



# THE EMPLOYMENT TRIBUNALS

**BETWEEN**

**Mr Jaiyeola Odusina**

*Claimant*

and

**Royal Borough of Kensington and Chelsea**

*Respondent*

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**Region:** London Central

**ON:** 22, 23, 26, 27 and 28 July 2021

**Before:** Employment Judge Paul Stewart

**MEMBERS:** Ms Christine Marsters  
and Mr Steven Hearn

***Appearances:***

**For Claimant:** in person

**For Respondent:** Mr Simon Harding of Counsel

### JUDGMENT

The unanimous judgment of the Tribunal is that all claims are dismissed.

### REASONS

1. The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under rule 46. The tribunal considered it as just and equitable to conduct the hearing in this way.
2. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. Members of the public attended the hearing accordingly.
3. The parties [and members of the public] were able to hear what the tribunal heard [and see the witnesses as seen by the tribunal]. From a technical perspective, there were several difficulties where certain witnesses, members of the Tribunal or counsel found the CVP transmission did not allow them to hear or see what was going on, but these difficulties were resolved by pausing the hearing and allowing the person with the problems to exit the platform and re-enter.

4. No requests were made by any members of the public to inspect any witness statements or for any other written materials before the tribunal
5. The participants were told that it is an offence to record the proceedings.
6. The Claimant was born in April 1963. He describes his ethnicity as being British African. He joined the Housing Department of the Respondent on 21 May 2018 as a Neighbourhood Manager on a fixed term contract that stated it was “for a temporary period only and will [be] due to end on 20<sup>th</sup> May 2020 due to funding of a specific project”. The initial six months of this contract was a probationary period during which the employee had to demonstrate his suitability for the job. If he failed to do that, his contract would be terminated.
7. The Claimant was adjudged to have failed to demonstrate his suitability for the job and the contract was terminated. Although the letter of dismissal informed him of his right to appeal the termination and the Claimant appealed, he failed to comply with the time limit that was placed on his right to appeal and consequently his appeal was rejected at the outset.
8. The Claimant then presented an ET1 to this Tribunal alleging that he had been unfairly dismissed and that he had been discriminated against on the grounds of his race and he had been victimised. He also claimed breach of contract / unauthorised deduction of wages. The unfair dismissal claim was dismissed at an early stage as he lacked the qualifying period of employment of two years. His ET1 was presented late but, at a preliminary hearing conducted on 19 December 2019, Employment Judge Russell exercised the discretion given to the Tribunal by section 123(1)(b) of the Equality Act 2010 and ruled that the Tribunal had jurisdiction in respect of the claims of discrimination, direct discrimination and victimisation. The breach of contract / unauthorised deduction of wages was dismissed. At that hearing, the case was listed for hearing on five days in February 2020. It has been, sadly, not uncommon for cases going through the Tribunal in these pandemic days to have their hearing delayed. Thus, it is that this case has arrived at its final hearing, some 18 months after it was initially listed.
9. At this hearing, we heard evidence from six witnesses for the Respondent namely:
  - a) Mr James Caspell who holds the position of Neighbourhood Director for the Lancaster West Estate. As such, he is responsible for “improving the operational performance of the full range of housing services, including repairs, rent collection and refurbishment”. He also manages housing services for the survivors and bereaved from the Grenfell Tower and Walk. In all, his team of some 60 staff caters for some 2000 residents. He commenced working for the Respondent in April 2018.
  - b) Ms Ruth George who holds the position of Head of Housing Services for the Lancaster West Estate. She joined the Respondent on 4 June 2018 as Senior Neighbourhood Manager. In that position, she reported to Mr Caspell and six employees reported to her, four of whom (including the Claimant) were Neighbourhood Managers.

