EMPLOYMENT TRIBUNALS

Claimants: (1) Navinderjit Singh (2) Parminder Singh

Respondent: Mphasis UK Ltd.

London Central remote hearing (CVP)

Employment Judge Goodman 9-10, 13 -15, 17 September 2021 Ms L. Moreton Ms D. Keyms

Representation
Claimants : Mr Kawsar Zaman, counsel
Respondent: Ms Kate Balmer, counsel

JUDGMENT

1. The first claimant was not discriminated against because of race.
2. The first claimant was not discriminated against because of religion.
3. The claim in breach of contract does not succeed.
4. Remaining claims of the first claimant are dismissed on withdrawal.
5. The second claimant was not discriminated against because of race.
6. The second claimant was not dismissed because of religion.
7. The second claimant was not unfairly dismissed.
8. The second claimant's claim for unpaid wages or in breach of contract does not succeed.

REASONS

1. The two claimants were dismissed by reason of redundancy, one in April and one in May 2020.

2. Both brought claims for unpaid bonus, and of discrimination because of race or religion and belief. Parminder Singh, the second claimant, also claims unfair dismissal. Navinderjit Singh, the first claimant, lacks qualifying service for unfair dismissal.

3. In closing, Navinderjit Singh's other claims - for holiday pay, expenses and the right to be accompanied - were withdrawn

4. The claims were brought separately, but have been consolidated because of the common element of discrimination alleged in the respondent's decision making.

Issues

5. Separate lists of issues had been agreed for each. They are appended to these reasons. In short, the claimants' case is that their dismissals for redundancy were engineered to remove Sikhs, or north Indians, from employment. Navenderjit Singh also alleges other detriment before dismissal.

Conduct of the Hearing

6. The remote hearing was open to the public, who could access the documents and witness statements on request to an email address posted in the chatline.

7. At the conclusion of the evidence there was a day's break. Counsel sent us written submissions early on the morning of the final day, when we heard brief oral submissions, and then reserved judgment.

Evidence

8. The tribunal heard evidence from the following witnesses. As this case concerns race and religion, we record how each identified their ethnicity and religion:

Parminder Singh, second claimant. He is Sikh, from a north Indian family, and an Australian citizen. He was in Australia during the hearing, and to accommodate timing differences his evidence was given in two parts, with the first claimant interposed.

Navinderjit Singh, first claimant, is Sikh, and of north Indian origin, resident in the UK for 13 years now.

Lyla Dlima, is Head of HR, UK and Europe. Her nationality, religion and ethnicity are not known to us. We assumed that if she was a Sikh or from north India she would have said so.

Sanjeev Kumar was until April 2020 Global Delivery Account Leader for BX/PE, the customer account in which both claimants worked. He helped recruit the first claimant and was his line manager. He is Hindu, from north India (Punjab) and a US citizen. His wife is a Catholic from Mumbai. He gave evidence from Toronto (Canada).

Kolanchery Renjeev is senior Vice-President and Global Delivery Account Leader for UK and Europe. He gave evidence about alternative roles for Parminder Singh. He is a Catholic from south India.

Vitthal Moola, senior Vice-President, Global Delivery, took over the accounts on which the first claimant worked in April 2020 and gave

evidence about the circumstances of his dismissal for redundancy. We do not know his religion or ethnic origin, but would assume that if Sikh or north Indian he would have said so. He works in New York and gave evidence from there.

Anurag Bhatia, senior Vice-President Europe, heard the second claimant's appeal. He is Hindu, married to a Sikh, and from north India (Punjab).

Subramanian Sundaresan (Sundar) is President- Global Delivery, and works in Chennai. Sanjeev Kumar and Renjeev Kolancherry are among those who report to him. We were given no information by either party about his religion or ethnicity but assume from the way the case was put that he is Hindu and south Indian, and that if he was not he would have said so.

Ramaa Sivaram is Senior Vice President Global Delivery, based in New York. In April 2020 the Refinitiv account in which the first claimant worked was added to her portfolio, and she gave evidence about the circumstances in which he was made redundant. She is a Hindu from south India.

9. There was a hearing bundle of 1,308 pages, with schedules of loss in addition. A few items were added during evidence, notably an Excel spreadsheet with details of all terminations April-June 2020. Some background material on north-south tensions in India was appended to the claimants' closing submissions but the material was not put to any witness. We read those documents to which we were directed.

Findings of Fact

10. The respondent, Mphasis UK, employs around 600 people in the UK. It is part of a global group employing around 29,000 people, with headquarters in Bangalore, south India.

11. The chairman of the board, Davinder Singh Brar, is Sikh. The chief executive, Nitin Rakesh, is Hindu. It is said that the workforce is ethnically diverse. In the absence of any figures (see on), we noted evidence that some Muslims and Christians were employed in Mr Subramanian's team, which may well have been majority Hindu.

12. HR staff in the UK reported to the global HR team in India.

13. There was little evidence before the tribunal about the north-south divide, or about religious differences. Punjab was identified as being in the north. We know that Sikhism developed out of Hinduism, principally in the Punjab, and that within India, Sikhs are often identified as 'Punjabis'. 'Singh' is a name usually taken by Sikh men, (Kaur by women) and the name Singh will usually identify them as Sikh. We heard in evidence that within Punjab there are many Hindus as well as Sikhs, and some intermarriage, and that in Punjab

there are Hindu families with the name Singh. Thus, knowing someone was called Singh might well suggest he was Sikh, but was not conclusive.

14. On the north-south divide, where a contrast was made between Hindi and Punjabi speakers, we understood that several southern states had their own languages, speaking neither Hindi nor Punjabi. We were shown newspaper reports of political tensions over the dominance of northern over southern states. There was no mention of other populous states in northern India - UP, Gujerat or West Bengal, say, the latter two having their own languages. Bangalore, the company's HQ, is in southern India, where the principal languages seem to be Kannada and English. Some individuals were identified as being from "western India" (for example), so until the submission of the newspaper items on closing we were unclear whether the north-south divide was about geography generally or something more like a state of mind. In fact-finding on this, we have taken on trust that there are perceived differences, and some resentment by southern Indians of those from the northern states, or that Hindus may dislike Sikhs.

15. The respondent's business provides IT technology solutions to large companies ('business process outsourcing' or BPO) in banking, insurance and pharmacology. Customers contract for work, whether IT system maintenance, or installation of new software, or running a call-centre, say, in effect hiring a team of the respondent's employees for a project. This means the respondent's main asset is its employees' expertise, and staff are its largest business cost.

16. In the nature of the work, some projects are long running, others of limited term. Customers may give notice to end a contract, or additional work may be offered, or new customers arrive. Between projects staff may be "on the bench", while a new project is sought for them.

17. Relatively few staff actually work in the respondent's London office. Most UK employed staff are located in the client's premises. Teams may also be spread between countries, to align with a multinational customer. Senior managers may be in another continent. This means there is less face to face communication than in many businesses.

18. The respondent does not, as a matter of policy, carry out diversity monitoring in the UK or any other area of operation. Despite this assertion, we noted, however, from the list of 2020 terminations, that they did in fact record gender, perhaps to enable compliance with the statutory requirement to report gender pay disparity. They do record immigration status, so as to be able to check that staff have the right to work in the UK or US, as the case may be. The respondent's witnesses added that even if they *had* monitored ethnicity in line with UK and US categories, that would not have captured the complexity of Indian ethnicity, as most of the workforce would simply have been recorded as 'Asian'. We observe that the same argument would not however apply to religion, as most south Asian faiths are listed in conventional UK diversity monitoring.

19. Although diversity itself was not a prominent concern of the respondent, we noted that the global company, using its whistleblowing policy, was careful to check compliance with its policy of neutral hiring. It seems there was a perceived problem of staff favouring particular individuals, or particular staffing agencies, with personal or family connections, when recruiting.

Second claimant – Parminder Singh

20. Parminder Singh was recruited in 2017 for a job in London as Associate VicePresident – Client Engagement NVG/GS, to work on an account where the work ended unexpectedly after two months. He had been hired from Australia at some cost - for example, the company paid relocation expenses usually afforded only to transferring staff - and he was found a post in the US on the Alight account, and, unusually, given a loan to facilitate the move. In February 2019, when the US project came to an end, he was transferred to the UK, at an annual salary of £150,000 plus bonuses.

