



THE EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Azid

v

(1) Escape Campus Limited
(2) Raffaele Misceo

Heard at: London Central

On: 11-12, 15-16 March 2021
In chambers 9 April 2021

Before: Employment Judge Glennie
Ms J Griffiths
Mr R Miller

Representation:

Claimant: Mr Owen (CAB representative)

Respondents: Mr Barca (Solicitor)

JUDGMENT

1. The complaints of harassment related to religion, and of instructing or inducing the Claimant to do something which contravenes the Equality Act 2010 contrary to section 111 are well founded with regard to comments by Mr Carrasco and the Second Respondent to the effect that the Claimant should not hire visibly Muslim teachers, or questioning why he did so.
2. The other complaints under the Equality Act 2010 are dismissed.
3. Compensation for injury to feelings in respect of the successful complaints is assessed at £5,000.00
4. Interest on the said compensation is assessed at £727.50.
5. The total sum payable by the Respondents to the Claimant is £5,727.50
6. The First and Second Respondents are jointly and severally liable to the Claimant in respect of the successful complaints.

REASONS

1. By his claim to the Tribunal the Claimant, Mr Azid, made complaints of direct discrimination; harassment; victimisation; detriment as a result of being instructed to contravene relevant provisions of the Equality Act; breach of contract (notice pay) and failure to pay holiday pay. In relation to the complaints under the Equality Act, Mr Azid originally identified the protected characteristics of race and religion, but in the event relied on religion only. He identifies himself as a Muslim.
2. The Respondents, Escape Campus Limited and Mr Raffaele Misceo, resist those complaints.
3. With the agreement of the parties, this hearing took place entirely remotely, by way of video (CVP).
4. The Tribunal is unanimous in the reasons that follow.

Procedural matters

5. The Respondents applied for permission to call 3 witnesses in addition to those whose statements had been exchanged on the due date, being Mr Adrian Carrasco, Mr Rocca Pirotta and Ms Nina Osman. Statements for these were produced the day before the commencement of the hearing. Mr Owen opposed the application, given the late production of the statements.
6. Mr Barca gave as the explanation for the late production of the statements financial and other difficulties arising from the pandemic and the fact Mr Misceo was in Ibiza and unable to travel. The Tribunal did not find these reasons very compelling: matters such as the obtaining and finalising of statements can usually be dealt with remotely. The evidence was, however, relevant, and the subject matter was already covered in Mr Azid's statement. The Tribunal concluded that there would be no evidential prejudice to Mr Azid in allowing the application, and that it should be allowed in the interests of justice.

The issues

7. The issues in the complaints under the Equality Act were set out in a list prepared on behalf of Mr Azid, to which the Respondents did not object. They were as follows:
 - 7.1 Direct discrimination: was the Claimant treated less favourably by being dismissed because he was a Muslim.

- 7.2 Victimisation: was the Claimant victimised by being dismissed because he refused to dismiss teachers and/or not to recruit teachers who were Muslims.
- 7.3 Detriment as a result of being instructed to contravene the Equality Act (the detriments were not specified in the list, but were identified as being dismissed and as being offended by the instruction):
- 7.3.1 Was the Claimant told on numerous occasions to dismiss teachers who were Muslims.
 - 7.3.2 Was the Claimant told on 30 May to dismiss a teacher named Muna who was Muslim, because he should not have hired her because of her headwear.
 - 7.3.3 Was the Claimant told in the following week by the Second Respondent to dismiss Muna.
 - 7.3.4 Was the Claimant told on or about 14 June not to hire a teacher named Hibo because she was a Muslim and did Adrian say to the Claimant that he could not believe he was still hiring Muslims.
 - 7.3.5 During the second or third week of June after the Claimant had interviewed two female candidates who were both wearing head scarves did Adrian give him a list of teachers and tell him to stop recruiting from the websites he had been using and only to hire from the list he had produced.
 - 7.3.6 After interviews in June was the Claimant told by the Second Respondent and Adrian to dismiss the new teachers who were Muslims.
 - 7.3.7 During the first week of July was the Claimant told by Adrian to dismiss Hibo because she was a Muslim.
- 7.4 Harassment:
- 7.4.1 Did the Respondents subject the Claimant to unwanted conduct which violated his dignity or created a humiliating or offensive environment for him every time he was told that he should dismiss teachers who were Muslims and that he should not hire them.
 - 7.4.2 On 30 May was the Claimant told by Adrian that he should not have hired Muna “with that thing on her head” referring to her headwear and that he should get her out of the classroom as people were shocked to see her, that she would scare away new clients and to put her in a place where as few students as possible could see her.