- c) Ms Stavroulla Kokkinou who holds the position of Head of Neighbourhood Management at the Respondent, responsible for tenancy services and various matters within housing estates. She was asked to conduct the Claimant's five-month probationary review as a manager at the appropriate level who had no experience of working with the Claimant. The reason she was invited to undertake that task was that the relationship between the Claimant and his line manager was impaired somewhat as evidenced by his submission of a grievance against his line manager Ms George in early October 2018.
  - d) Mr Pat Draper, an HR consultant who, in 2018, worked for an agency called Pertemps and was asked to investigate and report on the grievances that the Claimant had raised regarding his line manager, Ms George, and the Neighbourhood Director, Mr Caspell.
  - e) Mr Martin Greenway who, from October 2018 until January 2021, held the position of Head of Housing Repairs (Housing Management) for the Respondent. He reviewed the recommendation made by Ms Kokkinou in the Claimant's final probation report that his employment be terminated on the basis that the Claimant had failed his probation period.
  - f) Ms Bernadette Fry who holds the position of Assistant Director – Neighbourhood (Housing Management Services). Her employment with the Respondent began on 10 December 2017 but she had been working in housing services for over 30 years. She conducted an appeal hearing from the outcome of two grievances which had been lodged by the Claimant against Mr Caspell and against Ms George.
10. We also heard from the Claimant and one witness called on his behalf, the witness being Ms Chezella Maclean, who worked on the Lancaster West Estate on behalf of the Respondent (for whom she is still employed) for a period of approximately 10 months starting in August 2017.

## Facts

11. The Lancaster West Estate is a housing estate in North Kensington, West London which is run by the Respondent. It comprises Grenfell Tower and Walk and some 900 other units of accommodation. A fire in Grenfell Tower in June 2017 resulted in considerable loss of life and the displacement of the surviving residents. The office for the team which ran the estate was located at the foot of the Grenfell Tower. In the aftermath of the fire, a decision was taken to establish a new housing team with the result that the Lancaster West Neighbourhood Team [LWNT] was created. It was based in converted garages known as Baseline Studios near the Grenfell Tower.
12. Mr Caspell told us, and his figures were not challenged that, as of mid-2018, 72% of the 30 or so employees within the LWNT were of BAME heritage, which increased to over 80% within senior management positions. Further, 6 out of the 7 who reported directly to Mr Caspell were from BAME backgrounds, including white minority groups. One of these was Ms Ruth George who described her ethnicity as Black British. She further revealed under cross-examination, while responding to the Claimant's allegation that

she had been complicit in discriminating against him on the ground of his colour, that she was the lone parent of two black men.

13. The Claimant had experience working for the Respondent and was attracted to work for the LWNT. Initially he applied for the position of Senior Neighbourhood Manager but was unsuccessful. Ms George was appointed to that position. However, in the interview for the job held on 9 March 2018, he impressed Mr Caspell, one of the interviewers, sufficiently to make Mr Caspell consider he would be a good appointee for the more junior role of Neighbourhood Manager. Mr Caspell told us that he remembered remarking that the Claimant would be an asset to the team as he felt the Claimant would bring a lot of people skills and passion for the community at that time.
14. Counsel for the Respondent produced a skeleton argument at the beginning of the hearing in which he set out at paragraphs 13 to 116 a summary of the history of the Claimant's employment. We adopt that summary because the evidence from the witnesses tallied with the facts as presented. We would add the following comments.
15. The Claimant, ahead of starting in the role to which he was appointed, was asked to cover the duties that had been performed by one, Ms Shopna Akhtar, for the period from 9 to 20 April 2018 when she would be on vacation. The Claimant knew that Ms Akhtar was paid at a relatively high rate of pay and felt he should be paid at the same rate. However, Ms Akhtar's rate of pay whilst doing that job was artificially high because her pay was ring-fenced from a previous role she had carried out for the Respondent. Emails exchanged over what should be the rate of pay that the Claimant should receive ended with the Claimant writing on 5 April to Mr Desmond Zephyr informing him that "after some deliberation and with disappointment with the difficult position" he had been left in, he had decided he would cover for Ms Akhtar over the period. The resolution of this "difficult position" resulted in the Claimant being paid £20 per hour which was the rate he had been paid at in the work he was doing prior to providing cover for Ms Akhtar as opposed to a rate in the region of £18 to £19 which it appeared to be the rate that was commensurate with the actual role.
16. After he had provided the cover for Ms Akhtar, there was approximately a month's delay in the Claimant taking up his position as Neighbourhood Manager because the references he provided initially were not from referees who had been his managers – which was what was required - but from colleagues. Eventually a reference was obtained from a manager that satisfied the requirement of a managerial reference, but the Claimant told us that he believed that his "employment start date was unnecessarily delayed, possible [*sic*] in an effort to not employ me at this location".
17. Mr Caspell, when the proposition was advanced to him during his evidence that he had been using the need for a managerial reference to discriminate against the Claimant, confessed he could not understand the logic of attempting to discriminate against someone by offering that person a job. We also could not see the logic of offering someone a job and then delaying the start date so as not to employ that person at the chosen location.

