EMPLOYMENT TRIBUNALS

Claimant: **Mr C Singh**

Respondents: **Rethink Recruitment Solutions Limited (R1)**
Alliance Healthcare Management Services Limited (R2)

Heard at: **via CVP** **On: 12/7/2021 to 15/7/2021**

Before: **Employment Judge Wright**
Mr A Peart
Mr S Sheath

Representation:

Claimant: **Mr L Rahman - counsel**

Respondents: **Mr A Frances – counsel (R1)**
Mr J Green – counsel (R2)

LIABILITY JUDGMENT

It is the unanimous Judgment of the Tribunal that the claimant's claims of unlawful discrimination contrary to the Equality Act 2010 fail and are dismissed.

REASONS

1. The claimant presented his claim on 29/11/2018 following a period of early conciliation between 6/9/2018 to 1/10/2018 (R1) and 27/11/2018 to

29/11/2018 (R2). R2 supplied the claimant's limited company (Zosec Ltd) to R1.

2. The claimant brings his claims under the Equality Act 2010 (EQA). He relies upon the protected characteristic of race (he describes himself as Indian/Asian and of Indian nationality). The prohibited conduct is direct discrimination and victimisation. The complaint is of detriment and/or dismissal.

3. Following a preliminary hearing, there was an agreed list of issues. The issues were identified as:

Jurisdiction over the dispute between C and R1 (ss.41 and 55, EA 2010)

1. Does the Tribunal have jurisdiction to hear C's complaint against R1 either under
s.55 or s.41 EA 2010? In particular:

a. In respect of s.55:

i. Is it a requirement of s. 55 that the person bringing the complaint was the recipient of the employment service being provided?

ii. If so, was the employment service being provided to C or to Zosec Ltd or both?

b. In respect of s.41:

i. If C cannot bring his claim directly against R1 as a provider of employment services to him within the meaning of s.55, can he nonetheless bring his claim against R1 as a principal within the meaning of s.41 EA?

Direct race discrimination (s. 13, EA 2010)

2. Did R1 and/or R2 treat C in the following ways?

a. Set C's contractual daily rate of pay at £290. Rs admit that C was paid £290 per day, not £490. This was in line with the rate agreed between R1 and Zosec Ltd. C's case is that his pay should have been £650 (if the correct comparator is Steve Devine) or £550 (if the correct comparator is Dave Brown).

b. Fail to deal with C's complaint of 08.05.18.

3. Who are the appropriate comparators?

a. In respect of the allegation at 2(a) above, C relies on Steve Devine and Dave Brown. Rs will argue that these are not valid comparators because their circumstances were materially different.

b. In respect of the allegation at 2(b) above, C relies on a hypothetical comparator.

4. Was the treatment less favourable than Rs treated or would treat:

a. In respect of the allegation at 2(a) above, Steve Devine and Dave Brown?

b. In respect of the allegation at 2(b) above, a hypothetical comparator?

5. If so, was the less favourable treatment because of C's race? As to his race, C relies on being Indian/Asian and on his Indian nationality.

Victimisation (s. 27, EA 2010)

6. Did C do the following acts?

a. Email R1 on 08.05.18 alleging discrimination.

b. Speak with Paul Rice of R2 about discrimination.

7. If so, were those acts protected acts?

8. If so, did R1 and/or R2 subject C to the following alleged detriments?

a. Fail to deal with C's complaint adequately or at all.

b. Bring C's employment to an end on 31.08.18 with no opportunity afforded to him to renew.

9. If so, did R1 and/or R2 do so because C had done a protected act or protected acts?

Limitation (s. 123, EA 2010)

10. What were the dates of the acts to which the complaints relate? In answering this question, the Tribunal will consider whether any of the matters alleged amounted to conduct extending over a period within the meaning of s. 123(3)(a), EA 2010.

11. Did C bring the proceedings within the period of three months starting with the dates of the acts to which the complaints relate?

12. If not, did he bring the proceedings within such other period as the Tribunal thinks just and equitable?

Remedy

13. If C is successful in any of his claims:

a. What compensation, if any, should be awarded for financial losses?

b. What award, if any, should be made for injury to feelings?

4. For various reasons, the witnesses were taken slightly out of order. On the first day the Tribunal heard from Mr Tim Jacob (R1- Group Commercial Director) and Mr Lynton Challoner (R2 – *de facto* line manager of the claimant). On the second day it heard the claimant's evidence and the re-examination concluded on the third day. Following that, the Tribunal heard from Mr Laurence Mottram (R1 – Director of Centre of Excellence) and Mr Aled Pugh (R1- Account Manager for R2).

5. The Tribunal had before it an electronic bundle of almost one thousand pages. There were disputes over the bundle, which are addressed below.

