



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M J El-Turk

**Respondent:** Human Appeal

**Heard via CVP (London Central) On:** 1, 2, 3, 4, 8, 9, 10 November 2021

**Before:** Employment Judge Davidson  
Ms D Keyms  
Ms K O'Shaughnessy

## Representation

**Claimant:** in person  
**Respondent:** Dr M Ahmad, Counsel

**Interpreter:** Mrs J Akkari (Arabic)

# RESERVED JUDGMENT

**It is the unanimous decision of the tribunal that the claimant's complaints of sex discrimination, race discrimination, automatic unfair dismissal, ordinary unfair dismissal and wrongful dismissal fail and are hereby dismissed.**

# REASONS

## The Hearing

1. The hearing was a 'hybrid' hearing, with the claimant, the interpreter, the Employment Judge and for part of the hearing, one tribunal member, physically present in a tribunal room and the other participants connecting using the cloud video platform (CVP) under rule 46. The parties agreed to the hearing being conducted in this way.
2. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no significant difficulties.

3. Members of the public were able to attend via CVP or physically in the tribunal room and were able to inspect documents in the tribunal room.

The issues

4. The issues for the hearing as contained in the case management order of EJ Clark following a preliminary hearing on 12 May 2020 are set out below. The case management order included a note to the effect that the complaints to be determined and the issues to be decided were set out in that order and no other matter would be decided at the hearing.

*Age Discrimination*

1. Was the Claimant treated less favourably because of his age in being dismissed than someone in their 30's or 40's (it is the Claimant's case that someone younger would have been offered training in circumstances where they had made a mis-judgment)?

*Race Discrimination*

2. Was the Claimant treated less favourably because of his race in being dismissed than someone who was either of Pakistani national origins or someone who was white British?

*Protected Disclosures*

3. Did the Claimant make the following disclosures of information:
  - a. On or about 17 January 2017 in an email to all the Respondent's senior management, including the CEO, deputy CEO and Chief Financial Officer, that £20,000 in donations was missing from the Respondent's records contrary to the Charity Commission guidance on protecting charity money (*Disclosure 1*);
  - b. On or about 22 August 2017 in an email to all the Respondent's senior management, including the CEO, deputy CEO and Chief Financial Officer, that £2,425 in donations was missing from a Mosque in London contrary to the Charity Commission guidance on protecting charity money (*Disclosure 2*);
  - c. On or about 19 January 2018 in an email to all the Respondent's senior management, including the CEO, deputy CEO and Chief Financial Officer, that the pension company in which employees' pensions were invested was inefficient/failing thereby exposing the charity to potential liability if the pensions company failed which would not be a proper use of charitable funds (*Disclosure 3*);
  - d. On or about 24 May 2019 in an email to all the Respondent's senior management, including the CEO, deputy CEO and Chief Financial Officer that money was missing from a Mosque in High Wickham contrary to the Charity Commission guidance on protecting charity money (*Disclosure 4*)?

4. In relation to all the above disclosures: in the reasonable belief of the Claimant did the information tend to show that a person had failed, was failing or was likely to fail to comply with a legal obligation?
5. In relation to all the above disclosures, in the reasonable belief of the Claimant was the disclosure in the public interest.?

*Automatic unfair dismissal*

6. Was the reason or principal reason for the Claimant's dismissal the fact that he made one or more of the above disclosures?

*Unfair Dismissal*

7. Was the reason for the Claimant's dismissal a potentially fair one? The Respondent relies on conduct.
8. If so, did the Respondent acted reasonably in treating that reason as a reason to dismiss the Claimant?
9. If the Claimant's dismissal was procedurally unfair, should any deduction of compensation be made to reflect the fact that he could have been fairly dismissed?
10. Should the Claimant's compensation be reduced to reflect any contributory conduct on his part?

*Wrongful Dismissal*

11. Was the Claimant guilty of gross misconduct entitling the Respondent to terminate the Claimant's employment without notice?

*Remedy*

12. To what remedy is the Claimant entitled if successful in his claims?
13. Should any compensation be uplifted by 25% by reason of any failure by the Respondent to follow the ACAS Code of Practice on Disciplinary Procedures (in relation to which the Claimant is to provide details)?