- 7.4.3 After interviews in early June did the Second Respondent and Adrian accuse the Claimant of showing favouritism towards Muslim applicants; ask why he kept hiring Muslims; and tell him to dismiss the new teachers.
- 7.4.4 Did the Second Respondent at the end of June question the Claimant in a derogatory manner about how he could drink alcohol if he was a Muslim.
- 7.4.5 During the first week of July was the Claimant instructed to dismiss Hibo and when he refused to do so was he compelled to agree to Hibo being observed in her class by a senior teacher.
- 7.4.6 Was the Claimant's dignity violated and/or was a humiliating or offensive environment created for him in each of the above incidents.

Evidence and findings of fact

- 8. The Tribunal heard evidence from the following witnesses:
 - 8.1 Mr Azid, the Claimant.
 - 8.2 Mr Misceo, the Second Respondent.
 - 8.3 Mr Adrian Carrasco, who gave evidence in Spanish, translated into English.
 - 8.4 Ms Sangheeta Kohli.
 - 8.5 Mr Tibor Varga.
 - 8.6 Ms Muna Osman.
 - 8.7 Mr Rocco Pirota.
 - 8.8 Ms Alessia Miniello.
 - 8.9 Mr Dogan Kahveci.
- 9. Mr Azid also relied on witness statements from Mr Achille Marotta and Mr Anxo Moreira, who were not called to give evidence. The Tribunal took these statements into account, giving them less weight than they would have done had the makers attended the hearing.
- 10. There was an agreed bundle of documents and page numbers that follow refer to that bundle.
- 11. The Tribunal reminded itself that the evidential standard to be applied where there were disputes of fact was that of the balance of probabilities. It

was a feature of the present case that were extensive and wide-ranging disputes of fact. Essentially, each of the parties contended that the other's case on the issues was a complete fabrication. There were also other disputes about matters that were not directly in issue, and where the parties again maintained that the other was lying.

12. The Tribunal found the nature and extent of these disputes troubling. It was not possible to account for all, or even most, of these on the basis of genuinely differing recollections of events, or misunderstandings. In many cases, there was no independent corroborative evidence available.
13. The First Respondent ("the Company") operates a language school based in Oxford Street, London. Mr Misceo is the director and owner of the Company. Mr Azid began work for the Company on 26 January 2019, a start date which was accepted in both responses. Although Mr Barca challenged this date on the basis that the earliest written contract identified the commencement date as 1 March 2019, Mr Misceo readily accepted that the start date was in fact 26 January. (From now on, all dates in the reasons are in 2019).
14. There was some dispute about Mr Azid's role, at least at the start of his employment. His case was that, from the outset, he was engaged as Director of Studies (DOS) and that he taught when required. The Respondents' case was that he started as a teacher.
15. Whether Mr Azid was initially regarded as a teacher or as DOS, the evidence was that, with the passage of time, he took on increased duties. He said that he became responsible for accreditation and timetables in April and for the issuing of and dealing with contracts in May.
16. Mr Misceo was asked about the number of individuals working at the school. He agreed with Mr Azid's estimate of around 80 at the time of the events with which this case is concerned, and said that there were now around 100 in London, with another 50 in Spain and Italy. Mr Misceo said that, while Mr Azid was employed, there were 3 or 4 female Muslim teachers who wore the hijab; and that of the current workforce in London, about 20 were Muslims, and that 6 of these were women. The workforce contained both employees and freelancers.
17. There was an issue as to the role or status of Mr Carrasco within the school. The Respondents' case was that he was an independent agent who arranged for students (typically, Spanish speakers) to attend the school. Mr Misceo denied that Mr Carrasco was referred to as the Sales Manager, or that he was part of the management team.
18. The Tribunal found that, whatever the financial arrangements between the Respondents and Mr Carrasco may have been, he was a member of the Company's organisation and had a management role. The Tribunal so found for the following reasons:

- 18.1 Mr Carrasco had a company email address, as seen, for example, at page 105a.
 - 18.2 That document was an email from a former teacher, Ms Hassan, complaining about the treatment she had received at the school (which the Tribunal will refer to again later in these reasons). She addressed this to Mr Misceo and Mr Carrasco, which suggests that the latter was seen as having some authority within the organisation.
 - 18.3 The collective letter at page 100 on the same subject (again, referred to below) was also addressed to both Mr Misceo and Mr Carrasco.
 - 18.4 In an additional document (an email dated 28 March 2019 from the company's HR manager Mr Thomas) Mr Carrasco was identified as one of two supervisors for sales.
 - 18.5 The Tribunal will also describe below the evidence about events on 1 July. Mr Misceo was in Italy on that date. In the course of his oral evidence, he stated that Mr Carrasco was "in charge" on that date.
19. The Tribunal concluded that, in relation to the events with we are concerned, Mr Carrasco was at all material times acting on behalf of the company in his role as a supervisor or manager.
 20. There was also a dispute as to the level of communication that was possible between Mr Azid and Mr Carrasco. It was common ground that the latter spoke no English. Mr Azid's evidence was that he is at least reasonably proficient in Spanish, and that he and Mr Carrasco were able to understand each other, speaking Spanish. He said that he would translate for Mr Carrasco on occasions. Mr Carrasco maintained that the Claimant spoke only very basic Spanish, sufficient (as he put it) to have a coffee together, but not good enough for them to be able to sort out problems. He said that when such matters arose, they needed someone to act as a translator for them. One aspect of Mr Carrasco's denial of Mr Azid's allegations about things said by him was to the effect that he could not have said them in English and, had he said them in Spanish, Mr Azid would not have been able to understand them.
 21. Mr Misceo (who stated that he speaks Spanish to almost mother tongue level) described the Claimant's level of Spanish as "very poor". The only other evidence on the point came from Mr Varga, who said that he did not really see Mr Azid and Mr Carrasco talking; that he thought that if they spoke it was in Spanish, and that Mr Azid did not really translate for Mr Carrasco.
 22. The Tribunal concluded that Mr Azid and Mr Carrasco were able to communicate to a reasonable level in Spanish. This was supported to a limited extent by Mr Varga. It seemed unlikely that the sales manager or supervisor and the Director of Studies (as Mr Azid became) would have been wholly unable to communicate with one another. Furthermore Mr Misceo's letter dismissing Mr Azid (page 96) asserted that Mr Carrasco had given him a warning on 1 July. In cross-examination Mr Misceo stated that Mr Carrasco

had passed the phone to him and he had given the warning. Mr Azid denied receiving a warning from anyone. The point, however, in relation to this issue, is that it would be a curious error for Mr Misceo to make, had he believed that Mr Azid would not have been able to understand a warning given by Mr Carrasco.

23. Mr Azid's case, as reflected in the list of issues and paragraph 4 of his witness statement, was that he was told on many occasions by Mr Misceo and Mr Carrasco to dismiss a teacher "due to a minor complaint or due to their religion" (this being a reference to teachers who were Muslims). The first specific example of this given by the Claimant was said to have occurred on 30 May 2019, which was Ms Osman's first day at work at the school (Ms Osman being a Muslim who wears a hijab).
24. Thereafter, Mr Azid's evidence was that Mr Carrasco told him about once a week to dismiss Ms Osman until he himself was dismissed – and so, throughout June. He said that Mr Carrasco said that there were complaints about her from the students. Mr Azid further stated that, within about a week or two of Ms Osman starting work, Mr Misceo told him to dismiss her because students had complained about her. Mr Azid said that he spoke to the students and they told him that they had no problem with Ms Osman.
25. Mr Misceo and Mr Carrasco both denied that any such conversations took place. Mr Carrasco said that his role involved the students, and that he took no part in hiring or firing teachers. Mr Misceo stated that Ms Osman was "a very good friend" and that he never told Mr Azid to dismiss her. In cross-examination Mr Barca put it to Mr Azid that his evidence about these conversations was fabricated.
26. Mr Azid interviewed Ms Hassan, who is also a Muslim who wears a Hijab, on about 14 June. His evidence was that Mr Carrasco noticed Ms Hassan, and said to Mr Azid that he should not hire her and that he could not believe that he was still hiring Muslims. Mr Carrasco denied saying this.
27. Mr Azid's evidence continued that around the second or third week of June, he interviewed two candidates for roles as teachers, both of whom were wearing headscarves. He said that following this, Mr Carrasco gave him a list of teachers from which to recruit, and told him to stop hiring from the websites that he was using. Again, Mr Carrasco denied this.
28. Mr Azid further stated that, shortly after this, Mr Misceo and two sales managers (not including Mr Carrasco) approached him when he was working at his desk, and that Mr Misceo accused him of favouritism towards Muslim candidates and asked him "why do you keep hiring Muslims?" Mr Azid said that the two sales managers repeated the question when they met him a little later, adding that they were not racist but that it was not a good time to hire people like Ms Osman and Ms Hassan.