Matters arising during the hearing

6. On the first morning, despite not having the bundle and witness statements in advance of the hearing and only having received them at approximately 9.30am, the Tribunal was ready to commence hearing the evidence at 11.30am. Mr Rahman said that he was not ready to start due to late disclosure of witness statements (sent to the claimant on Friday 9/7/2021) and that he needed a further 45 minutes. The intention was to interpose Mr Jacob as he no longer worked for R1 and was only available on the first and fourth days. Mr Jacob's witness statement was three pages long and was dated 3/3/2020. It was not therefore clear why Mr Rahman could not deal with Mr Jacob's evidence and then take instructions over lunch; however he insisted it was not possible. As a compromise, the Tribunal took an early lunch. Mindful of the claimant being under a restriction once he started to give his evidence, the Tribunal also proposed interposing Mr Challoner as he was available for the remainder of the first day. The intention was that the claimant's evidence would start and be completed on day two and he would only be under a restriction during any comfort break and over lunch.

7. Despite not making an application during the housekeeping session at the outset of the hearing on day one at 10am, Mr Rahman then made an application that he objected to the supplementary witness statements served on 9/7/2021 being relied upon. That application was heard after Mr Jacob's evidence and was refused for the reasons given.

8. On day two, the parties and in particular the claimant, were asked to join the video hearing at 9.50am, so the connections could be checked and the hearing start promptly at 10am.

9. Mr Rahman then said he was instructed to make an application that the hearing be adjourned. A preliminary hearing had taken place on 10/6/2021 and the claimant had made an application for specific disclosure which was granted. He also made an application that he be allowed to rely upon an expert report on the issue of whether his role was that of a Business Analysist or a Security Analysist. That application was refused and the claimant cannot now go behind that. He had the option of seeking a reconsideration or appealing that decision.

10. It appeared the claimant was seeking a postponement in order to obtain an expert report into whether the emails he said he had sent, were in fact on R1's system. R1's case is simple; it says it cannot retrieve something which was never received.

11. The Tribunal refused the application. The evidence was before it and it could be challenged in cross-examination. There had already been significant delay in this matter and an adjournment could lead to a delay of more than 12-months. All parties were represented and all of the witnesses were available to give their evidence. The Tribunal had started to hear the evidence and if such an application was going to be made, the time to make it would have been at the commencement of the hearing; not part-way through. The interests of justice and overriding objective would be far better served by continuing with the case and concluding the evidence and submissions.

12. Due to that application, the questions for the claimant concluded at 4.20pm. Mr Rahman was asked if he had any re-examination and he said that he wanted a break and then would be over an hour with his questions. It was pointed out that the aim had been to finish the claimant's evidence so that he was not under a restriction and was then free to give instructions. Had Mr Rahman had 10-15 minutes of re-examination, the Tribunal would have indulged that and sat late in order that the claimant could be released. As it was, the claimant was under a restriction overnight.

13. The cross-examination of the claimant had been limited to four hours. The Tribunal could not see how it would be assisted in re-examination which was going to take a quarter of the time taken for cross-examination. The claimant had indicated on a couple of occasions that there was a document he wanted to be taken to in re-examination and it was understood there may be some points which Mr Rahman wished to pick up. As such, the parties were informed that the hearing needed to start on time on the third day at 10am and that Mr Rahman had until 10.30am to complete his re-examination.

14. When Mr Francis for R1 put questions to the claimant in respect of the supplementary witness statements, the claimant refused to answer them. He said he did not accept the witness statements as they had been served late. It was pointed out to the claimant that notwithstanding that, the Tribunal had agreed they could be relied upon. The claimant said that he had not had time to read them and then said he had 'not fully read' them. It was also pointed out to the claimant that if he refused to answer questions reasonably put to him, that the Tribunal could draw adverse inferences from that.

15. It is also observed, this is the claimant's claim and he is obliged to actively pursue it, otherwise he risks it being struck out. This case has been listed for a final hearing on three previous occasions and the claimant has complained to the President of the Employment Tribunals England and Wales on numerous occasions about the postponements and delay. Even if witness evidence or documents are served late, it is not unreasonable to expect that in a claim which was presented on 29/11/2018, the claimant set aside some time, prior to the hearing, for preparation.

16. There was to some extent unrealistic expectations about how the time allocated to this case would be used and as to how late the Tribunal would sit. Considering this was a hearing conducted via CVP, it would not ordinarily be expected that the Tribunal would sit late. Both respondents had sensibly proposed a hearing timetable which allowed the fourth day of the hearing for deliberations and that is what the Tribunal would expect. That left three days for Tribunal reading, hearing from four witnesses for the respondents and from the claimant and submissions. There was not unlimited time. Although Mr Francis pushed for more time, it was considered four hours (two hours each or however the respondents saw fit to divide the time between themselves) was sufficient for cross examination of the claimant. That left an afternoon (after an early lunch was taken) and a morning for cross examination of the respondents' witnesses. All parties were legally represented and they are expected to use their allocated time effectively.

