed a score for the claimant of 2 per competency, a total of 8. The appointable pass mark was 16, with a required minimum of 4 on each competency. The claimant's score therefore fell far short of the appointable level.

27. On the final page of each score sheet there was a summary of agreed comments to be noted by Ms Popat. The comments on the claimant read (203), in relation to each of the competencies:

> "Low levels of example. Need to read through CSCF and prepare the examples. Need to explain which was his role rather than talk about other people."

28. We understood the overarching comment to be that the claimant had prepared inadequately for his interview. He should have read the Civil Service Competence Framework; thought out better examples for each competency; prepared more meticulously for interview; and when questioned, he should have spoken less about other people and their shortcomings, and said more about himself, and his own achievements.

29. The claimant did not accept that the notes at 204-210 had been written by the interviewers during the interview. We accept Ms Petelova's evidence that they were. The claimant did not accept indeed that any of the interview notes in the bundle for any candidate were authentic. He asserted that they had been manufactured by the respondent for the purposes of defending these proceedings. There was (as the claimant agreed) no evidence to that effect, and we reject the allegation as absurd.

30. The bundle contained (447) the respondent's breakdown of the overall application. We take this to be accurate. The claimant did not accept its accuracy, but readily agreed that he could put forward no evidence to challenge it. It shows that there were 199 candidates, from whom 36 were

interviewed, and 25 were offered appointment, of whom 24 accepted. Applying self identification by ethnic category, three candidates out of the 25 appointed were white, 10 were Asian or Asian British, 11 were black African or Caribbean or black British or identified as other ethnic groups. We accept the accuracy of the figures.

31. We also accept the accuracy of Mr Burkitt's evidence, which was that those proportions were not untypical of the West London Litigation Office, which was, he said, exceptionally diverse. He referred us to the office organogram (772) from which we noted that of the five senior post holders in West London Litigation Operations, four had Asian surnames. (It was no credit to the claimant that when asked about this document, he denied that a number of the plainly South Asian surnames in the organogram were in fact Asian, or denied knowing that the names were Asian).

Security incident

32. When the claimant arrived at the building, Mr Gomes was on duty. He had asked the claimant to sign in, and handed him a visitor's pass. After his interview, the claimant left the building through the security system. On his departure the claimant had a curious altercation with Mr Pasha, who was briefly covering for Mr Gomes. Mr Pasha's evidence was that he appeared 'angry.' We accept that evidence: it is consistent with our finding that the claimant became convinced during the interview that he was experiencing discrimination.

33. Mr Pasha had been a Home Office security guard since 2007; Mr Gomes since 2001. They were familiar with the procedures. We accept their evidence, which was that a visitor was required to sign in personally on arrival, and was then issued with a visitor's pass. Their evidence was that on leaving the building, a visitor was not required to sign out. We accept their evidence, which was that a visitor was required to return the visitor's pass to a security officer, who would then note the time when the visitor left the building. The security officer's note of the leaving time was, in effect, the visitor's sign out.

34. The claimant asserted that he saw other visitors leaving, who had been allowed to sign themselves out. When he was leaving, he asked to sign out, and had a disagreement with Mr Pasha when Mr Pasha refused to allow him to do so. Mr Pasha said that the claimant tried to "grab" the security register. Mr Pasha prevented him from doing so, and signed out the claimant by writing in the time when he left, which recorded as 1555.

35. We accept the evidence of the security officers. They had nearly 40 years' security experience with the Home Office between them. Their evidence was particularly convincing because the exit procedure which they described had a common sense basis: it enabled a visitor to leave quickly; it prevented visitors from seeing confidential details about other visitors, and it ensured the return of the pass. We accept that Mr Pasha dealt with the claimant in accordance with the usual procedure by asking him simply to

return his pass. We accept that Mr Pasha noted the claimant's departure at the time when he thought the claimant departed.

36. We do not accept the claimant's evidence that other visitors, in circumstances similar to his, were allowed to sign out. We do not accept that he was able objectively to define what he thought he saw. We do not accept that Mr Pasha deliberately mis-recorded the time of the claimant's departure. There was no evidence of any reason why he might do this.

Complaint correspondence

37. The claimant was informed by email that he had been rejected. On 6 March 2019 he wrote a lengthy complaint (730-735) in which he raised a number of the complaints which were before this tribunal: the conduct of the interview, the use of A4 notes, the failure to answer his detailed questions about immigration law, the skill and qualification of the interviewers and the security procedure on his departure. He asserted that the outcome of his interview "had been predetermined at the expense of the external candidates". We note that that phrase was not a complaint of unlawful discrimination: it was a complaint that the recruitment favoured internal candidates over outsiders.