*Costs*

14. The respondent has an outstanding wasted costs application following from the preliminary hearing on 5 October 2020.

*Comment on the issues*

15. During the hearing, most of the claimant's cross examination of the respondent's witnesses, a large part of his 105 page witness statement and his final submissions focused on his general treatment by the respondent from 2017 onwards (which formed the content of his grievance). We reminded him of the issues before the tribunal, which did not include his grievance, but he was determined to air these matters and we allowed him some latitude in this respect. We pointed out to him that this is not a constructive dismissal claim and the only whistleblowing detriment relied on is the dismissal. We understand that the claimant wanted us to reach findings on his grievances but we decline to do so

as these are not issues before us and, in any event, not matters on which the respondent had prepared its case.

### Evidence

16. The tribunal heard evidence from Hameed Al Asaly (Director of Emerging Markets and Operations), Omar Mashjari (Trustee) and Pulvisha Raja (Interim Director of People and Culture, formerly People and Culture Business Partner) on behalf of the respondent and from the claimant on his own behalf with the assistance, when required, of an Arabic interpreter.
17. The tribunal had a main bundle comprising 852 pages and an additional bundle submitted by the claimant comprising 511 pages. We were also provided with additional documents (process maps) during the hearing.

### Facts

18. The tribunal found the following facts on the balance of probabilities.
19. The respondent is a faith-based charity inspired by Islamic values raising money for humanitarian causes across the world. Approximately two thirds of the employees are Muslim. The claimant has worked in the charitable sector for 26 years and started his employment with the respondent on 20 July 2011 as Community Fundraising Manager. His role was within the fundraising department and, for a period, he was National Mosques Manager, in charge of collecting funds from mosques throughout the UK. His job title later changed to Community Engagement Manager.
20. In January 2017, he alleged that there was money missing following a fundraising tour the previous month. Having reviewed the collections information, he expressed concern that the figures did not make sense and the lack of financial controls and cash protection procedures. **(Protected Disclosure 1)**
21. This was investigated by the respondent in August 2017 and the investigation concluded that there were weaknesses in the process but no money had gone missing.
22. In August 2017, the claimant sent an email to Aneeq Qureshi (Head of Finance) and then to Elfatih Ibrahim (then Director of Efficiency Accountability and Learning), again in response to information which had come to his attention which showed that charitable money had not been accounted for or had gone missing. Internal audit carried out an investigation and they concluded that there was no evidence that cash had gone missing but that there was a weakness in the process. **(Protected Disclosure 2)**
23. In January 2018, the claimant raised concerns about the respondent's pension provider, noting that pension contributions had been made but

had not been invested as he had expected. The pension provider confirmed that there had been an error in the cash element of the pension producing an incorrect valuation. **(Protected Disclosure 3)**

24. The claimant alleges that, in a conversation with Karim Samir (Director of People and Culture) on 13 August 2018, witnessed by Elfatih Ibrahim (Acting CEO), Karim Samir said to him that he wasn't wanted in the charity and that he should resign and go to work for another charity. In the course of the hearing, the claimant referred to this event as a threat by Karim Samir to dismiss him although we note that this is not the wording originally alleged to have been said. In any event, the respondent denies that any such comment was made.
25. On 8 March 2019, the respondent wrote to the claimant noting that he had repeatedly failed to submit his appraisal document, despite his managers numerous requests. The allegation was expressed to be potentially gross misconduct. The disciplinary hearing took place on 28 March 2019 and was conducted by the claimant's manager, Zaheer Khan, with Pulvisha Raja taking notes. Pulvisha Raja took handwritten notes at the meeting which were circulated at the end of the meeting to those present for approval. There was a conflict of evidence relating to the circulation of the minutes. We did not have a copy of the notes before us, nor did we have any evidence of the claimant chasing for the notes. In any event, we do not consider that it is necessary to resolve this conflict in order to determine the issues before us. The respondent does not rely on this disciplinary warning and therefore we do not consider that we need to reach any findings on this matter.
26. Also on 28 March 2019, the claimant raised a formal grievance against his manager, Zaheer Khan, Head of People and Culture, Karim Samir and the Establishment as a whole. The main thrust of the grievance was against his line manager, in particular that his manager was not competent, failed to provide support, ignored and overlooked him and generally undermined him. He made a specific allegation of age discrimination and discrimination on grounds of ethnic origin. The claimant is Arab and Zaheer Khan is Pakistani.
27. The claimant gave his 10 page grievance document to Pulvisha Raja and marked it 'Private and confidential for the attention of the CEO'. The CEO had just been appointed and was due to take up his role within a few days. When the new CEO was in post, Pulvisha Raja gave him the claimant's grievance. He reviewed this and decided that someone external should be appointed to conduct the grievance. He asked Pulvisha Raja if the respondent used any external contractors and she told the CEO about David Clark of Caritas who was engaged by the respondent from time to time to advise on HR issues. He asked her to arrange for David Clark to hear the grievance.