17. It is also noted that this case was first listed for a three-day final hearing on 14/10/2019 at a preliminary hearing on 29/5/2019. That hearing was postponed, it seems due to the claimant's planned operation. The hearing was re-listed for three days to commence on 23/3/2020. Due to the pandemic, that final hearing was in turn converted into a case management discussion. That resulted in a final hearing being listed for 27/12/2020 and the hearing length was extended to four days, the Order specifically stated that the hearing length included time for deliberations by the Tribunal and it also said: 'The parties must immediately notify the Tribunal if the position changes before the hearing.' No such communication was received. The December 2020 hearing was postponed due to a lack of judicial resources. On 29/12/2020 this hearing was listed (12/7/2021 – 15/7/2021).

18. After witness statements were exchanged in advance of the hearing listed for December 2020, at no point has any party said that a four-day hearing was not long enough. Furthermore, there was a preliminary hearing on 10/6/2021. The onus is on the parties, once a final hearing has been listed, to ensure the evidence can be heard within the time allocated or alternatively, to inform the Tribunal the existing listing is insufficient. That said, the Tribunal does not have unlimited resources and it has to allocate the resources it has being fair to all Tribunal users. That may result in time being allocated to a case that is not excessive but is adequate. The Tribunal hearing this case considered the listing to be adequate, although it was up to the parties to use the time efficiently. It should also be noted that the Respondents and Tribunal re-joined the hearing promptly on each occasion when a break was taken. The same cannot be said for the claimant and his representative, particularly on day two, when the claimant was asked to join at 9.50am in order that his settings could be checked and he joined at 10.05am.

19. At the conclusion of day two, it was indicated to Mr Rahman that he would have at most 30 minutes for re-examination of the claimant at the start of day three. That position was confirmed via an email, that the hearing needed to start promptly at 10am and Mr Rahman would have until 10.30am. Mr Rahman did not join the hearing on time. He then insisted he needed an hour for re-examination. In view of the tight timetable, he was told this was unreasonable and that he had until 10.30am. Mr Rahman did not make a request; he insisted. It was confirmed he had until 10.30am. Mr Rahman then proceeded to lead evidence-in-chief, to cross-examine and to ask leading questions. He attempted to address matters that had not been raised in cross-examination. He also took the claimant to the witness statements the claimant had refused to answer questions on the previous day. None of this was assisting the Tribunal and after 10.30am, the Tribunal brought the re-examination to a halt. Mr Rahman said he had one more question to ask. He was allowed to put

that and then a second question. After the two further questions, at approximately 10.40am, the re-examination was stopped and the Tribunal moved on to hear from the final two witnesses.

20. When timetabling the case, it was intended to give each party 30 minutes for closing submissions on the afternoon of day three. The Tribunal was able to stick to that plan. R1 and then R2 gave their closing summary and provided written submissions. Mr Rahman declined to make an oral submission and said he would provide written submissions by 6pm. That was agreed to and it was directed that if any party wished to comment on the written submissions, they may do so by 9am. That was in order that the Tribunal could consider those comments when it began its deliberations.

21. Mr Rahman was in breach of the directions and did not send in his written submissions until 7.56pm. If it were correct that he was having technical difficulties, then the correct course of action would be to update the respondents and the Tribunal (who were all in contact via email). It was extremely discourteous not to inform the respondents of the position. Although they were received late, the claimant's submissions were considered, as were the respondents' comments upon the same.

22. In contrast, the respondents complied with the overriding objective, co-operated with the directions and assisted the Tribunal.

Findings of Fact

23. In late 2017 R2 identified a need for a contractor role. The role was Junior Business Analyst. R2 contacted its recruitment supplier R1 regarding the same. R1 posted a job advertisement on its various job vacancy notice boards. On 4/12/2017 the claimant sent in his CV by way of application (page 146). Via R1's internal system, the application was forwarded to Mr Pugh.

24. The job posting history recorded the vacancy of Junior Business Analyst/IT Security was posted on 30/11/2017 (page 147). The salary was expressed to be £200 - £280 per annum. All parties accept this was an error and that was a daily rate, not an annual rate.

25. On 8/12/2017 Mr Pugh sent two CVs to his contact at R2, Paul Rice. Mr Rice was Mr Challoner's line manager and as Mr Rice was rarely available, Mr Challoner would deputise for Mr Rice and hence the Tribunal refers to him (Mr Challoner) as the claimant's *de facto* line manager. The claimant did not accept this and said he was equal to Mr Challoner, however the Tribunal finds that not to be the case. There was a hierarchy

in the department and Mr Challoner (and others) were more senior than the claimant.