21. He indicated then that he would like to work outside the US for at least a year, as this would mean he could achieve more favourable green card status on return to the US. However, in our finding there was no agreement (as asserted by the claimant) at that stage that he would transfer back to the US when the UK assignment completed.

22. Parminder Singh, unlike more traditional Sikhs, is clean shaven and does not wear a turban, so is not as readily identifiable as such. His name might suggest he was a Sikh (though as noted some Punjabi Hindus have the name), or it might be known from conversation that he was Sikh.

23. His project in the UK was to manage Global Sources/Clarion (GS) within the BX portfolio, where more energetic and effective management of the account was required. In this the claimant was successful. He also managed Kensington Mortgage, who had placed a small amount of work so far, which it was hoped would increase.

24. He was appointed client engagement manager (CEM) and was now managed by Sanjeev Kumar. His remuneration was an overhead of the contract price, meaning his time not directly billed to the client.

25. In October 2019 the respondent's global firm, at a senior management meeting in Phuket, discussed a quarter-on-quarter drop in profit margin. In a memo headed: "extraordinary situations call for extraordinary measures – margins", Sundar Subramanian suggested to a number of senior managers, which included Sanjeev Kumar, and the head of HR, Sanu Samuel, that they should reduce the number of managers whose time was not billed to the client, whether by releasing them to the general pool, or negotiating changes on contract terms so that they were billable to the client, and that delivery management generally should be moved into the accounts section. Otherwise, the fall in profit would "impact the incentives of our teams", and make them "less competitive in the industry", that is, valued staff would leave for more profitable competitors able to pay higher bonus. Unless the client

could be persuaded to be billed for his time, or he was moved, Parminder Singh was one of those under threat from this decision.

26. Investigations on this must then have started, because at the end of November 2019 there are emails from central HR about the cost of making the two claimants redundant, and Lyla Dlima in London supplied the figures for this. We also have an email from Sanjeev Kumar to central HR, copied to Sundar Subramanian, about the "opportunity for optimisation of delivery on the BX accounts", confirming an earlier discussion. This email identifies four managers on the BX accounts whose names had evidently come up. They include the two claimants in the UK, and two other employees in the US, and mentioned that the company had already "released" four individuals, and were "releasing" some others. We do not know the names of these additional four employees or the contractors. Sanu Samuel had identified Parminder Singh because his account, GS, was "ramping down" (coming to an end), and could be managed from offshore. Sanjeev Kumar however defended him as "one of the strongest programme/delivery manager that we have", adding that another account he managed, (Kensington Mortgage) was expected to increase. (He also defended Navinderjit Singh as someone who should be given 3 months to improve performance, as he had only just been hired.) Of the two US staff, he disputed one of the US candidates for redundancy, while agreeing the other should go. The response from Mr Samuel did not agree with him on all points, but left the decision with Sanjeev Kumar, noting of Parminder Singh "if he is good, maybe he can do Refinitiv too". Refinitiv was being led by Navinderjit Singh, the other claimant. In conclusion, both were *considered* for redundancy in November/December 2019, but no further steps were taken then. By contrast, both the US employees, both (by their names) probably Hindu and south Indian, were dismissed, and in the UK four were retained but moved to otjer roles.

27. In December 2019, there was a clearer indication that GS were bringing the contract to an end, and in January 2020 this was confirmed. Work on the contract was completed in February 2020. In the meantime, Kensington Mortgage, the other prospect under Parminder Singh's management, was showing no sign of further work coming. At the end of December, Sanjeev Kumar circulated Parminder Singh's CV among UK colleagues (including Navinderjit Singh) in the hope of finding a billable program manager role for him, and asked US colleagues if there was any opportunity on the Refinitiv – or any other -account.

28. In January 2020 there were further discussions by Sundar Subramanian and the HR leaders about potential redundancies. We only know about the UK managers being considered. They asked Lyla Dlima of UK HR for more information. On 13 January 2020 Lyla Dlima emailed them with a "brief" on both claimants, containing feedback from Sanjeev Kumar, noting of Parminder Singh that "he is a capable people manager, however he has not had the opportunity to showcase his skills yet". The other managers she had consulted on his ability, Anurag Bhatia and Kolancherry Ranjeev, had no feedback to give because he was rarely in the London office and they had had very limited interaction with him. (The claimant says this was because he

was usually on the client site). Ms Dlima also mentioned he had been given a warning for trying to use India recruitment agencies to by-pass the respondent's in-house recruitment teams.

29. All this was behind the scenes, until 12 February 2020, when Sundar Subramanian made a general announcement of a reorganisation of delivery leadership, with the declared aim of consolidating accounts based on domain, moving delivery closer to the region, and optimising leadership bandwidth. Sanjeev Kumar, the first claimant's line manager, was to move to a different account. Of his existing BX/PE portfolio, Refinitiv would move to Rama Sitharam, and the rest to Vitthal Moola. There were similar redistributions of four other managers' responsibilities.

30. The incoming managers, Rama Sitharam and Vitthal Moola, discussed the position with Sanjeev Kumar. With respect to Parminder Singh,

31. In February or March 2020, the claimant says that Sanjeev Kumar told him "Sundar is after both Singhs". Sanjeev Kumar firmly denies this. There is no context for the remark. It is possible it related to the emails of the previous year when the claimants, both called Singh, were in the group of managers under consideration for being moved off the account out of the firm, or to the implications of the recent reorganization.

32. Parminder Singh was also put forward for a vacancy on a project with insurance client Marsh. On the first occasion he was not shortlisted by the client. On the second occasion he was interviewed, and there was a favourable indication that he was being considered for hiring, but the decision was put on hold because of the onset of the pandemic towards the end of March 2020. (The claimant says there was only one Marsh opportunity, but on this we prefer the respondent's evidence). The contract price for the work would pay the respondent less than they paid the claimant, but the respondent was prepared to take that.

33. The Marsh opportunity was one of those circulated to the claimant and others on the respondent's fortnightly global vacancy list prepared by their talent fulfilment team. The claimant was actively looking for roles during these weeks.

34. In February the claimant discussed with Renjeev Kolancherry whether he was available for a project with Ardonagh, an insurer. In March or April Lyla Dlima discussed with the claimant a Transformation manager role for Ardonagh, whose work was expected to increase in coming months, but was now on pause because of the pandemic, the UK lockdown having started towards the end of March.

35. On 6 Aril 2020, soon after Vithal Moola took over from Sanjeev Kumar as line manager, the claimant asked him about a role in Chicago on the APPRIA account. Vithal Moola clarified what this was, as to his knowledge there was a four man team there that did not need a leader. On hearing back from the claimant he searched all his project lists to find it, without success. The

claimant then said he could have been mistaken, as he had overheard a conversation and could have been mistaken.

36. Faced with a drastic slowdown in work because of Covid, the respondent decided to cut costs, and imposed a freeze on hiring, delayed new starters, and renegotiated rates with contractors.

37. On or around 19 April Lyla Dlima asked the claimant if he would consider furlough for two to three months, at the end of which the Ardonagh post might become available, and if not he would be made redundant. Her evidence, which we accept, is that all employees then on the bench were being offered furlough, 12 in number. Under the government scheme, a furloughed employee would be paid 80% salary, but capped at £2,500 per month. As a high earner, this would mean a substantial pay cut for the claimant and he indicated he could not agree, given his financial commitments. Ms Dlima discussed this with her managers. Her superior directed on 21 April that he would be made redundant if he did not want to be furloughed. At the request of Kolanchery Renjeev a further attempt was made to persuade him to take furlough, without success. He asked to see the figure for a redundancy payment, indicating he proposed to return to Australia, where he still had a house.

38. On 27 April the claimant was sent an "at risk" letter, on grounds that an employee dedicated to his role was no longer required. There was a consultation meeting by telephone on 29 April. They discussed alternative roles. The claimant volunteered to take a 30% cut in salary as an alternative to furlough. Ms Dlima did not think the respondent could afford that, and also said it was unfair to others being furloughed who would also meet some hardship.

39. The claimant did not mention other Ardonagh roles at the time. He later complained that he should have been offered roles undertaken by Raghu Gollapudi and Rajesh Devarajulu. The respondent says that they were on lower salaries, worked for RBS, had developed client relationships, and that it would be disruptive to dismiss one in place of the claimant. Some new roles were also available on the Ardonagh project. Nicholas Tupper was recruited from Ardonagh as project management officer, because of his knowledge of Ardonagh. Nichola Thompson started on 1 April 2020 as Managing Director – Insurance. She had insurance experience, which the claimant did not. Thirdly, David Frost started on a 6 month contract (which ended in December 2020) managing a business processing service, of which the claimant had no experience. In two cases the salaries were lower than the claimant's.