18. The delay caused by the need to obtain a reference from a manager was the first of several adverse events or negative managerial comments which the Claimant attempted to link together as forming part of a narrative perpetuated by Mr Caspell and Ms George to ensure that the Claimant was treated unfavourably. We were unpersuaded that such was the case.
19. Ms George started her employment on 4 June, some two weeks after the Claimant started on 21 May. Before her arrival, Mr Caspell was managing the Claimant. The first sentence of paragraph 13 of his witness statement indicates how he judged the Claimant's performance in that period:
  13. It became quite clear, almost immediately at the commencement of the Claimant's employment, that he was unreliable, disruptive and unwilling to take even the most basic management instructions.
20. We therefore can quite accept that Ms Akhtar, in hearsay evidence contained in the Claimant's statement, might have overheard Mr Caspell telling Ms George that she would need to sort the Claimant out.
21. In the summary of facts, the incident referenced as "21st June 2018 – James Caspell Incident and the One-to-One meeting" occurred when the Claimant was taking a new employee, who was from Somalia, around the office. There was a conversation between Mr Caspell and the Claimant in which Mr Caspell considered the Claimant to have been both condescending and rude and for which the Claimant subsequently offered an apology to Mr Caspell because he recognised that Mr Caspell was embarrassed. Mr Caspell's concerns were relayed to the Claimant during a one-to-one meeting that Ms George conducted with the Claimant later in the day. Ms George recorded that, as a result, the Claimant became aggressive and confrontational and, indeed, he had to leave the room to calm down.
22. At this hearing, the Claimant repeated the complaint he made to Ms George by email on 21 June that it was inappropriate for this matter to have been raised at a one-to-one meeting. We could not accept this proposition. It seemed to us that such an incident might properly be brought up for discussion by a line manager in a meeting later on the day it occurred. We do note that, in his email, the Claimant also informed Ms George that he had apologised to Mr Caspell, not for having made the remarks to which Mr Caspell had taken exception, but for Mr Caspell feeling the remarks either to be intentionally unprofessional or disrespectful to him. Mr Caspell described this apology as "begrudging": to us, it has the hallmarks of a classic non-apology apology whereby an apology is rendered for the person feeling offended, if they have been, but no remorse is expressed.
23. We note on the summary of events that the Claimant filed a Violent Incident Report [*VIR*] on 2 July. At this hearing, he argued there he did not receive from Ms George the support he should have had from his line manager after an incident that had led to the filing of a *VIR*. In support of this, he directed our attention to a document in the trial bundle entitled "Policy and Procedure on Violent Incidents at Work" and to paragraph 3.3 of that Policy which states:

Where a violent incident occurs, RBKC Housing Management places a clear expectation on the relevant managers ... .. to support affected employees as appropriate ...

24. However, the Policy also states at paragraph 6.1:

It is recognised that employees who have been on the receiving end of work-related violence may find this a traumatic or stressful experience. Employees are encouraged to discuss incidents with their manager, their colleagues, the Health & Safety Team, or the Human Resources Team, to help them to cope with the adverse effects of these incidents.

25. In this instance, the VIR indicated that, when the violence of the incident was discerned, it being the abusive way in which a resident's family member complained by phone to the Claimant about the breakdown of the heating system in the residence, Ms George intervened and took over the call. And, furthermore, the Claimant had not sought to discuss this incident, or indeed, the other incidents that were recorded on VIRs to which our attention was drawn, with Ms George or anyone else. It seemed to us that this VIR demonstrated that the Claimant could not necessarily be relied upon as having proper grounds for complaint about his managers.