26. Mr Pugh noted in his email that he had struggled to source 'Business Analyst[s]' at the rate R2 had specified. The Tribunal was told that rate was £320 to include R1's mark up and so the daily rate paid to the contractor would be between £200 - £280 per day, as advertised.

27. The claimant's CV was sent through to R2 (page 149) on 8/12/2017. The Tribunal finds Mr Pugh had taken the text from the claimant's CV which he sent on the 4/12/2017 and cut and pasted it onto R1's logo headed document as is standard. The CV was identical to the one the claimant had provided, save that at the top of it, Mr Pugh had added in:

> 'Candidate; Chandan Singh
> Total Day Rate; £320 per day (including agency fee)
> Availability; Immediate'

28. An observation of the claimant's availability; he said he had been out of work for four months prior to getting this job. The claimant's role started on 19/3/2018. The Tribunal finds that the claimant, being out of work, was not in a position to 'pick and choose'. Had he been and based upon what he said about the role of Junior Business Analysist and the rate of pay and job role being beneath him in terms of his experience; he would not have accepted a role based in Nottingham. That is particularly so in respect of the fact he said he lived in London/Surrey and the role was five-days-per-week. In addition, having told Mr Pugh he was available immediately, his negotiating position would have been reduced somewhat. Although Mr Pugh would be keen for a candidate to start as soon as possible, there had been a delay from R2 from when it approached R1 and from when it took the matter forward. There were also registration preliminaries to go through. Mr Pugh would know, if the claimant was not currently working, that he would be more likely accept the role, as he said, he needed to pay the bills.

29. The was a discrepancy over the claimant's CV and the number of years' experience he said he had. The Tribunal finds the CV which was sent to R2 was the version which stated he had 13 years' experience in total, as per the information on page 149 and not the version which said he had 20 years' experience (page 771).

30. A CV from a second applicant was also sent to R2. The daily rate was given as '£330 per day (including agency fee)'.

31. Chronologically, the next email appeared to be sent on 9/1/2018 to the claimant from R1's 'work@rethink-recruitment.com' email address, with a reply from the claimant on 10/1/2018 (page 162). For the reasons set out below, the Tribunal finds this email to be a forgery. Not only that, but that it was created for the self-serving purpose of bolstering the claimant's case for the purposes of this litigation. As such, the claimant has misled the court in the documents he had produced and in his evidence.

32. Ignoring the forged email, what happened next was that Mr Pugh set up an interview between the claimant and R2 (pages 163 and 165).

33. On 28/2/2018 Mr Pugh confirmed the claimant's interview for the role of 'Business Analyst' (pages 167-168). The claimant was informed Mr Rice would interview him and that it would take place via Skype. In fact, the interview was converted to a telephone interview. The claimant maintained Mr Rice interviewed him. Mr Challoner said he had interviewed the claimant. It is not necessary to make a finding on this aspect of the claim, however the Tribunal's findings are relevant to the overall credibility of the claimant and the respondent's witnesses and indeed, their respective cases.

34. This was a telephone interview and the claimant did not meet, in person, either Mr Rice or Mr Challoner. Mr Challoner regularly deputised for Mr Rice. It is quite possible that Mr Rice was unable to conduct the interview (it was converted to a telephone interview as his Skype was not working) and Mr Challoner stepped in. As it was a telephone interview, they could have both conducted it. It may have been that Mr Challoner deputised and introduced himself to the claimant, but the claimant was focusing on the interview itself and he did not realise or understand that the interviewer had changed or that Mr Challoner was on the call in addition.

35. The Tribunal finds that all of the respondent's witnesses were credible and truthful. They sought to assist the Tribunal, did not exaggerate and accepted their own limitations. For example, in referring to another forged email of 8/5/2018 Mr Pugh said he could not be 100% certain, on oath, that it had not been received by R1; but that he was 99% certain. This was contrasted with the claimant's inconsistencies, him making up new allegations during his evidence (such as that he had been threatened with his contract being terminated early if he continued to complain about unequal pay as a result of racism[1]), evasiveness, not answering a simple question and him dismissing documents which did not assist him as 'your

[1] This was mentioned for the first time when the claimant was giving evidence; the Tribunal finds that if in fact this 'threat' had been made to the claimant. It would have formed the basis of an allegation. It did not and therefore the Tribunal finds it was not something which was said to the claimant.

document'[2]. In addition the claimant refused to answer questions based upon the supplementary witness statements; yet he was prepared to consider them in re-examination. The claimant also made wild and disparaging statements that were without any foundation. For example, he said that Mr Rice was not called as a witness by R2 as he did not want to lie under oath and perjure himself. When asked whether the claimant had called Mr Rice (who no longer works for R2) as a witness; he replied that he had contacted him on LinkedIn and Mr Rice had blocked him.