40. The respondent decided on 1 May to dismiss the claimant by reason of redundancy, because they had decided they could not afford to pay the claimant when there was little work available for him to do. At the claimant's request the dismissal was effective 11 May, so that he could get the holiday entitlement for May.

41. The dismissal letter is dated 12 May. It recites the discussion about furlough, the delay on the availability of the transformation manager post, and the freezing of the Marsh post. The claimant was told he would be paid the Q4 bonus, and one month's salary in lieu of notice, and the costs of relocating to Australia, plus the statutory redundancy payment.

42. On 22 May he appealed, saying he had been targeted for dismissal because of his religion, the process was unfair, and alternatives to redundancy were not properly considered. Full grounds of appeal were set out in a letter from solicitors dated 27 May. The letter conceded that work on the Global Sources/Clarion accounts had been completed in mid-February. It said he should have been given one of the Ardonagh roles, that he had been promised a transfer back to the US, and that he had learned in January that the company, and Sundar Subramanian in particular, a south Indian Hindu was looking to end his employment. He preferred south Indians and Hindus. The redundancy consultation was inadequate. The Marsh role was inadequate because the billing rate was lower than his salary.

43. Anurag Bhatia was appointed appeal manager, as someone hitherto not involved with the claimant's work, and from Punjab in north India. The claimant's solicitor sent a list of questions for Sundar Subramanian. They asked to represent the claimant at the meeting, or and when this was refused, it was proposed that Navinderjit Singh attend with him, also refused. There was an appeal meeting on 25 June 2020, where Ms Dlima took notes, and after the meeting she was asked to investigate some of the claimant's points about alternative roles at Ardonagh, Marsh and in the US. The claimant was asked to give more detail about the alleged discriminatory remarks – he had said Sanjeev Kumar told him "Sundar is looking to terminate the Singhs", and that Ranjeev Kolancherry told him Sundar (Subramanian) "had something big in mind for Mr Singh". He sent it on 11 July 2020.

44. Based on information provided by Ms Dlima, Mr Bhatia decided at some point that the termination was by reason of redundancy, that the alternative roles were unsuitable, and that the alleged remarks had not been made. There was no taint of discrimination because of religion or ethnic origin, it was a purely commercial decision. For reasons not explained, these reasons were not reduced to writing and sent to the claimant until over a year later, on 17 July 2021, just before disclosure in these proceedings, which is presumably when the omission was noticed.

Navinderjit Singh

45. Navinderjit Singh was recruited in July 2019, for a new post created in anticipation of expanded work in UK and Europe for Refinitiv, part of the Blackstone Private Equity portfolio (BX/PE). His team was based at the client's office in London, where 50 or so Mphaiss staff worked.AA number of 'hot desks" were available for them. Two reported to him directly. He was paid a quarterly bonus on meeting targets. At the end of his first quarter (Q2) he was disappointed by the level of his bonus, which had been dragged down by poor results in the US. He argued that the target was unfair, as he only had

responsibility for performance in the UK. Although it took a little time, the respondent conceded the point in November 2019, and removed the US target element in his compensation.

46. He was line managed by Sanjeev Kumar. He engaged in the weekly team meetings. From 16 October 2019 the claimant also set up 1:1 meetings with Mr Kumar, who frequently failed to attend, cancelling or postponing. The claimant's evidence was that Mr Kumar attended only two of these, and thereafter the claimant decided to cancel them. Sanjeev Kumar's evidence is that as a busy man he cancelled meetings with other team members too. He adds that the claimant did not always join the weekly team meeting.

47. As noted above, he was considered as part of the exercise in October and November 2019 to cut the costs of managers not billable to the client, when Sanjeev Kumar said he should be given more time to show his skills, and in December, as noted, it was suggested Parminder Singh could take over Refinitiv, indicating Navinderjt's role was under threat.

48. Navinderjit Singh wears a turban and has a beard and can thus readily be identified as Sikh. In November 2019 he met Sundar Subramanian, Sanjeev Kumar's manager, in person in London.

49. In mid-December Sanu Samuel (India HR) commented negatively on his usefulness, reporting (based on team feedback): " he is not effective.. doesn't join in any meetings and no one knows what he does", and his "team is complaining".

50. For Q3 he was given higher targets than others in his team. The respondent explains this was because his report, Manoj Kumar, was rated on completion of existing projects, while the claimant's target included new business, and that this was the common pattern for leaders at his level. The US project was removed from his target pursuant to his request.

51. At the end of December 2019 he asked for a letter supporting his application to UKVI for indefinite leave to remain. Lyla Dlima authorised, on 23 December, a standard letter confirming he was employed on a permanent contract of employment at £147,000 per annum, stating that "his role is key to the business and through it he continues to make a valuable contribution to the U.K.'s tech sector in line with the purpose of his current visa".

52. However, in the first quarter of 2020 there was a decline in business forecast for Refinitiv, which the respondent believed to be due to their planned acquisition by London Stock Exchange. In an email of 10 March 2020 Navinderjit Singh explained to administrative colleagues chasing him (from a fortnight before, suggesting he was well aware of the work reduction coming) to authorise new hires that he was not authorizing any offers due to "the huge uncertainty, reorganisation and ramp down at the customer side".

53. In Lyla Dlima's report of 13 January for senior managers looking at both claimants in the context of staff reductions, she reported there were "issues

with his attendance" – it was said he did not come to the office before noon unless there was a client meeting. She noted two cases of suspected attempts at preferential recruitment. The feedback from Renjeev Kolancherry and Anurag Bhatia was that they had hardly met him; the latter added "he would like to explore if we can utilise him elsewhere given the growth we are predicting for the region".

54. It can be seen from emails that when lockdown started Sundar Subramanian proposed a two-week freeze on all recruitment activity, including billable hires, to delay new starters not pay contractors who could not work from home, and "release people out of bench immediately if there is no skill matched to our demand".

55. He was not given a target for Q4 – we are told no one was, but also that he had seen the overall target for the year and so by Q4 could have worked out what was left – and not paid anything, but in May 2020, responding to his grievance, he received £7,486 for Q4 as a goodwill payment.

56. At the end of January 2020 he was notified of a performance bonus of £4,000 to be paid in June 2021 based on performance in the year 2020/21. It was not paid because he was no longer employed in June 2021. This was a new scheme for performance linked pay, available only to key employees. (Parminder Singh was also so notified). Sanjeev Kumar says he had nominated the claimant for inclusion in the scheme because despite misgivings about his leadership, he hoped the bonus would encourage better performance.

57. On 1 April, following the restructuring announced by Sundar Subramanian in February (see above) Ramaa Sitharam replaced Sanjeev Kumar as his line manager. She discussed staffing with him on handover. She then decided to allocate Navinderjit Singh's UK Refinitiv role to Jitendra Borkar who already managed the QBE and AIG accounts. The US part of Refinitiv went to Atari Gokhale, a US based client engagement manager. She informed Sanjeev Kumar that she did not need Navinderjit Singh because her existing team could manage his duties. In her view his cost was excessive as he been brought in to manage the full portfolio, but by early 2020 was only managing the UK portion. She phoned Lyla Dlima on 1 April to say Navinderjit Singh was to be progresed toward dismissal.

58. She notified Lyla Dlima on 19 April that the changes were to go ahead, and on 21 April Lyla Dlima booked a meeting with the claimant for all 5.15 pm, which he declined. In response she sent him the letter of termination which was to have been discussed at that meeting. That his employment has been terminated with immediate effect "due to a lack of available work". He would be paid one month's pay in lieu of notice. Soon after she telephoned to discuss the letter and reported back that he was unhappy and seeking legal advice. She added: "as far as we are concerned he does not have the two years' service to bringing a claim so we should be fine".

59. Although the termination was said to be for redundancy, Sanjeev Kumar entered it on the software system as a termination for unsatisfactory performance, lacking regular on-site presence, and unable to successfully lead the team. He was however asked to change this to redundancy.