28. The claimant challenged the veracity of Pulvisha Raja's account of how the grievance document was passed to David Clark. The claimant relies on this to challenge Pulvisha Raja's credibility. We find that the means of passing the grievance to David Clark is not relevant to the issues before us and we are not satisfied that the challenges raised by the claimant bring Pulvisha Raja's credibility into question.
29. On 10 April 2019, the claimant sent an email to the CEO making a number of allegations about the veracity of Zaheer Khan's work history. In this, he drew attention to a Facebook post put up by Zaheer Khan which concerned him, but he did not allege the content was discriminatory or anti-Semitic.
30. On 23 April 2019, David Clark was appointed to conduct the grievance. He held a meeting with the claimant for five hours over video conference. The claimant alleges that David Clark failed to take more than a few notes. We cannot comment on this but note that David Clark appears to have dealt with the points raised by the claimant and gave his grievance outcome on 30 May 2019 in a 19 page outcome report. After the meeting, the claimant sent David Clark a considerable amount of further information including photographs, video content and copies of emails. He alleges that David Clark did not consider this in reaching his outcome. The adequacy of the grievance investigation and outcome is not an issue before us and we make no comment.
31. The claimant disagreed with the grievance outcome. David Clark informed him of his right to appeal.
32. On 28 May 2019, the claimant sent an email to Feeras Khamees (Cashier) informing him that a donor at High Wycombe Mosque had complained of not receiving a formal receipt for a donation. The claimant noted that the donation had not been inputted in the respondent's donor management system. **(Protected Disclosure 4)**
33. After receiving the grievance outcome, the claimant had an exchange of emails with Pulvisha Raja in which he stated that he did not want David Clark handling his case as he did not want to leave his fate to a non-Muslim judge. He pointed out that the respondent is an Islamic organization and its judges should be Islamic and suggested that his grievance should be heard by a scholar familiar with Islamic law. He also criticized David Clark as being biased on the grounds that he was being paid by the respondent. He suggested someone who would not take money (for example, an Islamic scholar) would be appropriate, but if money was paid, he would be prepared to pay for half of the Muslim scholar's fee from his own pocket.
34. On 20 June 2019, the claimant sent an email to his manager, Zaheer Khan, offering to put their differences behind them. Part of the offer was that the claimant would take up the job of Head of Mosques and the CEO

would investigate his case personally. The respondent did not reply to this.

35. On 2 July 2019, Pulvisha Raja explained the respondent's grievance procedure and that there was no requirement to choose someone neutral. She stated that it was not a matter of the person's faith and it was the respondent's prerogative to decide who to appoint to hear a grievance or appeal. Having explained the appeal policy to the claimant, she asked him to confirm whether he was appealing against David Clark's decision.
36. The claimant replied to this email and said he saw it as an attempt to intimidate him. Pulvisha Raja then responded on 8 July 2019 asking the claimant to confirm if he was appealing and, if so, on what grounds, reminding him that the appeal manager would be someone they appointed. The claimant replied, repeating his contention that the appeal should be heard by a Muslim scholar and that he would accept the outcome of a Muslim scholar.
37. On Friday 19 July 2019, there was an open meeting at the respondent's head office in Cheadle which was attended (in person or by video-conference) by many of the worldwide staff, senior management team and the trustees. The claimant travelled from London to the meeting. He had prepared some handwritten notes setting out a number of points he wished to raise at the meeting. At the meeting, he read out from his prepared notes. One of points he raised was that, as an Islamic faith based charity, an Islamic scholar adviser should look after financial practices and resolution of disputes. He went on to say that he did not think these matters should not be left to people such as 'Alex or John'. He told the tribunal that he was going to say David Clark but decided not to at the last moment.
38. There was a conflict of evidence as to how many times he said this. Having heard the claimant ask and answer questions during the course of the hearing, we can understand that the claimant would consider he had mentioned something once but his style is to phrase and re-phrase a comment within a single question or answer and so a listener would think he had said it more than once.
39. The claimant suggested that his comments only related to his own situation. We do not accept this was his view at the time as it would not be something to raise in an open meeting and the context of the comments relates to how the organisation, as a faith based organisation, should deal with such matters.
40. According to the respondent's evidence, the claimant's comments provoked much discussion and offence among the office team after the event, both among Muslim and non-Muslim staff.