36. As a result of the interview, the claimant was offered a contract, via his service company. The Assignment Schedule confirmed the role was 'Junior Business Analyst' and the fees were £320 per professional day including R1's mark up. The contract was a fixed term of 19/3/2018 to 31/8/2018 and the service week was the standard 5 days (page 184).

37. That prompted another email to be subsequently forged to serve the claimant's case on 7/3/2018 (page 185).

38. Ignoring that, the claimant signed on behalf of his limited company the Assignment Schedule on 10/3/2018 (page 186). The job title and rate of pay remained.

39. For the direct discrimination claim, one of the claimant's comparators is Mr Brown. On 12/3/2018 Mr Pugh sent Mr Rice some CVs to consider for Mr Brown's replacement (page 188). Mr Rice responded he was interested in the CV of Mr Khan. The Tribunal was told Mr Khan is of Pakistani heritage. The indicated daily rate of pay for Mr Khan was £500 per day.

40. The claimant claimed he had been recruited as Mr Brown's replacement. Mr Brown's daily rate was £550. This is not accepted. The claimant relies upon an email Mr Challoner sent, when he sent Mr Brown's file to him 'for uploading' on 29/3/2018 (page 218). Mr Challoner was simply asking the claimant to upload Mr Brown's files and in doing so, this did not somehow transform the claimant into Mr Brown's replacement.

41. The claimant made an issue about his job title, he claims it was Security Analyst or similar. Unlike it seems almost every other person working at R1 or R2, the claimant did not have the usual email footer, giving his name, title and contact details. In some cases, some of R2's staff gave details of their working hours ('I do not work Fridays') and future periods of absence on annual leave.

42. On 29/8/2018, for the first time, the claimant's sign off footer read (pages 586 and 781):

[2] It was noticeable how the claimant impugned documents which did not assist him.

‘Chandan Singh
Information Security Analyst

Walgreens Boots Alliance - Information Security
D90 EG03 I Thane Road I Nottingham I NG90 1BS
~ Mobile: XXXXXXXXXXX
l8l Mail: chandan.singh@XXXXXXXXXXX
Member of Walgreens Boots Alliance’

43. The claimant claims the respondent removed his job title from other emails.

44. The Tribunal finds the claimant did not use the standard email ‘sign off’ or name, job title and contact details footer from his email account. He then reintroduced it two days before his contract ended. In any event, the Tribunal was told that the claimant did not attend work during the final week. The Tribunal also finds that by this stage, the claimant had decided to pursue an equal pay claim against the respondents and had claimed this particular job title to bolster his claim.

45. The rate of pay for the role of Junior Business Analyst was fixed before it was advertised, before the claimant applied for the role, before he was interviewed and before an offer was made to him. The rate of pay (although in Mr Pugh’s experience was on the lower side and hence he was not inundated with candidates) was relevant to the role. It was not set by any characteristic of the candidate. The second candidate’s daily rate was set at £330[3]. Mr Khan’s application was for a more senior role and required difference skills and experiences, hence the daily rate was £500.

46. The claimant’s actual comparators were not in materially the same circumstances as the claimant. Mr Rahman in his submissions appears to have misunderstood this aspect of the law. They were in more senior roles. The claimant’s contention the whole team were at the same level and he had the same experience as them is not accepted. It is not accepted the claimant was on the same level as Mr Challoner. Even on the claimant’s own case, he compares himself to contractors earning £650 or £550. Clearly, those contractors were on differing daily rates and were not on the same daily rate, as defined by the requirements of the role in terms of skills and experience and in respect of what daily rate they were able to negotiate/market demands.

[3] The differential of £10 per day between £330 for the second candidate and of £320 for the claimant is neither here nor there. In fact, it shows there was no manipulation by R1, had R1 been manipulating daily rates, it would have ensured both candidates were given exactly the same daily rate. As it is, it is likely to have been a simply typographical error.

47. The remaining allegations of direct discrimination and victimisation are premised upon the claimant having done a protected act on 8/5/2018. The claimant's case is that on 30/4/2018 he learned he was paid less than other contractors. This would be the relevant date for any limitation period.

48. The claimant said in his witness statement which he adopted as his evidence in chief on oath:

> '46. I discussed this issue with my manager, Mr Rice, on 8 May 2018 [page 272] and said that I thought that the difference in pay amounted to race discrimination. I was asked by Mr Rice to contact Rethink. He said that it is due to a lot of people joining and leaving the team at the same time, it is an administrative error and as an agency contractor, I needed to ask Rethink to rectify it with Boots.
>
> 47. On 8 May 2018 I sent an email with the subject 'Nationality and Race discrimination' to Mr Pugh raising my concerns about the difference in pay. I stated that I had discussed with Mr Rice about my unequal pay because of discrimination in Boots compared with the other Cyber Team members. As stated above, I was asked by Mr Rice to contact Rethink, which I set out in my email. I asked Mr Pugh to investigate my complaint and to make my pay equal to all the other consultants in my team to £490 per day as I worked on the same projects as the other team members [page 272].
>
> 48. On 9th May 2018 Mr Pugh responded saying he would speak to Mr Rice and Mr Challoner to try and resolve the issue. I received no formal response to my complaint of 8 May 2018.'