38. As Mr Randle put to the claimant, it was a detailed complaint, written by a law graduate, which quoted case law, complained of many aspects of unfairness, and alleged breach of due process, but never once used the vocabulary of race discrimination, or referred to the claimant's ethnic origin. Unconvincingly, the claimant answered that he had not studied employment law and did not realise that he had been discriminated against because he did not know the Equality Act. We struggle to accept that evidence. On a daily basis the tribunal meets claimants, who, without any legal education, are alive to having been victims of discrimination.

39. Mr Burkitt was tasked with investigating. We accept the integrity of his reply of 29 March (392-394), in which he set out his reasons for rejecting all the points in the claimant's complaint. He apologised to this Tribunal that the reply took longer to be sent than should have been the case. He explained the delay by having to investigate the matter with two members of his own staff, and two members of security staff. The claimant questioned whether Mr Burkitt was independent and we accept that Mr Burkitt's explanation was that he was independent of the selection and interview process in the claimant's case.

Discussion

40. In his concise closing, Mr Randle invited us to find that the claimant was not credible. We approach the language of credibility with care, because it is often an artificial lawyer's construct. In this case, we agree that the claimant was not a reliable witness. His case had inherent problems which had a cumulative effect, and which, even if he had identified and understood them, the claimant could not overcome.

41. The tribunal had refused permission to add a claim of indirect discrimination. The claimant nevertheless remained concerned that the application form asked questions about a candidate's immigration status and history. We note, without having heard the points argued, first that like any employer, the respondent was bound to satisfy itself that a job applicant has the right to work in the UK; and secondly, that it is not surprising or unreasonable, let alone discriminatory, that a public body asks if a potential new employee has ever fallen foul of the same body of law which he wishes to enforce.

42. The claimant asserted that he had been directly discriminated against at his interview. He readily agreed that he had and could have no knowledge of what happened at anyone else's interview, and therefore no evidential basis for comparison.

43. The claimant was concerned, to the point of seeming fixation, that the interviewers had made notes on separate sheets of A4, and not on the respondent's score sheet. He did not dispute that records in the bundle showed that that had been the practice in almost all the other interviews in this recruitment. He appeared not to understand (a) that the question for this tribunal was not whether writing A4 notes is good practice; (b) that if A4 notes were made at other candidates' interviews, he had not been treated differently; and (c) that it was not apparent in any event that writing notes on A4 is a detriment, or of any significance, or in any way related to race.

44. The claimant was plainly angry that the interviewers did not (in his view) match his understanding of the technicalities of immigration law, and as a result he challenged their legitimacy to interview him. He appeared not to understand (a) that the competencies on which he was assessed in his application, and at interview, were generic; or (b) that selection of interviewers was a matter entirely for the respondent; and (c) that aggressively challenging the competence of interviewers was not likely to enhance his prospects of appointment.

45. The claimant alleged that the guards' actions as he left the building constituted harassment. To make good that claim, he had to show that their actions were related to race. The action of signing out a visitor is one which a security guard undertakes countless times. It is the work of a moment. The claimant did not appear to understand how difficult it would be to demonstrate that an action which was a momentary routine was in any one case tainted by race.

46. There were four alleged discriminators in this case. One was of Pakistani origin; two were Indian; and one was Eastern European. The recruitment in this case resulted in the appointment of 24 candidates, of whom 3 identified as white, and 21 identified their ethnic origin as other than white (including 10 who identified as Asian). The organogram of the team in question showed a large number of Asian surnames at all levels, including 4 of the 5 most senior post holders. The claimant had not understood or analysed that

taken together all of these factors pointed against there having been racial discrimination in any one instance.

47. As the claimant agreed, no document in the bundle supported his claim. A large number of documents supported the respondent's case. When asked about any individual document which did not help his case, the claimant's recurrent answer was to assert that it had been fabricated. He asserted that the notes of all the other interviews had been manufactured well after the event for the purposes of defending this claim. He denied the accuracy of the ethnic analysis of the recruitment (447). When asked about the organogram, he denied that names which are plainly of Asian origin (eg Mukhtar) were Asian. The claimant did not appear to understand that taken together these answers indicated a concerted denial of reality.

48. In general, the claimant showed little capacity for analysis of evidence, either at the time of the events, or in this hearing, some 28 months later. We accept that by the time he had reached the security desk after his interview and before leaving the building he was convinced that he had been discriminated against, and he retained that conviction. Where evidence did not support him, or strongly suggested the contrary, he brushed the evidence aside without thought or analysis. Thus, he alleged that a substantial portion of the bundle consisted of forgeries, knowingly fabricated by Home Office officials to deceive the Tribunal. He agreed when asked by Mr Randle that there was 'a conspiracy' against him. He asserted that those who had discriminated against him, namely the interviewers and security officers, were following the instructions of unidentified superiors. He asserted that the Home Office recruitment figures were false, while accepting that he had no others. He denied that Asian names were Asian.