41. Following the staff meeting on 19 July 2019, there was a meeting of Trustees. At this meeting, the issue of the claimant's comments was raised and it was referred to the Head of People and Culture, Karim Samir, to take further action. In the normal course of events, the disciplinary hearing would be held by an employee's manager. As there was an outstanding grievance by the claimant against his manager, the respondent appointed Hameed Al-Asaly, who worked in a different department and was relatively new to the organisation, to conduct the disciplinary hearing.
42. On 23 July 2019, a member of the HR team, Nicola Rennie, sent an email to Pulvisha Raja expressing her concern about the claimant's comments at the meeting and how she, as a non-Muslim, felt deeply offended, particularly at the suggestion that non-Muslim staff take decisions 'for the paycheck' and not because of Islamic values. The claimant challenged the genuineness of her complaint, saying that it was part of her manager's (Karim Samir) agenda against him. We do not know whether the email was written at the suggestion of Karim Samir or not but we accept that the respondent was entitled to take Nicola Rennie's complaint seriously and to regard it as a genuinely held concern.
43. On 29 July 2019, Pulvisha Raja sent the claimant an invitation to a disciplinary hearing conducted by Hameed Al-Asaly, to answer the allegation that, at an open meeting held on 19 July at the Cheadle office attended by a large number of staff and trustees, the claimant commented that the respondent should set up an advisory board comprised of Muslim scholars who can help with disciplinary matters and, in making that comment he expressed his view that, as an organisation, claims should be based on Islamic values which is preferable to issues being handled by 'Alex or John'. This caused offence and the respondent regarded it as discriminatory and contrary to their equality and diversity policy. The claimant was informed that this was potentially a gross misconduct offence which could lead to his summary dismissal.
44. On the same day, 29 July 2019, the claimant was informed that his grievance appeal would be heard by an independent contractor, Fatima Ali. The claimant replied saying that he did not know who she was and he did not accept it. He asked for an Islamic scholar (which he was prepared to pay 50% of the cost) or for the CEO to hear the appeal. Pulvisha Raja repeated her earlier comments that the person hearing the appeal was chosen by the respondent in accordance with ACAS guidelines and that Fatima Ali was an appropriate person.
45. On 30 July 2019, on the advice of one of the trustees, the claimant contacted Nicola Rennie and sought to explain his comments, reiterating what he said at the meeting, and he offered an apology if he had offended her.



46. On 7 August 2019, the claimant sent an apology to the CEO, saying he did not intend to harm or offend and that he retracted what he said.
47. On 22 August 2019, the disciplinary hearing was held by Hameed Al-Asaly. Pulvisha Raja attended remotely and was the note taker. During the course of the hearing, the claimant repeated his sentiments, stating that the charity should look to a Muslim scholar to look after its complaints and grievances, not some 'Christopher or Jones' but that this was just a suggestion. He accepted he should have been more diplomatic in his wording. He then developed his position to emphasise that his objection was to individuals being paid to hear the grievance, which in his mind meant that they could not be objective. He said he would have no problem if the person dealing with it did so for spiritual reasons rather than financial and would accept a priest or a rabbi as well as a Muslim scholar. He also stated that he had no problems with non-Muslim employees.
48. After the meeting, Pulvisha Raja circulated the notes. The claimant pointed out some matters which he thought had been omitted and the respondent accepted his additions.
49. On 1 September 2019, the claimant sent an email to a number of trustees enclosing a document he entitled 'A Dignified Exit'. This contained a proposal that he should meet with the trustees and agree a 'dignified' departure from the respondent, failing which he would bring matters he was aware of to the attention of the Charity Commission on their forthcoming visit.
50. On 11 September 2019, Hameed Al-Asaly wrote to the claimant with the outcome of the disciplinary hearing being summary dismissal for gross misconduct. There was no dispute regarding the incident itself. Hameed Al-Asaly concluded that the claimant wanted to make his point (regarding Muslim scholars) regardless that his statement was racially discriminatory and in breach of the organisation's values, ethos and legal obligations. The claimant's last day of employment was 11 September 2019 and he was not given notice or payment in lieu. He was notified of his right of appeal.
51. On 17 September 2019, the claimant exercised his right of appeal in a ten page document covering 44 points. His grounds of appeal can be summarised as procedural flaws, the reason for dismissal was not put to him (race discrimination) and that he was being 'victimised'. He again raised the issues surrounding his treatment by his manager and others which formed the content of his grievance. One of the trustees, Omar Mashjari, was appointed to hear the appeal.
52. On 21 September 2019, Fatima Ali wrote to the claimant to confirm that the appeal against the grievance outcome would be dealt with by way of

re-hearing and she invited him to submit any evidence he wanted to rely on.