29. Mr Misceo denied all of this, adding when cross-examined that his grandmother is a Muslim, and “absolutely I did not ask him why he kept hiring Muslims.”
30. In relation to Ms Hassan, Mr Azid stated that on a date in June Mr Carrasco told him that he should dismiss her, on the grounds that a student had complained about her. The Respondents’ position was that this allegation also was not true.
31. Ms Hassan resigned from her employment, apparently on 5 July. Following her departure, a number of teachers signed a letter dated 16 July at page 100, addressed to Mr Carrasco and Mr Misceo, saying that a teacher (apparently Ms Hassan) had “quit on the spot” because people were observing her through a window into the classroom (the “Bristol” room) and because of an alleged comment about her hijab, saying that she should not be teaching where visible to customers. The letter asked for an investigation, disciplinary action against those involved, and an apology to the teacher.
32. Mr Misceo said that he investigated the matter and held a meeting with the teachers. Mr Owen took him to a statement provided by Mr Marotta on Mr Azid’s behalf (although Mr Marotta did not attend the hearing). With reference to what was said in this statement, Mr Misceo denied that he had admitted that Islamophobic bullying had taken place, or that he said that customers would be put off studying at the school if they saw a teacher wearing a hijab. He said that many students were themselves Muslims.
33. In paragraph 18 of his witness statement Mr Azid placed these events in early June, but that does not reflect the internal chronology of the statement. It seems that this was an error and that the reference should be to early July. He said that Ms Hassan had complained to him about the people staring at her. He also stated that Mr Carrasco had told him to dismiss Ms Hassan because a student had complained about her.
34. Ms Hassan herself sent an email on 20 July 2019 at page 105a to Mr Misceo and Mr Carrasco in which she included the following:
- “....I am writing this email to let you know that the treatment I got at your school was unacceptable and I will be seeking legal advice. I am aware of your dislike and contempt at me working at Bristol room as you deemed my hijab as hindrance to your sales. You’ve clearly stated that my looks somehow meant I was not a native English speaker.....”
35. Returning to events directly involving the Claimant, there was an occasion in late June when Mr Misceo had recently returned from a trip to Italy and when he gave out small bottles of limoncello to employees. Mr Azid’s evidence was that, when he accepted a bottle, Mr Misceo asked his religion, and when he replied that he had grown up in a Catholic and Muslim environment, but now considered himself a Muslim, Mr Misceo asked how he could drink alcohol if he was a Muslim.

36. When asked about this incident in cross-examination, Mr Misceo replied that he did not usually ask employees about their religion, meaning that he denied doing so on this occasion. He said that Mr Azid did not say that he considered himself to be a Muslim, and added that he would have no reason to ask whether the Mr Azid was a drinker, as he was often present on Friday evenings when employees went to the pub.
37. Mr Misceo was then taken to his Response, at page 28, where point 3 read: “The Claimant described himself to me as a “non observant” Muslim and he drank alcohol.” Mr Misceo replied that he did not know that Mr Azid was a Muslim and said: “I probably wanted to say something different. My English is not perfect.” In his closing submissions, Mr Barca stated that he had written this long after the proceedings had started (it is true that the Responses were presented late) and that he had made the error of conflating his own knowledge at the time of writing with that of Mr Misceo at the relevant time. He said that the expression “non observant” was his own characterisation of the situation.
38. The Tribunal was faced with a stark conflict of evidence on these matters. It is the case that Ms Osman remains employed by the company, and expressed herself satisfied with the way that she had been treated. There are currently more visibly Muslim teachers engaged than was the case in 2019. On the balance of probabilities, however, we found that, more than once, Mr Carrasco and Mr Misceo expressed negative views about Mr Azid hiring Muslim teachers. These were to the effect that Mr Azid should not do so, or questioning why he was doing so. The Tribunal is unable to be more precise about what was said, not least because any conversation was conducted in Spanish, but then described in English by one party, while being wholly denied by the other. The Tribunal found that what was said left Mr Azid with the clear impression that visibly Muslim staff were unwelcome at the school. He was probably not expressly told to dismiss the existing Muslim staff members, as this would have been an extreme position to take. He would have thought, however, from what was said, that it would be preferable if he did not retain them.
39. The Tribunal reached these conclusions for the following reasons:
- 39.1 Ms Osman and Ms Hassan were the first visibly Muslim women engaged at the school. They were, in that way, visibly “different” from the other teachers.
- 39.2 Ms Hassan’s complaint indicates that she felt unwelcome because of her appearance, specifically because she wore a hijab.
- 39.3 The other teachers evidently believed that her complaint was credible: they did not take the view that it was unthinkable that the school’s management might be hostile towards a teacher wearing a hijab.