60. In all the respondent made 11 “involuntary terminations” of UK staff in April 2020, and another 18 in Germany.

61. On 26 April 2020 Navinderjit Singh lodged a grievance. On termination, he complained the proposed meeting was outside his working hours, and that it was untrue there was a lack of available work. He referred to letter accompanying his application for indefinite leave to remain, and be notified about a retention bonus payable in June 2021. At that stage Covid had not been anticipated, but it had not had a significant impact for ref Finnerty, Q4 was the most successful of the three quarters he had been there. Three individuals recently been added to the account. If lack of work was the real reason, he should have been considered for further. Alternatively, he should have been reassigned to another account, such as such as Marsh in the UK. He complained of the quarter for bonus payment and that he had not been allowed to work as notice. He went on to complain that he had had minimal with meeting frequently being cancelled without notice. He considered that he had been terminated “under false pretenses, and that he considered this was because he held a different religion and belief to others in the Refinitiv account”, and the others were treated preferentially, which was connected to his age.

62. The respondent dealt with this by letter rather than a meeting. Their reply of 14 May 2020 was that without two years of employment the company did not have to follow full redundancy process, or give a reason for termination at all. On the termination meeting, he was reminded his working hours were 9 a.m. to 6 p.m. (this appears to be error, based on Indian working hours). He was told that there was a reduction in new business from the Refinitiv account, and the impact of the coronavirus pandemic, leading to an urgent need for the company to reduce business costs, “which has resulted in redundancies across the business”. His role was eliminated as “we just no longer needed a dedicated BX/PE delivery leader for EU/UK, or a dedicated Refinitiv delivery leader for EU/UK, nor for Risk/Tech Ops at the vice president level”. The letter for UKVI suggesting hos role was likely to continue was in standard form, and sent before the pandemic impact was known. Of the three individuals added to the account, they were based in India in US and UK, and were lower paid than him. The company did not need his role. As for furlough, the company was not obliged to offer furlough, and the elimination of his role was for a permanent lack of work, not a temporary adjustment to the pandemic. On alternatives, there were none suitable, and in any case the company had just instituted a hiring freeze. The Marsh account would have been unprofitable for someone at his level of salary. As for notice, as there was no available work, it would not have been practical to ask him to work it. The company denied discriminating - it was said they had a wide range of religions and ages, and they were unaware that he had ever raised such concerns during his employment.

63. Navinderjit Singh's solicitors replied in detail to the these points. There was a particular complaint that the three individuals brought onto the Refinitiv account were added by Ramas Sitheram, who was from southern India and suspected to be Hindu, as was also the case for President/Global delivery and Head of Delivery in Europe, "and all individuals holding central positions within the delivery organisation". None were Sikh, other than Parminder Singh who was also being made redundant.

64. The respondent replied to this by their own solicitors. The redundancy was said to arise from a restructure, such that the Delivery Leader/Vice President was no longer needed. The three employees brought onto the account in April had been employed elsewhere in Mphasis for many years, only one of them did work formerly carried out by Navinderjit, and at a much lower salary. The Marsh offer had been retracted by the client. The discrimination was still denied.

Relevant Law Direct Discrimination

65. Section 13(1) of the Equality Act defines direct discrimination**:**

> 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.

66. Deciding what is 'less favourable' involves a comparison, and by section 23 (1):

> On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

67. Because people rarely admit to discriminating, may not intend to discriminate, and may not even be conscious that they are discriminating, the Equality Act provides a special burden of proof. Section 136 provides:

> (2) If there are facts from which the court could decide, in the absence of any other xthat the contravention occurred
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

68. How this is to operate is discussed in **Igen v Wong (2005) ICR 931.** The burden of proof is on the claimant. Evidence of discrimination is unusual, and the tribunal can draw inferences from facts proved by a claimant. If inferences tending to show discrimination can be drawn from those facts, it is for the respondent to prove that he did not discriminate, including that the treatment is "in no sense whatsoever" because of the protected characteristic. Tribunals are to bear in mind that many of the facts required to prove any explanation are in the hands of the respondent.

69. Where there is no actual comparator, tribunals must focus on the reason why the claimant was treated as she was, recognising that construction of a hypothetical comparator is an aid to identifying the reason for the treatment - **Shamoon v Royal Ulster Constabulary (2003) ICR 337. Anya v University of Oxford (2001) ICR 847** directs tribunals to find primary facts from which they can draw inferences and then look at: "the totality of those facts (including the

respondent's explanations) in order to see whether it is legitimate to infer that the actual decision complained of in the originating applications were" because of a protected characteristic. There must be facts to support the conclusion that there was discrimination, not "a mere intuitive hunch". **Laing v Manchester City Council (2006) ICR 1519**, explains how once the employee has shown less favourable treatment and all material facts, the tribunal can then move to consider the respondent's explanation. There is no need to prove positively the protected characteristic was the reason for treatment, as tribunals can draw inferences in the absence of explanation – **Network Rail Infrastructure Ltd v Griffiths-Henry (2006) IRLR 88 -** but Tribunals are reminded in **Madarrassy v Nomura International Ltd 2007 ICR 867**, that the bare facts of the difference in protected characteristic and less favourable treatment is not "without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent" committed an act of unlawful discrimination". There must be "something more".

70. Among the factors from which we can draw inferences, are statistical material, which may "put the tribunal on enquiry" – **Rihal v London Borough of Ealing (2004) ILRLR642**, where a "sharp ethnic imbalance" should have prompted the tribunal to consider whether there was a non-racial reason for this. **McCorry v McKeith (2017) IRLR 253** noted that "reluctant, piecemeal and incomplete nature of discovery" could be a factor indicating discrimination, as can omissions and inaccuracies -**Country Style Foods Ltd v Bouzir (2011) EWCA Civ 1519**.

71. The fact that an employer has acted unfairly or unreasonably does not of itself infer discrimination: **Glasgow City Council v Zafar (1998) ICR 120.** Further, there may be unjustified reasons for an employer's actions, but if the tribunal accepts that these were the genuine reasons, and those reasons would have been applied to someone not sharing the claimant's protected characteristic, discrimination cannot be inferred from that**: Bahl v Law Society (2004) EWCA Civ 1070.**

72. Direct discrimination under section 13 requires less favourable treatment because of a protected characteristic. The claimant's rely on the protected characteristics of race, and religion and belief. The Equality Act 2010 defines race at section 9 as including:

> "(a) colour;
> (b) nationality;
> (c) ethnic or national origins".

and section 9 (4) specifies that a racial group (those who share race as a protected characteristic) can comprise one or more distinct racial groups. This is relevant to "north Indian" as a group entitled to protection from discrimination.

73. It is uncontroversial that Sikhism is a religion. As for race, in **Mandla v Dowell-Lee [1982] UKHL 7**, a case decided before religion and belief became a legally protected characteristic in discrimination legislation, it was held that Sikhs form an ethnic group entitled to protection from discrimination.

74. In relation to North Indians, the respondent accepts that this is an ethnic group or group sharing a national origin, having regard to what was said in **Chandok v Tirkey UKEAT/0190/14/KN** (citing **R(E) v Governing Body of JFS (2010) 2AC 728),** about discrimination by descent.

Unfair Dismissal

75. Section 98 of the Employment Rights Act 1996 provides the following as potentially fair reasons for dismissal: conduct, capability, statutory obligation, redundancy, or "some other substantial reason justifying dismissal". It is for the employer to establish the reason for dismissal.

76. If a potentially fair reason is shown by the employer, section 98 (4) provides that it is the employment tribunal to determine:

> "whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
>
> (which)
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case".

77. The tribunal must not substitute its own view for that of the employer, provided the employer's action was within the range of responses of a reasonable employer, and this principle applies both to findings on whether the decision itself was reasonable, and on whether the process adopted was reasonable – **Foley v Post Office (2000) IR LR 82,** and **Sainsbury's Supermarkets Ltd v Hitt (2002) EWCA Civ 1588.**

78. Where a dismissal is found unfair because of shortcomings in the process by which the decision was reached, when it comes to remedy, the tribunal can consider what difference a fair procedure would have made to the outcome – **Polkey v AE Dayton Services Ltd (1988) AC 344**.