49. The Tribunal is prepared to accept the claimant may have had a discussion with Mr Rice about the rate of pay on 8/5/2018, but no more than that. It does not accept the claimant referred to the difference in pay being due to race. The Tribunal also finds that this was not a 'complaint'. At best it was raising an issue of difference in pay. The Tribunal finds that Mr Rice would not be overly concerned by any such comment from the claimant. There were objective and justifiable explanations for the different rates in pay and that Mr Rice would not have been troubled by the claimant mentioning this to him.

50. After the contract had ended and whilst the claimant was considered taking legal action, on 13/9/2018 he wrote to Mr Pugh (page 595):

> 'Aled,

> My contract is illegal because day rate is nearly half of other people who work in Boots in my role.
>
> Please do not discriminate and pay equal to all other security analysts.
>
> Regards'

51. There was no mention of race in this email and the Tribunal finds the claimant was considering an equal pay claim, not a claim based upon the protected characteristic of race.

52. The Tribunal finds the email of 8/5/2018 is a further forgery. It was not sent to R1 and therefore, there is no protected act. As there was no protected act, the claims that the claimant was victimised by a failure to investigate the email, failed to investigate it and brought the claimant's contract to an end as a result are therefore without any foundation.

53. The claimant sought to make much of Mr Pugh's change in stance in respect of his two witness statements. Mr Pugh explained, and the Tribunal accepted, that he was misled by the claimant's forged email of 8/5/2018. At first, he accepted it at face-value as genuine. His evidence initially was (paragraph 3.4 of the first witness statement):

> 'I cannot recall the actions I took after receiving the Claimant's email on 8 May 2018. Towards the end of the Claimant's assignment, I met Mr Rice and Lynton Challoner of the Second Respondent. I recall the Claimant's pay being discussed but cannot recall what was said.'

54. It was only once suspicions were raised, that Mr Pugh revisited his position. It is of note that Mr Pugh did not make any reference to any action which he had taken in respect of the email of 8/5/2018; other than to say towards the end of the assignment, he discussed the claimant's rate of pay. Mr Pugh went onto say, and it is accepted by the Tribunal, that if a matter of the magnitude of an express complaint entitled 'Nationality and race discrimination' was sent to him, he would have sought assistance. The Tribunal finds it is inconceivable that Mr Pugh would receive such an email and do nothing. In his second witness statement, Mr Pugh said he had reflected upon the email and he had no recollection of receiving it. The Tribunal finds that there is not a contradiction between the two witness statements. Mr Pugh was misled in respect of the email; it was forged and that led him to correct his evidence. His corrected evidence was accepted.

55. For the sake of completeness, the claimant's contract was not ended on 31/8/2018 due to him making any enquiry at all about the rate of pay. The claimant was on a fixed term contract, which expired and was not renewed. The Tribunal heard and was shown evidence in various emails, of dissatisfaction with his performance. Mr Challoner described his performance as in three parts: a bumpy start, followed by steady delivery and then a dropping off in attendance. Furthermore, Dr Martin stopped delegating work to him and Mr Challoner said 'enough was enough'.

56. The Tribunal was told, and the claimant did not challenge, that it was agreed he would work at home on Thursdays and Fridays. In addition to that, the claimant had medical appointments on Wednesday and although he was asked, he would not agree to swap the days he worked from home.

57. There was undisputed evidence that the claimant's performance was unsatisfactory and that his attendance was poor. The contract was for a fixed term which expired and in view of his lack of application to the role, that was for this reason his contract was not renewed.

Forged emails

58. The Tribunal finds on the balance of probabilities the claimant forged three emails. R1 cannot retrieve something from their systems which was never received. The claimant made much of the fact that he wanted an expert to inspect the server and he put R1 to time, expense and trouble in responding to his claims that emails had been sent.

59. The response to the claimant's claim he had sent emails to R1 was much simpler than that. All the claimant had to do, to evidence the emails were sent, was to re-send or forward the emails. The claimant did not do that. Another method of putting the emphasis onto R1 to show the emails were sent by the claimant, would have been to take a screen shot of his sent items showing the email had been sent. The claimant was asked, rather than focusing on the recipient of the email, what evidence he had produced to show the emails had been sent, i.e. that they had left his email account and he replied by asked what was required? That was not the point. The claimant maintained that the emails were genuine and he knew, R1 in particular, was going to challenge that (with R2 taking the same view), yet he did not take one simple step on his own account to evidence the emails had been sent by him.