- 39.4 We found it (regrettably) plausible that the managers of an English language school for foreign students might take the view that teachers in Muslim dress would not conform to potential students' views about how an English teacher would appear, and so might be thought of as liable to discourage them from attending, if seen when potential students were visiting the school.
40. The Tribunal was not convinced, again as a matter of probability, that the "limoncello" incident occurred as described by Mr Azid. We found it improbable on this occasion that Mr Misceo would have asked Mr Azid what was his religion, as the latter maintained. If, as point 3 of the Response might suggest if taken at face value, Mr Misceo already knew the answer, he would be unlikely to ask. If he did not know, it seemed to be an unlikely enquiry for Mr Misceo to make. The Tribunal found Mr Misceo's explanation that he would not in any event assume that no Muslim would ever drink alcohol to be plausible. We therefore found that Mr Azid had not proved, as a matter of probability, that this event occurred.
41. There was at pages 57 to 63 what purported to be a second contract of employment, bearing the date 24 June 2019, and the electronic signatures of Mr Misceo and Mr Azid. Although this document was not directly relevant to any of the issues before the Tribunal, the Respondents placed considerable reliance on it in attacking Mr Azid's credibility. It was suggested, in essence, that Mr Azid had created this document in anticipation of being dismissed. The terms in this version differed from those in the original contract, in particular in specifying salary of £33,000 and a notice period of 2 months. When asked about this in cross-examination Mr Azid said that he had created this document with Mr Misceo's permission, and that he had agreed to the provision for 2 months' notice. Mr Azid stated that this had taken place before Mr Misceo departed for Bari (which was on the evening of Friday 28 June). He said that he used a copy of Mr Misceo's signature using a system named DocuSign. Mr Misceo maintained that he had not agreed to the new contract.
42. Mr Barca asked questions of Mr Azid on the premise that it was necessary for a user of DocuSign to have a code in order to use a particular signature. Mr Azid agreed with this, saying that the owner of the signature would be sent the code by text or email, and that Mr Misceo in fact had to give him the code twice because the first one expired before he could use it.
43. In his closing submissions Mr Barca relied on this evidence as demonstrating that Mr Azid had been caught out lying. He said that his own questions had been based on a mistake, in that at the time in question it was not necessary to have a code to access a signature on DocuSign, so that Mr Azid's account of having to be given the code twice was an attempt to fit his evidence around what was being put to him.
44. Ultimately, the Tribunal found this aspect of no real assistance in resolving the issues before us. In particular, it did not lead us to any conclusions on questions of credibility. There was no evidence to support Mr Barca's assertion that, at the time, a code was not needed in order to access a

signature. No doubt, that was what he had been instructed, but the Tribunal had no reason to take it that those instructions were definitively correct. They might have been mistaken, and Mr Barca's original (but supposedly mistaken) assertion that a code was needed, might have been right. The Tribunal did not consider that it could safely rely on a retraction of a supposed mistake in order to make a finding against Mr Azid's credibility.

45. There was a dispute about what occurred on Monday 1 July, a day on which a session of classes was due to begin. Mr Misceo was in Italy at this time. The Respondents' case, which the Tribunal accepted, was that it was important for Mr Azid to be present, as he was the DOS.
46. Beyond this, the Respondents' evidence about 1 July was as follows. Mr Carrasco said that Mr Azid did not attend in the morning and that there was what was translated as "a revolution" among the students. The Tribunal understood this to mean that there was an angry scene, because the classes had not been organised and the DOS was not present to resolve matters. Mr Carrasco further stated that when Mr Azid arrived he was "a bit aggressive" and "not very normal". He added: "I don't know if he had some beers or something but that is not normal."
47. Mr Misceo's evidence was that Mr Azid arrived late (about 3 or 4 pm), hungover and smelling of alcohol (details which, if correct, he must have been told by someone present at the school). Mr Misceo further stated that Mr Carrasco had not allowed Mr Azid to enter the school. Mr Carrasco had called Mr Misceo, who gave Mr Azid a warning over the telephone. This was put into writing but the document concerned was at the school's premises, which could not be accessed because of the pandemic.
48. Mr Azid's evidence was that he had taken two days off in June, but that these did not include 1 July. He said that he had never turned up late or with a hangover, and that he was present on 1 July. He denied receiving a verbal warning, whether on 1 July or any other date, and when it was put to him specifically, he said that Mr Misceo did not give him a warning over the phone from Italy. It was not put to him that any warning had ever been committed to writing.
49. Once again, there was no common ground in the evidence about 1 July. The Tribunal found it unlikely that nothing at all had happened, beyond Mr Azid arriving as normal and doing a day's work without incident, and that Mr Misceo and Mr Carrasco had invented the whole scenario as a partial justification for dismissing him. Mr Misceo could have relied on the events of 6 July, without needing to fabricate a story about 1 July in addition. It was, we found, surprising that Mr Azid's evidence included nothing about 1 July, other than a denial of the Respondents' case; and surprising that the Respondents' evidence did not include any attempts to contact Mr Azid when he did not arrive at work as expected on an important occasion.
50. The Tribunal found as a matter of probability that there was some incident involving Mr Azid's attendance and/or timekeeping. We found that his