79. A dismissal by reason of redundancy is defined in section 139 of the Employment Rights Act as where:

> the dismissal is wholly or mainly attributable to—
>
> (a) the fact that his employer has ceased or intends to cease—
>
> (i) to carry on the business for the purposes of which the employee was employed by him, or
>
> (ii) to carry on that business in the place where the employee was so employed, or (b)
>
> the fact that the requirements of that business—
>
> (i) for employees to carry out work of a particular kind, or
>
> (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,
>
> have ceased or diminished or are expected to cease or diminish

80. In redundancy cases, a tribunal may, in relation to the fairness issue, consider the pool of employees considered for redundancy, how the criteria for selection for redundancy within that pool are identified and applied, how employees are consulted about redundancy, and what consideration is given to alternative employment, but should remember not to decide for itself whether an alternative would have been fairer, but only whether the employer's decisions were within the range of conduct of a reasonable employer – **Williams v Compair Maxam Ltd (1982) IRLR 83**. It is for the employer to decide the pool, and that choice can be difficult to challenge if the employer has genuinely applied his mind to that – tame at v Ryan EAT/663/94. It can be a reasonable decision to have a pool of one person only – **Halpin v Sandpiper Books Ltd UKAEAT/0171/11.** As for consultation, in **Polkey,** an employer "will normally not act reasonably unless he warns and consults any employees affected…"; but what consultation is required will depend on the facts of the case, and the tribunal should consider the reasonableness in the circumstances. On alternative work, an employer is generally obliged to take reasonable steps to look for alternative work, but is not required to take every conceivable step possible - **Quinton Hazell Ltd v Earl (1976) IRLR 296,** and **British United Shoe Machinery Co Ltd v Clarke (1977) IRLR 297.**

81. Finally, on compensation for successful claims of discrimination or unfair dismissal, where an employer has failed to follow the ACAS Code of Practice on Discipline and Grievance, and the tribunal considers that failure unreasonable, it may, if it is just and equitable, increase the compensation otherwise payable by up to 25% – section 207A Trade Union and Labour Relations (Consolidation) Act 1992.

Discussion and Conclusions Parminder Singh

82. Taking the alleged discriminatory treatment item by item from the list of issues (see below), the first in time is that he was not transferred back to the USA as agreed. In our finding, there was no such agreement, though that may have been his long-term plan, which respondent may have been happy at some stage to facilitate. In fact, when his role as a non-billable manager was under threat because of the "extraordinary measures" identified in November 2019, his CV was circulated to US managers in case there was a vacancy there. There is no evidence of any work available on APPRIA. Without work for him in the US, he could not work there, not being a US citizen. The claimant does not establish the facts of less favourable treatment.

83. Items (ii) and (iv) are in effect the same, that his colleagues Ragu Devaraju and Rajeesh Gollapudi were in March 2020 allocated to "new and growing accounts", and not included for selection for redundancy in a pool with the claimant. The respondent's evidence, which we accept, is that these two were not given new accounts, for RBS (financial services) and Ardonagh (insurance) as they had worked on these accounts from before 2019. In addition, both were significantly lower paid, already established with their respective clients, and hds experience in building Apps towers, which the claimant did not. Ms. Dlima makes the additional point that the claimant made

no mention of this preference at the time of their meetings. In our finding, the two comparators were not materially comparable. The claimant was paid more, did not have the client relationships, nor the technical expertise or experience of the relevant industries.

84. Taking (v) next, that the claimant's dismissal by reason of redundancy was "predetermined and a sham", we considered what facts the claimant had established from which we might draw an inference that the decision was because of race or religion, namely being Sikh or north Indian. We note that the two UK employees in the group of four names being considered in November 2019 were both Sikh, and probably (given the lack of evidence) in a minority compared with the Hindu majority, the remark about "Singhs" in early 2020, and "something big for Mr Singh". That his name was in the frame in autumn 2019 could also indicate predetermination, when the lack of work was not acute until March 2020. Against that, there is evidence from the "extraordinary measures" email that there were financial reasons for looking for staff cuts at that stage, and there was no doubt, as the claimant accepts, that work on his account came to an end, as predicted, by February 2020, and Kensington Mortgage had not led to new work, so the reality, independent of race and religion was that he was about to be "on the bench" and looking for new roles. The lack of alternatives for him is what matters for his dismissal.

85. Before examining those, we consider where the "sham" is said to have originated. Initially the claimant pointed to finger at Sanjeev Kumar. In the hearing (possibly after reviewing the email evidence available on disclosure) blame shifted to Sundar Subramanian. Mr Kumar clearly supported the claimant in November and December 2019, and was circulating his CV to contacts in the UK and US in December and early January, which tends to suggest he hoped to keep him on. As for Mr Subramanian, he drove the proposed cuts and reorganisation, eventually announced to staff in February 2020, but there is no evidence that his reading of the financial performance figures was a sham, and there is no doubt that the claimant's own role was ending.

86. Allegations (iii) and (vi) are that Lyla Dlima in particular and the respondent generally did not look for alternative roles. We know Sanjeev Kumar looked. We know too that the claimant was put forward for the role at Marsh, despite being paid more than the client's contract price, and only lost it because of the supervening uncertainty of the pandemic putting plans on hold. On Ardonagh, we have evidence that specialists were hired for three of these roles, one coming from Ardonagh at the client's request and the other two hired from outside for specific expertise, and little evidence that the claimant was suitable. These are good non-discriminatory reasons. We know that he *was* considered suitable for the generalist role there, and urged to accept furlough in the hope the work would go forward in July (in the event it did not start until later in the year). This suggests the respondent wanted to keep him on, following their normal process of putting skilled employees "on the bench" as work ebbed and flowed, not look for a reason to dismiss him because of race or religion, but was faced with uncertainty when the pandemic supervened.

The trigger for dismissal was the claimant not wanting to take the pay cut of furlough and the respondent refusing to give him special treatment – in this respect he was seeking to be treated more favourably than others being furloughed. The way the search for work as an alternative to GS/KM roles was conducted meant that by the time there was a fall at risk consultation on redundancy, all the alternatives had been explored. Although it is unusual not to look for alternatives after the consultation, in this case it is adequately shown that alternatives were sought, and that not looking for alternatives after the consultation meeting was not because of race or religion.

87. Item (vi) is that the respondent did not consider an alternative to redundancy. They did consider furlough, and they did put him forward for Marsh and the general role at Ardonagh. Vithal Moola did look for the APPRIA role. The claimant's proposal of a 70% pay cut was refused because inequitable, and there is no evidence anyone, from any background, got this. The claimant was also getting fortnightly global lists of posts coming vacant within the organization, and following them up, knowing he "on the bench", even if not formally notified of the risk of redundancy, and was successful with Marsh even if in the event the post was withdrawn because of the pandemic.

88. Item (vii) is that the respondent selected him in preference to hypothetical Hindu and south Indian comparators. We considered the evidence showed no pool from which he was preferentially selected. He lacked the specific skills required for the Ardonagh posts. The respondent adequately shows reasons for not keeping him on when alternatives were not found and he did not wish to be furloughed. We also take into account that the two Singhs were among 12 who left at this time. That weakens any case that their departure was engineered when Sundar Subramanian realised that they were both Sikh.

89. Item (viii) is that the delay in delivering the appeal outcome was because he was Sikh or north Indian. We account of the prompt handling of the appeal up to June 2020, with a hearing and further enquiries. It was suggested this was because of the constraints and distractions of working in the pandemic. No doubt those were real, but do not of themselves explain why the respondent lost sight of delivering a decision on the appeal. However, we found it hard to accept that the reason for failing to bring the appeal to a conclusion was because of religion or north Indian origin. The respondent by now knew that discrimination was alleged, and then that employment tribunal proceedings had started. If anything they would have been concerned to see the outstanding processes were now concluded properly, not give cause to believe there was unfair treatment. In the light of our findings that race and religion played no part in the other less favourable treatment alleged, where we have accepted the respondent's non- discriminatory explanations, there is no basis, in the absence of anything else, for concluding that not concluding the appeal process was because of being Sikh or north Indian, rather that the all too human explanation that it had dropped off the priority list, or – speculatively - that legal proceedings had paralysed normal managerial processes. We noted that the respondent did not disclose the spreadsheet of involuntary terminations until the case had begun, or the holiday pay screen, but that an application by the claimant for specific disclosure was not made

until late (10 June 2021). These lapses suggest lack of attention to detail, rather than inaction because the claimant was Sikh or north Indian.