60. The claimant's suggestion that someone with Administrator rights had gone onto the system and completely deleted the three relevant emails (as submitted by the respondents, being the only ones which 'supported' the claimant's case and no others) was rejected. Again, the response to that,

rather than applying for an expert to be instructed; was to simply provide the emails from the claimant's account which he said he had sent to the respondents.

61. It is relevant that the claimant is an IT security expert. He informed the Tribunal one of his roles was 'ethical hacking of the Boots app to find security holes' (witness statement 25). Apart from the other witnesses, the claimant probably had the most IT expertise of all the parties to this case.

62. In respect of the exchange on 9-10/1/2018, this purports to be an automated response in relation to a 'Security Analyst' role and the claimant's confirmation is the supposed reply (page 162).

63. As per the evidence of R1, the forged 'automated' email includes the word 'of' before the job title/role. The omission of the word 'of' in the auto generated emails, was explained and evidenced, by R1's glitch in the system which had not been changed prior to or after that date of these emails.

64. The order in the 9/1/2018 email is: From, To, Sent and no CC. The automated email's order is From, Sent, To and includes CC for the purpose of replying

65. The automated emails include a line stating 'please can you reply to this email copying XXX in'. This is not in the 9/1/2018 email, yet the claimant has replied and used the same sentence that he used in reply to an auto-generated email; 'I am happy to be represented by you for this role.' It is nonsensical that he would reply in those terms when there was no request from R1 for that confirmation.

66. On 5/3/2018 Mr Shaw of R1 sent an email to the claimant attaching documents relating to the assignment (page 173). The claimant then manipulated that email and purported to reply to Mr Shaw saying that the job title was wrong, as was the end user's name and location on 7/3/2018. Mr Pugh purportedly then replied to the claimant saying the contract was a standard one. Mr Pugh's evidence, which was accepted, was that he would not have responded in that manner, he was unlikely to have sent such an email and he would have answered the direct questions asked and not have given a vague response. The Tribunal finds this was an attempt by the claimant to start an evidence trail to assert he was employed as a Security Analyst all along. That was not the case, he was engaged as a Junior Business Analyst.

67. The email exchange of 8-9/5/2018 was the purported protected act (page 362). It is worth setting out the email in full:

‘6/25/2019 chandan8625@yahoo.co.uk - Yahoo Mail

From: Aled Pugh [apugh@rethint-tm.com]
Sent: 09 May 2018 12:59
To: Chandan Singh <mailto:chandan8625@yahoo.co.uk>
Subject: Re:Nationality and Race Discrimination

Hi Chandan,

I will talk to Paul & Lynton and try to resolve the issue.

Thanks

Aled

From: Chandan Singh [mailto:chandan8625@yahoo.co.uk]
Sent: 08 May 2018 15:43
To: Aled Pugh <apugh@rethink-tm.com>
Subject: Nationality and Race Discrimination

Hi Aled,

I discussed with Paul Rice about my unequal pay because of discrimination in Boots compared to my all other team members in Cyber Security team.

He asked me to contact you as Re-think manager in Boots, please investigate my complain and make my pay equal to all the other consultants in my team to £490 per day as I work on the same projects like other team members and charge same amount to the project managers in Boots for cyber security consultation work.

Thanks

Chandan’

68. The first observation the Tribunal makes is that the email is sent from the claimant’s personal email (yahoo) account, not from the work account which he was previously using. The Tribunal finds that it is common knowledge that email accounts such as yahoo are not as secure as the system a company such as R1 would use. Furthermore, R1’s email system would not have been as easy to manipulate, even with the claimant’s skills.

69. It is also noted that the claimant references a discussion with Mr Rice, but did not copy him into the email, as would be expected.

70. Mr Pugh said, and the Tribunal accepted, that it is unlikely he would have replied in such a way. To try to 'resolve the issue' for example would have been an indication that the complaint would be upheld, without investigation. A more likely and credible response, as Mr Pugh said, would be to refer the matter to HR/legal. It would also be logical for Mr Pugh to seek input from Mr Rice as to what exactly had been said and how Mr Rice envisaged it being resolved. The Tribunal finds Mr Pugh was conscientious, responsible and professional. He would not have given such a glib (he used the word blasé) response. He would have, at least, forwarded the email on, escalated it and sought specialist input.

71. The claimant focused very much on the recipient of the email. In view of his background, that is to be expected. In weighing the evidence and considering the balance of probabilities, or is it more likely than not the email was sent, the Tribunal has taken into account the whole picture; including what happened before and after the fake email was sent.