26. On 3 July 2018, Ms George had arrived at the office at 1.30 p.m., but it was not until 4 p.m. that the Claimant informed her that he did not have access to the CRM [the IT system for recording communications from residents]. Counsel has recorded that "a row ensued between them" and when the Claimant left to attend a meeting and returned at 1700 hours, she noted that he had left without signing out. Ms George in her evidence elaborated on the subject matter of the row. The Claimant and she had had a conversation in which the issue of raising repairs via the CRM was discussed. The Claimant said he did not consider it was his role to raise repairs and argued that it should be done by the maintenance team. Ms George responded by saying this was within his remit and was not negotiable. At that, the Claimant started shouting at her, saying he did not want to hear such words.

27. The Claimant in his evidence confirmed that they had a conversation about repairs in which he had mentioned there was a repairs team with an officer. He said:

It was not a major issue – I did not shout back – it is part of the continuing narrative. This narrative being perpetrated – it is a deliberate lie and part of the narrative.

28. Our view was that Ms George summarised it accurately: the Claimant was attempting to establish with his manager demarcation lines between what he regarded as within his remit and what was outside that remit. In our view, this was an incident entirely consistent with the evidence of Ms George which we accept that, whenever she asked the Claimant to do something, he always had a reason either not to do it or not to do it in the way she had asked. We consider, on the balance of probabilities, that Ms George is right when she asserts that the Claimant was resentful of the fact that he had been passed over for appointment to the role that she was successful in obtaining and that he had a problem being managed by a woman. In our view, it was not up to the Claimant to lay down demarcation lines between what his manager could

legitimately ask him to do and what she could not. His job was to just get on with it.

29. An incident occurred on 4 July 2018 when the Claimant emailed Ms George asking permission to work from home once a fortnight. Ms George responded saying:

We are currently not in a position to grant any officer the ability to work from home.

Therefore, I will be happy to review your request in September.

30. The Claimant then wrote:

Thank you for getting back so promptly on this matter.

For clarity, when you say you are not currently in a position to grant any officer this ability, what exactly are you referring to, if I may ask?

Subject to clarification of the above, I also think a review in August would be more appropriate, so as to ensure the standard of service output required.

31. This led Ms George on 5 July early in the morning to write”

As discussed, the team has been fully staffed for just over a month. There are various projects that means we have to be all on site currently. We are also imbedding a culture that the residents feel we are present and able to access good quality customer service during our operational hours. That means being able to go to their homes (if needed) quickly.

I am understanding [*sic*] that there are plans to obtain another unit which will allow for some quiet time.

Therefore as previously stated, I will review your progress and the teams in September

32. Later, the Claimant came to Ms George to speak about his request to work at home. When she reiterated that no officers in the new team would be working from home, he said loudly that he did not think it was fair. Ms George described him in this manner:

I remember that he stood there with his legs quite wide and his hands behind his back, looking over me as I sat at my desk. I look up and said again that it was not up for discussion and that he should return to his desk. It was his manner that shocked me as I could see he wanted to appear dominant and see if I would cave because he was standing over me.

33. The Claimant denied he had been posturing in his evidence. However, we accept Ms George’s account on the balance of probabilities. We did not perceive that her denial of the Claimant’s request was in any way discriminatory.

34. The further correspondence on the issue confirmed to us that the relationship between them was not good as witnessed by the Claimant writing at the end of the working day on 5 July:

I do note your assertion that I seem to have ‘issue with receiving negative responses’. As I have consistently stated, if actions are presented after decisions

taken that impact on the work I do, then it will always appear that I have 'issue' with that.

My response to your assertion is that I feel you have issue with me!! I have already highlighted the narrative that you seem to be pursuing – which is to portray me as being difficult and obstructive, and that could not be further from the truth.

I have repeatedly stated that I'm happy to work with you, however I am finding it difficult to do so because of the lack of respect and consideration afforded me.