90. The final allegation (ix) of discriminatory treatment is failure to pay the quarter 4 bonus. The respondent asserts the claimant did not meet the target, not did the other three on the GS/KM accounts. There is no evidence this was untrue, especially when the account was ramping down and Kensington Mortgage not increasing. They had said in the dismissal letter his bonus would be paid, but on making the calculations later (payments were normally made two months after the quarter end) found it was not payable. The evidence came from Sanjeev Kumar, and the claimant no longer suggests he was discriminatory.

91. The discrimination claims, whether for race or religion, are not well founded.

Unfair Dismissal

92. We concluded that the reason for dismissal was that the work the claimant was hired to do had, by February 2020, ceased, and that while on normal times he would have been expected to take up another role from “the bench”, indeed was identified for the role at Marsh and another with Ardonagh, neither was available in April 2020 because of the uncertainty of the pandemic, which in London was apprehended towards the end of March, though earlier elsewhere, in Asia and Europe. He was dismissed because there was no work, by reason of redundancy. The element of costs optimisation in this did not mean his role did not cease.

93. In our finding, the evidence we had of the roles of others did not suggest the claimant should have been pooled with them, and we reject the suggestion that others, for example on the Ardonagh contract, should have been bumped. They possessed the necessary skills, which he did not have, had been doing the work for some time, and were paid less.

94. We considered the fairness of the brevity of the period between an at risk consultation and dismissal. Although from the point of view of the formal process this was very brief, and can have given him little notice, it is clear that he had plenty of notice of the fact that his work was coming to an end, and that he knew that from February he was in need of other work. He had the global vacancy lists. He applied for two roles with Marsh and was offered one. He was considered for Ardonagh. His CV was circulated as far back as the end of December. When both posts were in effect frozen because of the pandemic, he was offered furlough. Had he accepted, he would have been free to supplement his income by working full-time for another employer while in receipt of furlough payments. He still had the opportunity, when formally consulted, to accept furlough, and we know that it was suggested that he be urged to reconsider. It was only the refusal of furlough, coupled with the lack of alternatives, that triggered the decision to dismiss. From the point of fairness, the claimant could see the lack of employment, and the respondent had expected to follow the usual process for someone on the bench, to be found alternative projects, but the abruptness of the pandemic brought matters to a head. The panel also considered whether the respondent should have proposed short time working as an alternative to dismissal, but faced

with the claimant refusing furlough on financial grounds, and the lack of evidence of even short time work, it is hard to say that this would have been a reasonable proposal, as the claimant's firm opposition to furlough suggested any cut in pay below the 70% counteroffer was unlikely to be acceptable. He was dismissed more than a month after lockdown began, the financial position was by then acute, and a general freeze on hiring and renegotiation with contractors, had started.

95. Thus although began late, in practice the steps which would have been taken after the first at risk meeting had already been explored. The respondent had waited for opportunities despite the acute pressures of lockdown on their business, with clients closing their premises and cancelling or postponing projects. The respondent also cushioned the blow by extending the termination date from the 1st to 11th of May, so that in effect he was paid for the whole of May. Taken as a whole, the respondent did what they could to soften the blow.

96. There is fault of course in the 12 months delay delivering the appeal outcome. We do not know if the claimant chased it up in the interim; he had by that stage started proceedings in any event. The respondent had held an appeal meeting and considered what the claimant said. We do not accept that Anurag Bhatia was insufficiently independent, having had nothing to do with the claimant – the only prior association with the claimant had been the comment that he should be retained if possible. As for the assertion that there was unfairness in Lyla Dlima attending to take the note of the appeal meeting, we accept that pandemic conditions meant the respondent was short of administrative staff, and note that the claimant himself has not been able to point to any material inaccuracy in her notes. When we viewed these imperfections in the context of the respondent's other actions before and after dismissal, we concluded that taken in the round, and in the prevailing conditions, neither the failure to provide the appeal outcome until much later, nor the substance of the decision, made this dismissal unfair.

Right to be Accompanied

97. Section 10 of the Employment Relations Act 1999 provides a right to be accompanied at a disciplinary or grievance hearing by a trade union representative or by a co-worker. This was not a disciplinary meeting, and even if arguably an appeal hearing is the hearing of the grievance, Navinderjit Singh was not by then a co-worker, having been dismissed before the claimant. The claim is not made out.

Wages Act and Breach of Contract

98. under section 13 of the employment rights act 1996 an employment tribunal can order payment of an unauthorised deduction from wages, the deduction being the difference between the amount properly payable and the amount actually paid. Where the employment has terminated, an employment tribunal has jurisdiction to hear claims in breach of contract subject to a cap of £25,000. This claim relates to failure to pay the Q4 bonus. As already discussed in the context of the discrimination claim, the tribunal does not

accept that the claimant had met the target required for payment of the Q4 bonus, so that it was not properly payable nor due under the contract terms.

Discussion and Conclusions Navinderjit Singh

Discrimination

99. Working from the list of less favourable treatment, (i) is that Sanjeev Kumar failed to hold one-to-one meetings with the claimant. We note that there were weekly team meetings, and that one-to-one meetings were scheduled by the claimant, though very few took place. In effect, the claimant had a regular opportunity to speak to his manager, but not on a one-to-one basis which would have provided an opportunity for personal development. There was no complaint about this at the time. There is no actual comparator. The tribunal accepts Sanjeev Kumar's explanation that he cancelled or postponed because he was very busy and travelled a lot, and that he did the same to others in his team. Taking into account the claimant's focus on Sundar Subramanian rather than Sanjeev Kumar, being against Sikhs and south Indians, and the lack of evidence that others were treated any better, we could not find that the cancellation and postponement of meetings had anything to do with the claimant's religion or origin. Sundar Subramanian was said not to have been aware that the claimant will seek until he met him in person in November 2019. We could not discern any change in the pattern of meetings that would indicate that a direction was given that the claimant should be treated less favourably. Mr Subramanian had interviewed the claimant by telephone. Had the name alone indicated he was Sikh, that might have discouraged his hiring when there was said to have been a strong field, and as for being north Indian, the name suggested that, and he was still hired.

100. Taking, for convenience, allegation (iv), next, as it relates to the same period, we accept the evidence that no one was allocated a dedicated desk. We also accept the evidence that the claimant could and did use a conference room when he attended. There was no complaint about this time, no explanation of why he did not complain about is at the time if it was an inconvenience. We conclude the allegation is made in response to the suggestion that he was never at the office. There is no suggestion the pattern changed when Mr Subramanian became aware he was Sikh. It is not shown that he was less favourably treated than others, let alone because of religion or origin.

101. Allegation (ii) is that from July 2019 until dismissed in April 2020 he was given unfair performance targets, or no performance targets. The evidence was that like other senior managers on the Blackstone portfolio, his target was aligned to all groups of the business, not just those he managed himself. So in Q1 and Q2 the US was included. When he made the point that he was being dragged down by the US section of the portfolio, an adjustment was made at his request. This applied on Q3. As for Q4, he was able to work it out from the overall annual target, and in any case the evidence was that no one was given a separate figure for the target. The explanation as to why his report, Manoj Kumar had a more generous target, relates to team managers as against team members across the board, not just in his team, and we were

given undisputed examples. Finally, if this is about the new performance bonus introduced in January 2020, this was not to be paid until April 2021 at the earliest, being rated on the financial year starting 31st March 2020, and we are not clear that anyone was given any more specific figures by April 2020 when the claimant left.

102. Allegation (iii) is that the respondent did not hold a meeting on his post-employment grievance. The current ACAS code on discipline and grievance unlike its predecessor, is silent on whether raised by former employees. Had the code applied, the respondent should have invited the claimant to a meeting to discuss his grievance. They chose not to do so. The company handbook contains a brief grievance policy, which is expressly stated to be noncontractual. It refers throughout to "the employee" and makes no mention of former employees reflecting in this and all other aspects the statutory code. It was irrelevant that he had not been employed two years, the reason given why there was no consultation about redundancy. The respondent did however take the grievance seriously, replied to it in detail, and replied again to the response from the claimant's solicitors. There is no evidence at all about how other grievances by former employees were all may have been handled. We concluded that the respondent had treated the grievance properly, and were not required to hold a meeting with a former employee, either under the code of practice, or by its own policy. There was no less favourable treatment, and there are no facts in which we could conclude in the absence of explanation that the decision not to have a meeting related in any way to the claimant being Sikh or of north Indian origin.