72. As already observed, the email was sent from the claimant's personal account. More telling however, is what happened after the email was sent. The Tribunal finds it incredible that the claimant would go to the trouble of making such a serious allegation in writing, via email, and then not mention it ever again; even after the contract ended. Notwithstanding the race issue, the claimant believes he was being underpaid by at least £200 per day, £1,000 per week. The claimant's evidence was (witness statement paragraph 46), that Mr Rice told him this was an administrative error. If a contractor believes they were underpaid £200 per day and were told it was an administrative error, then they would have followed that up and asked for it to be corrected. They would not have raised it and then done nothing further about it for the duration of the contract.

73. The claimant's evidence-in-chief was (witness statement paragraph 50) that on 17/6/2018 Mr Rice said he was trying to resolve the pay differential and that the claimant 'should be on the same daily rate as Mr Devine (£650/day)'. Not only is it again inconceivable that the claimant would not take any further action, including sending a further email, if such a comment had been made, but also that means the pay differential was greater. The difference was now £360 per day or £1,800 per week. The claimant said he mentioned the conversation to Mr Challoner.

74. Had the claimant sent the email he claimed he had, had he had a response from Mr Pugh to say he would speak to Mr Rice and Mr Challoner; and then had the claimant spoken again to Mr Rice (and be told he should be on £650 per day) and Mr Challoner about the same matter;

the Tribunal finds that the claimant would have sent a further email. He did not do so and that is nonsensical and improbable; and therefore on the balance of probabilities, the Tribunal finds did not happen. Based upon the same burden of proof, it also finds that all of the emails were forgeries.

Other observations

75. At a preliminary hearing on 10/6/2021 an order for specific disclosure was made. It is not clear how the claimant addressed this material in his witness evidence; for example, he did not offer any supplementary evidence in respect of it.

76. R1 did serve its additional witness statements late, on 9/7/2021. It was not acceptable for it to say that it was only as the final hearing became imminent, that it addressed its mind to the issue. R1's mind should have been engaged, at the latest, following the preliminary hearing on 10/6/2021. Had R1 addressed these matters earlier and served its supplementary witness statements much sooner, it would have removed arguments (which were time-consuming) which the claimant advanced, in respect of this matter. It is only right that R1 should be criticised in respect of this element of the conduct of the case.

77. The claimant discovered the differential in pay, on his account on 30/4/2018. To the extent that is accepted (the rate of pay including R1's mark up was set out on the various job advertisements) the claim is therefore out of time. The claimant did not address this issue and did not invite the Tribunal to exercise its discretion to extend the time limit. He did not engage with this aspect of his claim at all.

78. Furthermore, just to be clear, even without the forged documents and time issue, the claims failed on the merits. There was a perfectly reasonable and factual explanation for the differential in pay. It was objectively evidenced and documented. The Tribunal found that the claimant initially intended to pursue an equal pay claim. Presumably, as there was no female comparator, he was unable to do so. He then decided to advance a spurious claim under the EQA, which inexplicably, he then decided to bolster by creating forged documents.

The Law

79. The claimant relies upon the protected characteristic of race per s. 6 EQA.

80. The prohibited conduct is direct discrimination contrary to s.13 EQA:

> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

81. It appears the claimant relies upon both detriment and dismissal as the complaint under s. 39(2)(c) and (d) EQA.

82. The burden of proof in s. 136 EQA provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provision concerned, the court must hold that the contravention occurred.

83. The claimant claims he was victimised contrary to s. 27 EQA, which provides:

> (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
>
> (a) B does a protected act, or
>
> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act—
>
> (a) bringing proceedings under this Act;
>
> (b) giving evidence or information in connection with proceedings under this Act;
>
> (c) doing any other thing for the purposes of or in connection with this Act;
>
> (d) making an allegation (whether or not express) that A or another person has contravened this Act.
>
> (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
>
> (4) This section applies only where the person subjected to a detriment is an individual.
>
> (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

84. Clearly, there has to be a protected act for an allegation of victimisation to follow.

Conclusions

85. Although he was moderate in his conduct of the proceedings for R2, Mr Green in his written closing submissions referred to the claimant as an 'unabashed liar' and the Tribunal adopts that description. It also found, on the balance of probabilities that the claimant forged three emails.

86. There was no directed discrimination. There was an unconnected, factual and reasonable explanation for the different rates of pay. The rate set (albeit on the low side) was determined by market conditions. The rate for the role had nothing whatsoever to do with the claimant's race; there was no less favourable treatment.

87. The claimant did not do any protected act. Furthermore, there was a perfectly reasonable explanation for the claimant's contract ending. It was fixed-term and the term had expired. The claimant's performance was not satisfactory and his record and attendance was poor. The reason the contract was not renewed or extended was entirely unconnected with the claimant's race and there was no less favourable treatment because of his race.

88. The claims fail and are dismissed.

89. A provisional remedy hearing has been listed for 4/2/2022. It will not now be needed for that purpose. Unless there is any indication from the parties within 14 days, that hearing will be vacated.

21/7/2021

Employment Judge Wright