behaviour probably was somewhat aggressive or unusual, but that it was unlikely that he was hungover or smelling of alcohol: this seems to be an amplification by Mr Misceo of something he did not witness first hand, and which Mr Carrasco put in terms of Mr Azid behaving in a way that might have suggested he had been drinking. The Tribunal found that Mr Misceo probably had warned Mr Azid over the telephone – it would be natural for him to do so if Mr Azid had arrived late for the first day of a course – but that it was implausible that anything had been put in writing and that the document was impossible to retrieve.

51. On Thursday 4 July a meeting took place involving Mr Azid, Mr Misceo and a teacher named Taylor, which concerned allegations that the latter had described the course materials as “shit” and Mr Azid as a “dickhead”. There were notes of the meeting at pages 94-95. These show that Taylor said that he could not work in a school that was badly organised, and that Mr Azid then suggested that he should leave. Mr Misceo’s characterisation of this event was that Mr Azid had dismissed Taylor, who he had then re-instated.
52. A new series of classes was due to start on Saturday 6 July. The Respondents’ case was that Mr Azid should have been present in order to ensure that things ran smoothly and to deal with any problems. Mr Azid’s evidence was that he did not attend because he did not work on Saturdays, and that this was well established.
53. Mr Pirotta had recently been promoted to Senior Teacher, and this was to be his first day in that role. It was put to Mr Azid in cross-examination that he had agreed to be present: he denied this. Mr Pirotta’s evidence was that Mr Azid had told him that he would be present. He described the day as a “debacle”, as two teachers had failed to turn up for their classes and so he had to cover a class. (Mr Azid accepted that there might have been a shortage of teachers on the day). A number of students had to be given refunds. Mr Pirotta stated that Mr Carrasco had been informed of events by the end of the day (although in cross-examination the latter said that he was present on 6 July).
54. Mr Misceo’s evidence was that he decided on 6 July that Mr Azid should be dismissed. In paragraph 43 of his witness statement Mr Misceo said that this was “due to his inability to follow the company’s formal disciplinary and dismissal process”, this being a reference to the meeting with Taylor. In his oral evidence, Mr Misceo said “I decided on the 6th. It was gross misconduct. I already gave him one warning on the 1st”, indicating that it was Mr Azid’s absence on Saturday 6th that precipitated his dismissal.
55. On 8 July Mr Misceo gave the Claimant a letter dismissing him from his employment. The letter, at page 96, read as follows:

“Re [Dismissal without notice] Letter

Following many meetings and first and final warnings from Adrian on the 1st of July 2019 it has been decided that your performance is still unsatisfactory and

that you will be dismissed without notice for breach of the employment agreement.

In particular:

- 1) **DEVOTION AND DUTY TO THE ROLE** – the company has requested you to be present on crucial days as exam day or the first day of the cycle, unfortunately you missed twice in one week.
- 2) **GRIVANCE [sic] PROCEDURE**

- Favouritism; there are three senior teachers, only Rocco has had to do all covers and also work on Saturday, making him work a disproportionate number of hours and generating stress. The fact of promoting him as Saturdays senior teacher is very unfair.
- Unfair dismissal; following the company's formal disciplinary and the dismissal process Taylor should have received only one formal warning as it was a single offence case generated by the stress of the disorganisation. This personal revenge has created problems and frustration in the team, forcing teachers to do covers last minute.

Please note that you have the right of appeal against this decision.....”

56. Mr Azid did not reply to the letter or seek to appeal, but sent an email on 8 July to Mr Moreira at page 97 in which he sought 2 months' notice pay, outstanding pay up to 8 July, holiday pay and sick pay. Mr Misceo responded on the same day, stating that he had not signed the second contract containing the provision for 2 months' notice, and that the signature had been applied from Mr Azid's computer.
57. Thereafter, there was some further correspondence about the notice period and outstanding payments. Mr Azid subsequently contacted ACAS for early conciliation and presented his claim to the Tribunal.
58. The Tribunal concluded that the reasons for Mr Misceo's decision to dismiss Mr Azid were those stated in the letter. Mr Azid had been late or absent on two important days, and the Tribunal found that (whether justifiably or not in relation to 8 July) Mr Misceo was displeased with this. Again, whatever the rights and wrongs of the situations may have been, the Tribunal accepted that Mr Misceo was also dissatisfied with Mr Azid's actions in relation to Mr Pirotta and Taylor. Taken together, these matters would have been sufficient to cause Mr Misceo to decide to dismiss Mr Azid, and the Tribunal found that this was in fact what happened.
59. The Tribunal found that the fact that Mr Azid is a Muslim played no part in Mr Misceo's decision to dismiss him. It is not clear that Mr Misceo even knew this at the time, but assuming that he did, the evidence shows that he had an adverse view of individuals who were identifiably Muslim from their dress, rather than an adverse view of Muslims in general. The adverse view that he had arose from his belief that potential students might be put off by teachers