103. Allegation (v) is that the claimant was dismissed at the behest of Sundar Subramanian, that there was no genuine redundancy situation, and the decision was predetermined and a sham. His role was under consideration in November 2019 because his time was not billable to the client, and a decision had been made generally that such roles should either become available, or allocated elsewhere in the organisation. He was not displaced this time, having been supported by Sanjeev Kumar. Further, the letter to UKVI suggests that certainly at the end of December there was no plan to end his contract, unless we consider, for which there is no other evidence, that it was issued in bad faith. The next discussions took place in early January in the light of predictions for quarter 4, when it was known that Refinitiv work was that reducing, as the claimant himself knew, later if not then. In any case he was in the frame as someone who was highly paid, and separately from that, there was adverse feedback on his timekeeping and commitment. The claimant did not adduce evidence that this comment was untrue or unfair, save in relation to not having a desk. It is also the case that neither he nor Parminder Singh were the only redundancies that occurred around this time. We know that numbers were being shed in November 2019, and that there were nine others terminated in April/May 2020, quite apart from contractors, with similar numbers in Germany. The mid-February announcement of restructure applied to many, not just two Sikhs. This points to there being a redundancy situation, due to a downturn in work generally. There is no suggestion that the claimant's work kept up, and his contemporary email indicates the considerable uncertainty with the client. When it came to April

2020, his remaining work was allocated between others without difficulty. The respondent's system allowed employees between projects to be 'on the bench', but by the time it came to April 2020, when a decisions was made about the claimant, the pandemic had radically reduced the supply of work generally and the direction was to "release people out of bench" along with other staff reduction measures. As for the intervention of Mr Subramanian, the evidence was that discussions took place between Sanjeev Kumar and Ramaa Sitheram without his intervention. We concluded that redundancy was real, the decision was not predetermined, at any rate before the pandemic, nor was it a sham. In any case, other than the two remarks about intentions for Singhs, for which we have no context to suggest that this indicated malice, there is nothing at all to suggest that the claimant was treated differently to any other person whose work had ended. As for the abruptness of dismissal, without a meeting, the claimant lacks the service to claim unfair dismissal, which accounted for Ms Dlima deciding she did not need to hold a consultation meeting. There is nothing to suggest that anyone else with short service would have been treated any differently.

Failure to Pay Bonus

104. There is a remaining claim in contract that the respondent failed to pay the right bonus for Q4. We know he was paid £7,846 for goodwill, being no longer employed on the payment date. We have no evidence on whether the claimant was entitled to another £3,179 as claimed. The claim is not proved.

105. The remaining money claims and the claim as to the right to be accompanied have been withdrawn.

106. In conclusion, none of the claims succeed.

Employment Judge Goodman
23 November 2021

JUDGMENT and REASONS SENT to the PARTIES ON
25 November 2021

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FOR THE TRIBUNAL OFFICE

APPENDIX ONE

Parminder Singh 2206859/20 - AGREED LIST OF ISSUES

The Claims

The Claimant brings the following claims:

A. unfair dismissal contrary to section 94 of Employment Rights Act 1996
B. direct discrimination on the grounds of religion and belief and/or race contrary to section 13 of Equality Act 2010
C. breach of the right to be accompanied contrary to section 10 of Employment Relations Act 1999;
D. unlawful deduction from wages contrary to section 13 of ERA 1996 E. Breach of contract

ISSUES ON LIABILITY

A.Unfair Dismissal

1.What was the reason (or, if more than one, the principal reason) for the Claimant's dismissal? The Respondent contends that reason was a fair one under sections 98(1) and (2), namely redundancy, *or* some other substantial reason, namely business reorganisation.

2. Was the Claimant's dismissal fair in all the circumstances, pursuant to section 98(4) ERA 1996? The Claimant submits that the dismissal was unfair, including for the reasons set out in paragraph 9i – 9ix below.

B. Direct Religious Belief and/or Race Discrimination

Jurisdiction

3. Did any of the acts of direct discrimination relied upon by the Claimant occur more than three months before the date on which the Claimant submitted his claim to an Employment Tribunal (extended, as necessary, by ACAS conciliation)?

4. If so, do any such acts form part of "conduct extending over a period" for the purposes of section 123(3) of Equality Act 2010, and was the claim brought within three months of the end of that period (extended, as necessary, by ACAS conciliation); and

5. If not, should time be extended to "such other period as the employment tribunal thinks just and equitable" under section 123(1)(b) of EqA 2010?

Protected characteristics

6. The Claimant relies upon his religion "Sikh" as a protected characteristic.

7. The Claimant relies upon his ethnic origin of "North Indian" as a protected characteristic.

Less favourable treatment

8. Has the Claimant proved, on the balance of probabilities, that the following alleged acts or omissions occurred:

i. between February and April 2020, the Respondent (allegedly at the behest of Mr Sundar Subramanian (President, Global Delivery and Head Delivery Europe)) deciding not to transfer the Claimant back to Mphasis USA;

ii. the Respondent (allegedly at the behest of Mr Subramanian and/or Mr Ranjeev Kumar (Delivery Leader UK and Europe)) allocating two Delivery Managers, Raghu Gollapudi and Rajesh Devaraju to new and growing accounts instead of the Claimant, despite him being equally suitable for the same appointment to those accounts;

iii. Lyla Dlima (Senior Human Resources Business Partner – UK and Europe) failing to look for and/or to fully consider alternatives to redundancy for the Claimant;

iv. the Respondent (allegedly at the behest of Mr Subramanian) failing to include two Delivery Managers, Raghu Gollapudi and Rajesh Devaraju, in its selection pool for redundancy with the Claimant, despite those two individuals carrying out the same duties as the Claimant;

v. on 12 May 2020, the Respondent (allegedly at Mr Subramanian's behest) dismissing the Claimant in circumstances where there was no genuine redundancy situation and the dismissal was pre-determined and/or a sham;

vi. Failing to look for and/or fully consider alternatives to redundancy;

vii. On 12 May 2020, selecting the Claimant for redundancy in preference to Hindu/South Indian employees;

viii. Anurag Bhatia (Senior Vice President and Head of Europe) unreasonably delaying the Claimant's appeal process and failing to carry out a fair appeal process; and ix. the Respondent not paying the Claimant his Quarter 4 bonus payment.

9. If so, by any of the above conduct, did the Respondent treat the Claimant less favourably than they treated or would treat a comparator in materially similar circumstances? The Claimant relies on the following comparators in relation to each of the alleged acts at paragraph 9 (i)-(vii) above:

i., iii., and v. to ix. a hypothetical South Indian and/or Hindu comparator;

ii. and iv. Raghu Gollapudi (South Indian and Hindu) and Rajesh Devaraju (South Indian and Hindu) both Delivery Managers;

Reason for less favourable treatment

10. Was any such less favourable treatment because of either religion and belief or ethnic origin?

C. Breach of the right to be accompanied

Jurisdiction

11. Has any complaint of failure to allow the right to be accompanied been presented within time for the purposes of section 11 of the Employment Relations Act 1999 taking into account the Early Conciliation period?

Allegations

13. Did the Respondent breach the Claimant's right to be accompanied by dismissing him on 12 May 2020 without inviting him to a dismissal meeting?

D. Unlawful Deduction From Wages

Jurisdiction

14. Did any or all of the alleged unlawful deductions from wages amount to a series of similar deductions within the meaning of section 23(3)(a) ERA 1996?

15. Has the Claimant's claim (with respect to each alleged unlawful deduction or, if applicable, the series of deductions) been brought within the three month time limit of section 23 of ERA taking into account the Early Conciliation period?

16. If not, was it not reasonably practicable for the Claimant to have presented his claim before the end of that three month period, and if yes, did he present his claim within such further period as the Tribunal considers reasonable?

Allegations

17. Did the Respondent make a deduction from the Claimant's wages by failing to pay the Claimant a sum, in the region of around £9,000.00 gross, by way of a performance related bonus for the 2019 Quarter 4?

18. If so, was any such deduction unlawful under section 13 of ERA 1996?

E. Breach of Contract

Jurisdiction

19. Has any complaint of breach of contract been presented within three months beginning with the effective date of termination pursuant to Article 7(a) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623)?

20. If not, does the Tribunal have jurisdiction to hear such complaints?

Allegations

21. Did the Respondent breach an express or implied term of the Claimant's contract of employment by not paying him a bonus, in the region of around £9,000.00 gross, for the 2019 Quarter 4 period?