I still believe I can be an invaluable resource to you and the wider LancWest team, however your constant responses to things I raise or offer, suggest that you either don't wish me to contribute positively or that you don't value my judgement.

35. Responding to this email the following day, Ms George was short and blunt:

To be clear there will be no compromise with regards to working from home, I am happy to meet with you and James to discuss any further concerns you have.

36. This exchange indicated that Ms George was capable of exhibiting a degree of steeliness in her interaction with an employee whose behaviour, in her view, warranted it. It showed her to be far removed from the sort of person who, if we understand the Claimant's allegations correctly, was prepared to discriminate against a black man because he was black and because such discriminatory behaviour would ingratiate herself to her line manager and to do all that despite having two black adult sons.
37. On 30 July 2018, Ms George asked the Claimant to desist from wearing headphones whilst he was at work. The Claimant accepted in evidence that it was appropriate to ask that he did not listen to music and appeared to suggest that the headphones he was wearing were noise reduction headphones. He seemed not to grasp that, even if that had been the case, the appearance of an officer wearing headphones might raise doubts as to whether he would be able to hear the telephone and answer it, that being part of his job. To us, it appeared that this was another instance where the Claimant's approach appeared to be that his approach was better than the one mandated by his line manager.
38. On 2 August 2018, Ms George conducted a three-month probationary review with the Claimant. Several performance targets were noted not to have been met and issues were raised and recorded about his failure to keep Ms George informed of his whereabouts and concerns about his "unprofessional, confrontational, obstructive and at times hostile behaviour; towards senior managers, this includes RG [*Ms George*]." We noted that the written report entitled "First Probation Report" had, set out on its front page, the date that the Final Probation Meeting was to take place, that being 9 October 2018. We mention this because, in his evidence, the Claimant asserted that when Ms Stavroulla Kokkinou made arrangements for his Final Probation Review, to be held not on 9 October but on 29 November because his probationary procedure had been paused while his grievances were sorted out, he was sure that the Final Probation Report had already been conducted by Ms George and that he had discussed her findings with her. None of the documentary evidence in the Trial Bundle supported this assertion. We were driven to the conclusion that the Claimant was a bad historian, and we thus



were wary of accepting his version of history over that of other witnesses from whom we heard.

39. The Claimant asserted that Ms Kokkinou reached the conclusions she did because she was following a script that Ms George had prepared for her. Ms Kokkinou, being a manager who lacked any interaction with the Claimant during his probation, had to rely on the documentation that only the Claimant's line manager could provide. However, we found no evidence that Ms Kokkinou's conclusions were not her own and we further found it entirely appropriate for her to have reached the conclusions she did.
40. An incident took place on 10 August when Mr Caspell, having noted that the Claimant and a colleague were sitting with feet on a desk and apparently discussing trainers, suggested to Mr Adeola Oke who was a Project Manager at the time, that he might ask those two for help that Mr Oke needed for disseminating on notice boards notices advertising a resident engagement event he was holding. Mr Caspell's evidence recorded what happened next:

Shortly after, the Claimant stormed in, bursting through the door and stood over me. Adeola could be heard asking the Claimant not to do that and stating that his behaviour was a mistake. The Claimant then proceeded to argue with me, saying how unfair it was that he was being asked to do this task (which others, including myself, were helping with at short notice), and that it was not in his job description. I pointed out that he, and his colleague, were clearly not busy, given they had their feet on the desk, to which the Claimant did not respond and stormed back out. Adeola, himself of Nigerian descent, provided a statement (dated 28 August 2018) at the time to confirm his view of events (409). At this point I ceased asking the Claimant directly to do any work as it was clear he would become aggressive and confrontational.

41. We found it difficult to accept that such an incident, wherein both Mr Caspell and a colleague of the Claimant's (of Nigerian descent) had found, and recorded in a statement, the Claimant's behaviour to be rude and aggressive, could possibly constitute Mr Caspell "perpetuating a narrative" that the Claimant was aggressive and confrontational merely because the Claimant physically is, in his words, a large black man. As to which, we could see on the Cloud Video Platform that the Claimant was black, but his relative size was not a matter we could discern. And we should acknowledge for completeness that Mr Oke's statement was in the Trial Bundle: while we read it, Mr Oke did not give evidence.