who did not conform to a stereotypical view of how a native English speaker would appear.

60. The Tribunal also found that Mr Azid's recruiting of Muslim teachers and/or failure to dismiss Muslim teachers was not a factor in the decision to dismiss him. The timing of the dismissal strongly suggested that the precipitating event was Mr Azid's absence on 6 July, seen against the background of events during the preceding week. Mr Azid's evidence about the conversations was that they began on 30 May and occurred throughout June. That evidence did not contain any suggestion that his job would be at risk if he continued to interview or engage visibly Muslim teachers, or if he did not dismiss the existing ones. In any event, the Tribunal has found, on balance of probabilities, that Mr Azid was not told to dismiss the Muslim teachers.

The applicable law and conclusions

61. Section 13 of the Equality Act 2010 makes the following provision about direct discrimination:

(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.

62. In relation to harassment, section 26 provides that:

(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.

63. Section 27 includes the following provisions about victimisation:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act.

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act –

(a)

- (b)
- (c) *doing any other thing for the purposes or in connection with this Act;*
- (d) *making an allegation (whether or not express) that A or another person has contravened this Act.*

64. Subsections (1) to (3) of section 111, in summary, prohibit instructing, causing or inducing another to do something which contravenes the Act. Subsection (5)(a) provides that the person so instructed, caused or induced may bring proceedings for a contravention of the section if they are subjected to a detriment as a result of being so instructed, etc.

65. For less favourable treatment or a detriment to be “because of” a protected characteristic or a protected act, it is not necessary for those to be the sole or principal reason for that: they need to be a substantial, or more than trivial, reason. The Tribunal understood the “as a result of” test in section 111 as requiring a causal link at least equivalent to the “because of” test. The “related to” test for harassment is less strict, and so is often considered first when allegations are relied on in that regard as well as for complaints under section 13 and/or section 111.

66. Section 136 of the Equality Act makes the following provision about the burden of proof:

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

67. In **Igen v Wong [2005] IRLR 258** and **Madarassy v Nomura [2007] IRLR 246** the Court of Appeal identified a two-stage approach to the burden of proof in discrimination cases. At the first stage, the Tribunal would consider whether the facts found were such that, in the absence of an explanation from the Respondent, it could properly find that discrimination had occurred. In **Madarassy** the Court of Appeal emphasised that this must be a conclusion that the Tribunal could properly reach. A difference in protected characteristic and in treatment would not, without something more, be enough. The something more need not, in itself, be very significant, but it would have to be present. If the facts found were of this nature, the burden would be on the Respondent to prove that discrimination had not occurred.

68. In **Hewage v Grampian Health Board [2012] UKSC 37** in the Supreme Court, Lord Hope said that the burden of proof provisions had nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

69. The Tribunal first considered its conclusions in relation to the complaints of harassment, following the issues as set out in paragraph 8.4 above. They were as follows:

- 69.1 The Tribunal has found that Mr Azid was told that he should not hire Muslim teachers, or was asked why he was doing so, and was left with the impression that visibly Muslim staff were unwelcome at the school. We found that this was unwanted conduct and that it was related to religion. The Tribunal found that, whatever the intention of Mr Carrasco and/or Mr Misceo was, these comments had the effect of creating an offensive environment for Mr Azid. His case is that he found this offensive, and the Tribunal found that it was reasonable that he should do so: he was being told to discriminate against individuals on the grounds of their religion.
- 69.2 Mr Azid's evidence did not include reference Mr Carrasco referring to Ms Osman's headwear as "that thing on her head", or to getting her out of the classroom, and the Tribunal has not found that those specific comments were made. The complaint that Mr Azid was told that he should not have hired Ms Osman falls within the finding in sub-paragraph 1 above.
- 69.3 This allegation (being accused of favouring Muslims, being asked why he kept hiring Muslims, and being told to dismiss the new teachers) is essentially a repeat of allegation 1.
- 69.4 The allegation that Mr Misceo asked Mr Azid how he could drink alcohol has not been made out on the facts.
- 69.5 The allegation of being instructed to dismiss Ms Hassan has not been made out on the facts.
- 69.6 The Tribunal has concluded, as set out in sub-paragraph 1 above, that the comments concerned had the effect of harassing Mr Azid.
70. In relation to the complaint of direct discrimination, the Tribunal has found that Mr Azid was not dismissed because he was a Muslim. Alternatively, if the two stage test is applied, the facts are such that, in the absence of an explanation, the Tribunal could properly find that the dismissal was an act of discrimination, in that Mr Azid was dismissed and the Tribunal has found that Mr Misceo took an adverse view of visibly Muslim teachers. The Respondents have, however, shown that they did not discriminate against Mr Azid in this respect.
71. With regard to the complaint of victimisation, the Tribunal has found that Mr Azid was not dismissed because he refused to dismiss or refused not to recruit teachers who were Muslim. Alternatively, if the two stage test is applied, the Tribunal's analysis would be similar to that in paragraph 70 above in relation to direct discrimination. The Respondents have shown that they did not discriminate against Mr Azid in this respect.
72. The Tribunal determined the complaints under section 111 as follows:

- 72.1 The allegation of being told to dismiss teachers who were Muslims was not made out on the facts.
- 72.2 The allegation of being told to dismiss Ms Osman was not made out on the facts.
- 72.3 Ditto.
- 72.4 The allegation that Mr Azid was told not to hire Ms Hassan because she was a Muslim and that Mr Carrasco said that he could not believe that Mr Azid was still hiring Muslims is covered by the conclusions in paragraph 69.1 above. To that extent, Mr Azid was instructed or induced (in the sense that there was an attempt to persuade him) to do something that contravened the Act, i.e. to discriminate against individuals who were Muslims.
- 72.5 The Tribunal has not found that the specific allegation about using a list of teachers has been made out.
- 72.6 The allegation of being told to dismiss new teachers has not been made out on the facts.
- 72.7 The allegation of being told to dismiss Ms Hassan was not made out on the facts.
73. The Tribunal's overall finding on liability is therefore that the complaints of harassment and under section 111 are well-founded to the extent set out in paragraphs 69.1 and 72.4 above. They cover essentially the same factual ground. The other complaints are unsuccessful.
74. There is a question, not specifically addressed by the parties in the hearing, as to the extent to which the two Respondents should be liable in respect of any well-founded complaints. The Tribunal concluded that they should be jointly and severally liable for the successful complaints. Mr Carrasco's role within the organisation was such that the Company should be held vicariously liable for his acts. The Company should also be held vicariously liable for Mr Misceo's acts (there never having been any suggestion to the contrary). Mr Misceo would not, on the face of the matter, be vicariously liable for Mr Carrasco's acts, but what he said to Mr Azid amounted to the same as what Mr Carrasco said. It seemed to the Tribunal that it would be artificial to say that he should only be liable for whatever proportion of the harassment or inducement arose from his own words, when he was the owner of the Company and was giving the same instructions as Mr Carrasco.
75. The remedy in issue for successful complaints is that of compensation for injury to feelings. There had been several comments or instructions and, as we have stated, Mr Azid found them offensive. The Tribunal also considered that what was said were adverse comments about how he was doing his job, and that he would have felt concerned as well as uncomfortable. He also would naturally have been concerned at being asked or told to act unlawfully.

76. The Tribunal considered that the lower **Vento** band was appropriate, as the successful complaints involved a small number of comments over a relatively short period. We assessed compensation for injury to feelings at £5,000.
77. The Employment Tribunals (Interest on awards in discrimination cases) Regulations 1996 provide that the Tribunal shall consider whether to include interest on the sums awarded. The current rate is 8% per annum. Regulation 6(1) provides that, in the case of an award for injury to feelings, interest shall be for the period beginning on the day of the contravention or act of discrimination and ending on the day of calculation. The acts of discrimination occurred over a period of around one month in June 2019. The Tribunal took 15 June 2019 as a working date for the date of the act of discrimination. The day of calculation is 9 April 2021. The period would therefore be 1 year 299 days. This gives a total of 14.55% interest, which in turn produces a figure of £727.50 on £5,000.
78. Regulation 6(3) provides that where the Tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be awarded in respect of the relevant period, it may (in summary) calculate interest for a different period. The Tribunal did not consider that serious injustice would be so caused, and awards interest of £727.50.

Employment Judge Glennie

Dated:23 August 2021.....

Judgment sent to the parties on:

23/08/2021.

.....
For the Tribunal Office