53. On 15 October 2019, the appeal against dismissal was heard via Zoom. Fatima Akhtar was the note taker. The claimant started the meeting by informing Omar Mashjari of the historic whistleblowing incidents and the way he was treated by Zaheer Kahn and Karim Samir. Omar Mashjari asked the claimant to comment on the incident of 19 July 2019. The claimant repeated his view that he wanted his grievance dealt with by someone who was not being paid by the respondent. He accepted that he should have phrased his comments more diplomatically.
54. Later that evening, the claimant sent Omar Mashjari the disciplinary hearing notes and made the additional submission that these show that he was asked about religion and the finding was based on race. He sent in the region of 34 attachments. The following day, the claimant sent Omar Mashjari a further email with 48 attachments. These did not relate directly to the subject of appeal, namely the dismissal decision, but related to his grievance.
55. On 21 November 2019, Omar Mashjari wrote to the claimant informing him that his appeal was not upheld.
56. In December 2019, the claimant submitted his ET1.
57. On 22 May 2020, Fatima Ali concluded her grievance outcome report, running to 189 pages. This was sent to the claimant on 30 May 2020. She did not uphold his grievance.

### Law

The relevant law is as follows;

#### *Direct discrimination*

58. Section 13 Equality Act provides: “(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.”
59. If the claimant shows facts from which it could be inferred that the respondent has treated him less favourably because of a protected characteristic, the burden of proof shifts to the respondent who must show that the treatment was in no sense on the grounds of the claimant’s protected characteristic.

#### *Protected Disclosures*

60. The Employment Rights Act 1996 (“ERA 1996”) contains the following relevant provisions:

*Section 43A: Meaning of 'protected disclosure'*

In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any sections 43C to 43H.]

*Section 43B: Disclosures qualifying for protection*

In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

*Section 103A: Protected disclosure (dismissal)*

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

*Unfair dismissal*

- 61. The burden is on the employer to show the reason for dismissal and that it is a potentially fair reason (section 98(1) Employment Rights Act 1996).
- 62. If the reason is a fair reason, the employer must act reasonably in treating it as a sufficient reason for dismissing the employee (section 98(2) ERA 1996).
- 63. In the context of a dismissal for misconduct, the employer must reasonably believe that the employee committed the misconduct and have reasonable grounds for that belief, having carried out an adequate investigation and followed a fair procedure. Dismissal must be within the range of reasonable sanctions.

Determination of the issues

- 64. The claimant asks us to make a credibility finding against Pulvisha Raja. We have considered his representations and do not agree that the

inevitable conclusion is that her evidence is unreliable. There are always conflicts of evidence in tribunal hearings and we have indicated which account we prefer where applicable. We do not find that it is necessary to make any generalised credibility findings.

65. The tribunal determines the issues unanimously as follows:

*Age and Race Discrimination*

66. The claimant expressly stated that neither Hameed Al Asaly and Omar Mashjari discriminated against him. The discrimination allegation relates only to the dismissal, for which they were the disciplinary manager and appeal manager respectively. He has therefore shown no facts on which a tribunal could conclude that his dismissal was tainted by discrimination. This claim therefore fails.

*Protected Disclosures*

67. Our findings relating to the protected disclosures are as follows:

68. *On or about 17 January 2017 in an email to all the Respondent's senior management, including the CEO, deputy CEO and Chief Financial Officer, that £20,000 in donations was missing from the Respondent's records. (Disclosure 1)*

69. We find that this is a disclosure of information which the claimant reasonably believed to be in the public interest and reasonably believed to show a failure to take proper care of charitable funds. We therefore find that this is protected disclosure.