ISSUES ON REMEDY

22. If the Claimant succeeds in respect of any of the claims referred to above, what remedy, if any, is he entitled to? This may involve inconsideration of the issues below.

Unfair dismissal compensation

23. What compensation, if any, is the Claimant entitled to pursuant to section 118 ERA?

24. Should any award be decreased by virtue of a 'Polkey' reduction and, if so, by what amount?

25. Has the Claimant taken sufficient steps to mitigate his losses? If not, should any award be decreased on the grounds of the Claimant's failure to do so?

Other compensation

26. What compensation, if any, is the Claimant entitled to pursuant to section 124 of EqA 2010 in respect of any successful discrimination claims?

27. What compensation, if any, is the Claimant entitled to in respect of any successful claim for breach of the right to be accompanied?

28. What compensation, if any, if the Claimant entitled to in respect of any successful claim for unlawful deduction from wages?

29. What compensation, if any, if the Claimant entitled to in respect of any successful claim for breach of contract?

30. Did the Respondent fail to comply with the ACAS Code of Conduct in respect of the Claimant's appeal by failing to conclude the appeal process in a reasonable time frame and, if so, was any such failure unreasonable? If so, should the Employment Tribunal exercise its discretion to award any increase in compensation by up to 25% under section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("**TULRCA**").

31. Did the Claimant breach the ACAS Code of Conduct by failing to raise any complaint or grievance about alleged discrimination during his employment and, if so, was any such breach unreasonable? If so, should the Employment Tribunal exercise its discretion to decrease any compensation by up to 25% pursuant to section 207A(3) of TULRCA.

APPENDIX TWO

Navinderjit Singh 2205960/20

AGREED LIST OF ISSUES

THE CLAIMS

The Claimant brings the following claims:

A. direct discrimination on the grounds of religion and belief and/or race contrary to section 13 of Equality Act 2010

B. unlawful deduction from wages contrary to section 13 of Employment Rights Act 1996 C.

breach of the right to be accompanied contrary to section 10 of Employment Relations Act 1999

D. Breach of contract.

ISSUES ON LIABILITY

A. Direct Religious Belief and/or Race Discrimination

Jurisdiction

1. Did any of the acts of direct discrimination relied upon by the Claimant occur more than three months before the date on which the Claimant submitted his claim to an Employment Tribunal (extended, as necessary, by ACAS conciliation)?

2. If so, do any such acts form part of "conduct extending over a period" for the purposes of section 123(3) of EqA 2010, and was the claim brought within three months of the end of that period (extended, as necessary, by ACAS conciliation); and

3. If not, should time be extended to "such other period as the employment tribunal thinks just and equitable" under section 123(1)(b) of EqA 2010?

Protected characteristics

4. The Claimant relies upon his religion "Sikh" as a protected characteristic.

5. The Claimant relies upon his ethnic origin of "North Indian" as a protected characteristic.

Less favourable treatment

6. Has the Claimant proven, on the balance of probabilities, that the following alleged acts or omissions occurred:

i. between July 2019 and April 2020, the Claimant's line manager, Sanjeev Kumar, failing to hold regular or sufficient one-to-one meetings with him; ii. between July 2019 and April 2020, the Claimant's line manager, Sanjeev Kumar, failing to provide him with performance targets for his bonus and/or setting unfair performance targets for him;

iii. between 27 April 2020 and 14 May 2020**,** Lyla Dlima (Senior Human Resources Partner) failing to invite the Claimant to a meeting to discuss his post-employment grievance and sending him a written response instead;

iv. between July 2019 and 21 April 2020, not providing the Claimant with an office desk;

v. on 21 April 2020, the Respondent (allegedly at Mr Subramanian's behest) dismissing the Claimant in circumstances where there was no genuine redundancy situation and the dismissal was pre-determined and a sham.

7. If so, by any of the above conduct, did the Respondent treat the Claimant less favourably than they treated or would treat a comparator in materially similar circumstances? In

the absence of an actual comparator, the Claimant will rely upon a hypothetical South Indian and/or Hindu comparator in respect of each of the alleged acts at paragraph 7 i-iv above.

Reason for less favourable treatment

9. If so, was any such less favourable treatment because of either religion and belief or ethnic origin?

B. Unlawful Deduction From Wages

Jurisdiction

10. Did any or all of the alleged unlawful deductions from wages amount to a series of similar deductions within the meaning of section 23(3)(a) ERA 1996?

11. Has the Claimant's claim (with respect to each alleged unlawful deduction or, if applicable, the series of deductions) been brought within the three month time limit of section 23 of ERA taking into account the Early Conciliation period?

12. If not, was it not reasonably practicable for the Claimant to present his claim before the end of that three month period, and if yes, did he present his claim within such further period as the Tribunal considers reasonable?

Allegations

13. Did the Respondent make a deduction(s) from the Claimant's wages as follows:

i. *Holiday pay*: on 21 April 2020, failing to pay the Claimant his correct accrued but untaken annual leave;

ii. *Expenses*: on 21 April 2020, failing to pay the Claimant the sum of £200 in expenses incurred in respect of broadband and mobile phone bills alleged to have been owed to him on dismissal;

iii. *Quarter 3 bonus*: failing to pay the Claimant the sum of £11,025.00 (30% annual salary for the quarter) alleged to have been owed to him by way of a Q3 bonus;

iv. *Quarter 4 bonus*: failing to pay the Claimant the sum of £11,025.00 (30% annual salary for the quarter) or, alternatively, the sum of £7,846.00, allegedly owed to him by way of a Q4 bonus.

14. If so, was any such deduction unlawful under section 13 of ERA 1996?

C. Breach of the right to be accompanied

Jurisdiction

15. Has any complaint of failure to allow the right to be accompanied been presented within time for the purposes of section 11 of the Employment Relations Act 1999 taking into account the Early Conciliation period?

Allegations

16. Notwithstanding that the Claimant had less than 2 years' service at the date of his dismissal, did the Respondent breach the Claimant's right to be accompanied by inviting him to a meeting on 21 April 2020 and not informing him that it was a dismissal/disciplinary hearing and dismissing him later that day?

D. Breach of Contract

Jurisdiction

17. Has any complaint of breach of contract been presented within three months beginning with the effective date of termination pursuant to Article 7(a) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623)?

18. If not, does the Tribunal have jurisdiction to hear such complaints?

Allegations

19. Did the Respondent breach an express or implied term of the Claimant's contract of employment by:

    i. not paying him a bonus for 2019-2020 financial year; and

    ii. failing to set performance targets at all and/or failing to set fair performance targets. Insofar as the Claimant's contract permitted the Respondent exercise its discretion in respect of the setting of targets, the Claimant alleges that such targets were not exercised honestly and in good faith; were exercised in a manner that was arbitrary, capricious and/or irrational; and/or were exercised in a manner that was unreasonable.

ISSUES ON REMEDY

20. If the Claimant succeeds in respect of any of the claims referred to above, what remedy, if any, is he entitled to? This may involve consideration of the issues below.

21. What compensation, if any, is the Claimant entitled to pursuant to section 124 of EqA 2010 in respect of any successful discrimination claims?

22. What compensation, if any, if the Claimant entitled to in respect of any successful claim for breach of the right to be accompanied?

23. What compensation, if any, if the Claimant entitled to in respect of any successful claim for unlawful deduction from wages?

24. What compensation, if any, if the Claimant entitled to in respect of any successful claim for breach of contract?

25. Did the Respondent fail to comply with the ACAS Code of Conduct in respect of the Claimant's dismissal by not inviting hi m to a dismissal meeting and, if so, was any such failure unreasonable? If so, should the Employment Tribunal exercise its discretion to award any increase in compensation by up to 25% under section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992

26. Did the Claimant breach the ACAS Code of Conduct by failing to raise any complaint or grievance about alleged discrimination during his employment and, if so, was any such breach unreasonable? If so, should the Employment Tribunal exercise its discretion to decrease any compensation by up to 25% pursuant to section 207A(3) of TULRCA?

27. Did the Respondent breach the ACAS Code of Conduct by failing to invite the Claimant to a grievance meeting and, if so, was any such failure unreasonable? If so, should the Employment Tribunal exercise its discretion to decrease any compensation by up to 25% pursuant to section 207A(3) of TULRCA?