42. One matter that the Claimant raised in his evidence to us concerned one resident whose name we will abbreviate to Mr E. The Claimant wrote:

54. In early summer of 2019, I encountered one of the residents from the Lancaster West Estate at our local hospital. I was there attending a counselling session with the Grenfell Health and Well Being team. The resident's name is E.

55. Mr E was the resident involved in one of violent incident reports, and also was alleged to have complained about me.

56. Mr E alleged that Ms George had visited him sometime after I my contract had been terminated and asked him to claim he had been spoken to about the violent incident, even though he had not. He further alleged that Ms George had informed him that I had made a complaint about him, and that she was not looking to pursue

that report. He said he was surprised at this as he felt it was extremely unprofessional.

57. Mr E had initially agreed to act as witness and provide testimony on this, however due to the length of time taken for the case to be heard and what he believes is the far-reaching influence of the Management team at the Lancaster West Estate Office, he is now reluctant to do so. I have informed him that I will still include his allegation and he may be summoned to court regarding it.

43. The account relayed by the Claimant is hearsay evidence. We did not hear from Mr E. And, rather unfortunately, the Claimant did not choose to question Ms George as to whether she did, in fact, visit Mr E as was claimed. As it is a serious allegation, it would have been better to have heard from Ms George who, in her statement, did not comment on this allegation, the witness statements being exchanged at the same time. However, whatever might have been her evidence on the matter, we did not consider it would have altered our view that neither she nor Mr Caspell were doing what the Claimant asserted, that is, perpetuating a narrative that the Claimant was hostile, aggressive and confrontational merely because he was a large black man.

44. In his statement, the Claimant complained at paragraph 24:

I was not considered for a vacant post that arose after the incumbent officer - Ms Shopna Akhtar - had left following a dispute with Mr Caspell. As indicated above, I was the only one with recent experience of the work she had been doing. I received no explanation or reasons for this.

We did not find this complaint to be justified. While it is true that the Claimant had recent experience of the work that Ms Akhtar had been doing, he was in his probationary period and he was not performing well.

45. The Claimant considered himself hard done by in the way his grievances were handled. In his statement, he stated his belief that the investigation was not handled impartially and was flawed. We heard from Mr Draper who had conducted the investigation and from Ms Fry who had rejected the appeal from Mr Draper's conclusions. We considered they were entitled to come to the conclusions they did.

46. Counsel for the Respondent had produced a list of assumptions concerning the Claimant's claims, a list which was endorsed by the Claimant with the addition of asserting that the difficulties that he had experienced following his dismissal – the shortness of notice and the demand for repayment of sums alleged to have been overpayments – were acts of victimisation.

47. The list was as follows:

- (a) That the one-to-one meetings, the probation review processes, and the dismissal contained criticisms of the claimant.
- (b) Those criticisms amount to a detriment as they were unjustified.
- (c) The claimant was unjustifiably criticised because he was black,
- (d) The dismissal itself was an act of race discrimination in that had he not been black, he would not have been dismissed.

- (e) That the grievances of 3 October 2018 were protected acts.
  - (f) That the subsequent dismissal and further criticisms made of him were acts of victimisation.
48. Using that list in order to summarise our conclusions:
- a) We accept that the one-to-one meetings, the probation review processes, and the dismissal contained criticisms of the Claimant.
  - b) Those criticism do not amount to a detriment because they were justified.
  - c) The dismissal was not an act of race discrimination: had he not been black, he would still have been dismissed.
  - d) The grievances of 3 October 2018 were protected acts.
  - e) The subsequent dismissal and further criticisms made of him were not acts of victimisation.
49. In consequence, we dismiss the claims in their entirety.

**13 August 2021**

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**Employment Judge Paul Stewart**

**DECISION SENT TO THE PARTIES ON**

**14/08/2021.**

**AND ENTERED IN THE REGISTER: 14/08/21**

**FOR SECRETARY OF THE TRIBUNALS**