70. *On or about 22 August 2017 in an email to all the Respondent's senior management, including the CEO, deputy CEO and Chief Financial Officer, that £2,425 in donations was missing from a Mosque in London. (Disclosure 2)*

71. We find that this is a disclosure of information which the claimant reasonably believed to be in the public interest and reasonably believed to show a failure to take proper care of charitable funds. We therefore find that this is protected disclosure.

72. *On or about 19 January 2018 in an email to all the Respondent's senior management, including the CEO, deputy CEO and Chief Financial Officer, that the pension company in which employees' pensions were invested was inefficient/failing. (Disclosure 3)*

73. We find that this is a disclosure of information which the claimant reasonably believed to be in the public interest (being all the employees of the respondent, not just the claimant) and reasonably believed to show a failure to take deal with funds within a pension scheme appropriately. We therefore find that this is protected disclosure.

74. *On or about 24 May 2019 in an email to all the Respondent's senior management, including the CEO, deputy CEO and Chief Financial Officer that money was missing from a Mosque in High Wickham. (Disclosure 4)*

75. We find that this is a disclosure of information which the claimant reasonably believed to be in the public interest and reasonably believed to show a failure to take proper care of charitable funds. We therefore find that this is protected disclosure.

76. In relation to all the above disclosures we find that, in the reasonable belief of the Claimant, the information tended to show that a person had failed, was failing or was likely to fail to comply with a legal obligation.

77. In relation to all the above disclosures, we find that, in the reasonable belief of the Claimant, the disclosures were in the public interest.

*Automatic dismissal*

78. We find that the reason for dismissal was the comments made by the claimant at an open meeting on 19 July 2019 which were found by Hameed Al-Asaly to be discriminatory and constitute gross misconduct. We accept Hameed Al-Asaly's evidence that he was unaware of the protected disclosures and did not take them into account in reaching his decision to dismiss. The claimant's claim for automatic unfair dismissal therefore fails.

*Unfair Dismissal*

79. We remind ourselves that we must not substitute our view for that of the employer.

80. We find that the reason for the dismissal was the claimant's misconduct. We accept Hameed Al-Asaly's evidence on this point. We accept that he had a genuine belief in the misconduct and had reasonable grounds for that belief in that the claimant did not dispute what he said.

81. We find that the respondent acted reasonably in treating that as a sufficient reason to dismiss the claimant.

82. We note that the original disciplinary allegation did not specify what type of discrimination was being alleged although the general assumption was that the claimant was drawing a distinction between Muslims and non-Muslims and his use of the term 'Alex or John' was effectively shorthand for a non-Muslim. It was regarded as discriminatory on that basis.

83. In the disciplinary hearing the claimant said that he had no objection to a scholar from another faith if they were not being paid. As a result of the claimant mentioning other faiths, the respondent gave the label of 'race discrimination' to the allegation, rather than religion discrimination. Hameed Al-Asaly was prepared to accept that the claimant may accept the integrity of a non-Muslim scholar but he found the reference to 'Alex and John' and to 'Christopher and Jones' to be names generally associated with people of white ethnicity and therefore found that there was a racially discriminatory element to the comments. The claimant makes the point that this was not put to him directly and this is a ground of unfairness. We find that the remarks alleged to have been made by the claimant were made, which is not in dispute, and that they were premeditated and caused offence. They were not, as suggested by the

claimant, a 'slip of the tongue'. The allegation that they were discriminatory and offensive was put to the claimant and he had an opportunity to make representations. We do not think that the claimant would have said anything different in his disciplinary hearing if the allegation had been labelled race discrimination from the outset.