49. This Tribunal found all four witnesses on behalf of the respondent compelling witnesses of truth. We noted that the alleged discriminators were at the interview stage Ms Petelova who is of European origin and Ms Popat who is Indian; and at the security stage, Mr Pasha who told us that he is Pakistani Muslim and Mr Gomes who said that he is Indian. We noted the huge majority of BAME recruits employed in this campaign, a proportion which Mr Burkitt said was entirely consistent with the operation in question and out of kilter with national statistics. We in particular accepted in full the impressive evidence given by Ms Petelova about her personal commitment to equality and diversity, and her professional volunteering and training roles which followed.

50. Taking the issues identified by Judge Manley in turn, our conclusions are the following.

51. The claimant's first complaint was that he was not asked probing questions. We find that the interviewers asked template questions related to the competencies, which they were free to follow up by probing the answer they were given. The extent and nature of probing was reactive to each candidate's primary answer. We accept Ms Petelova's evidence that the claimant's answers were so basic and of such "low level" that there was no

more to be asked. We accept that candidates who gave better answers than the claimant may have been asked probing questions which were more in number and deeper in scope. If so, the reason why other candidates were probed more than the claimant was wholly unrelated to race, and was entirely related to the quality of the primary answer.

52. The second point was whether the claimant's questions were answered by the interviewers. We accept that the claimant asked some detailed questions about his understanding of immigration law and that neither interviewer was competent to answer them. We also find that the claimant asked personal questions of the interviewers, namely as to their position, qualification and status, which they did answer, but did not answer necessarily repeatedly. We repeat our findings at #23 above. We find that both interviewers were experienced and competent to interview the claimant, and any other candidate whom they interviewed. Their answers to the claimant's questions were wholly unrelated to race.

53. We accept the integrity of the claimant's poor scoring at interview, and that his scores represented the genuine professional assessment of both interviewers, wholly unrelated to race. It follows that we find that the failure to appoint the claimant was in no respect whatsoever related to race. The reason was his poor performance at interview.

54. The third matter identified by Judge Manley was "a vagueness of the feedback". We understand this to refer to the material at the foot of the interview sheets at page 203 of the bundle, set out at #27 above. We understood the guidance that was being given to the claimant. It was framed in more neutral language than we have summarised at #28. We do not agree that it was vague. We find that it summarised the honest professional assessment of the interviewers.

55. The respondent had a formal system for unsuccessful interviewees to ask for feedback. We accept Mr Burkitt's evidence, which was that the claimant did not engage the formal system.

56. If the claimant's allegation related to his complaint and Mr Burkitt's reply, we find that the reply was not vague, but we accept that it was not the reply for which the claimant was hoping. We find that it set out Mr Burkitt's honest assessment of the material before him (which did not include a complaint of racial discrimination, either express or implied).

57. In relation to all of the above aspects of the claim of direct discrimination our finding is that race played no part whatsoever in any aspect of any of the matters complained of by the claimant.

58. The claimant's complaint of racial harassment related to Mr Pasha, and two matters: his refusal to give the claimant the sign out register to sign personally; and alleged mis-timing his exit from the building in the record which he wrote. (Mr Pasha wrote that the claimant left at 1555; the claimant

was adamant that he had left at 1545; and that the discrepancy was an act of racial harassment).

59. We accept that Mr Pasha did not give the claimant the sign out register. We find that the reason was that Mr Pasha was following the normal procedure. The claimant asserted that he had left at 3:45pm. Mr Pasha said that he had signed out the claimant when he left the building at 3:55pm, allowing time for the claimant to leave his interview, visit the gents, have an argument with Mr Pasha and then leave the building. We find that Mr Pasha honestly recorded the claimant's departure at the time when he thought he departed.

60. There is of course no reason in law why one Pakistani Muslim man might not discriminate against another Pakistani Muslim man. It is however a matter of likelihood and plausibility. We accept that Mr Pasha followed the usual procedures with which he had many years of familiarity. There was no evidence whatsoever that Mr Pasha was obeying the instructions of a higher conspiracy at the Home Office.

61. We find that race played no part whatsoever in any of Mr Pasha's actions. We add that we also do not accept that either of them was capable of causing the statutory effect of harassment, or of constituting a detriment for other purposes under the Equality Act.

62. It follows that all the claimant's claims fail in full.

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Employment Judge R Lewis

Date: …25.06.2021……..

Sent to the parties on: ..1.07.2021.....
THY
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For the Tribunal Office