84. If we are wrong about this, we find that the remarks taken in context of the audience and his seniority within the organisation (where he positioned himself as a potential trustee) would justify a finding of gross misconduct. We find that such a comment would not be tolerated if made by anyone saying that grievances should not be heard by people with a different protected characteristic from them.
85. The claimant relies on differential treatment given to him (dismissal for discriminatory conduct) with the treatment given to Zaheer Khan in relation to a post on Facebook which the claimant alleged to be discriminatory. He raised this on 10 April 2019 as part of a number of allegations against Zaheer Khan but did not express his view that the comments were anti-Semitic, just that they were of concern. The respondent confirmed to the tribunal that there had been an investigation into the allegations against Zaheer Khan arising from this post and had been dealt with under the disciplinary policy. Zaheer Khan was not dismissed. We accept that an organisation must be consistent in its application of disciplinary rules. However, we were provided with no evidence of the offence or the disciplinary action taken, or any explanation of matters taken into account or mitigating factors raised. We feel unable, therefore, to make any findings on inconsistency and therefore do not find this a ground of unfairness. This was not raised at the disciplinary hearing or the appeal hearing.
86. In any event, we accept that neither Hameed Al-Asaly or Omar Mashjari were aware of this other case and they made their decision entirely based on the information before them.
87. The claimant raised a number of points regarding the time it took to deal with outcomes and appeals, both in relation to his grievance and his disciplinary. We note that the claimant is in the habit of submitting long written submissions and numerous attachments and pieces of evidence which he requires to be considered, even when they are not on point. We accept the respondent's evidence that taking all the claimant's materials into account would not have been feasible within the usual time limits for such procedures. We also note that there are no fixed time limits within the policy where a verbal outcome is not given, or within the ACAS guidelines. Applying a 'reasonable time' test, we find that the respondent dealt with the disciplinary and appeal within a reasonable time.
88. The claimant alleges that the information he gave to the disciplinary and appeal managers was not sufficiently considered. To the extent that these representations were a repeat of his grievance, we find that it was appropriate for the disciplinary and appeal managers to disregard this information (given that an appeal manager had been appointed to consider those issues) save to the extent that it provided a mitigating factor in relation to the disciplinary allegation itself. We find that the

stress and sick leave resulting from the claimant's view of this treatment by his manager did not explain the misconduct of the discriminatory comment. This was part of a premeditated presentation to the meeting and the sentiment regarding the appropriate person to hear his grievance had been expressed previously and subsequently. Although the grievance outcome was the reason for the claimant's dissatisfaction with David Clark which led to the comments which were the subject of the disciplinary, it was not necessary, or even appropriate for Hameed Al-Asaly or Omar Mashjari to hear evidence or reach findings on the subject matter of the underlying grievances.

89. The claimant also alleged that Pulvisha Raja, who was present at the disciplinary hearing as notetaker, steered the meeting away from a course where Hameed Al-Asaly was considering a more lenient approach. He alleges that she was put up to this by her line manager, Karim Samir. Having read the minutes and considered the evidence before us, we do not agree with this interpretation of the conversation. We do not find that Pulvisha Raja overstepped the mark of a notetaker or that Hameed Al-Asaly relied on anything other than his own reasoning in reaching his decision.
90. We go on to consider whether dismissal was a fair sanction. Although we accept that many employers would have considered a final written warning an appropriate sanction, we cannot say that dismissal is outside the range of reasonable responses. There was no dispute about the comment itself and the natural understanding of the claimant's position was that he suggested that an 'Alex or John' would not be able to reach a fair outcome. This suggested someone of that background could not be relied on to reach a reliable outcome. This was discriminatory and caused offence. It was contrary to the values of the organisation and fell within its list of gross misconduct offences in the Disciplinary Policy. In those circumstances, we cannot say it was outside the range of reasonable responses.
91. We accept the evidence of Hameed Al-Asaly and Omar Mashjari in relation to consideration of other sanctions and find that they were entitled to find that dismissal was an appropriate sanction.
92. If we are wrong about the fairness of the dismissal procedure, we find that the same outcome would have been reached if a different procedure had been followed. There was no dispute regarding the comments made and the respondent was entitled to find that these breached their conduct rules and fell within the category of gross misconduct under its disciplinary procedure.
93. We therefore find that the dismissal was fair.

#### *Wrongful Dismissal*

94. We find that the claimant had committed an act of gross misconduct according to the respondent's disciplinary procedure. He is therefore not entitled to notice, or pay in lieu of notice.

*Costs*

95. We have considered the respondent's application for costs in relation to the preliminary hearing on 5 October 2020, which was held over to be considered at the conclusion of the full merits hearing. Having taken into account the respondent's representations and the claimant's comments, we do not consider it appropriate to make a costs order. The claimant is a litigant person dealing with complex issues without the benefit of support. As a general comment, we find that the claimant has conducted himself with dignity and has put a lot of time into his preparation which was of assistance to the tribunal. In addition, the hearing which forms the basis of the costs application was also listed to deal with the respondent's counterclaim, which was withdrawn at the hearing. Given that the respondent did not withdraw its claim until the hearing itself, it is inappropriate to seek wasted costs for a hearing which was required to address the respondent's counterclaim.

Employment Judge Davidson

Date 12 November 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON  
15/11/2021.

FOR EMPLOYMENT TRIBUNALS

Notes

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