EMPLOYMENT TRIBUNALS

Claimant: **Mr C M Seaman**

Respondent: **Alliance Automotive UK LV Limited**

HELD at: Leeds **ON: 12 and 13 April 2022**

BEFORE: **Employment Judge Shulman**

REPRESENTATION:

Claimant: **In person**
Respondent: **Mr T Noble, HR Director**

JUDGMENT

1. The claim of unfair dismissal is hereby dismissed.
2. The claim of breach of contract is hereby dismissed.
3. The deposit paid by the claimant in the sum of £300.00 shall be paid to the respondent.

REASONS

1. **Claims**
   1.1. Unfair dismissal.
   1.2. Breach of contract.
2. **Issues**
   2.1. Unfair dismissal. These are set out on page 7 of the record of a preliminary hearing on 29 November 2021 (the record).
   2.2. Breach of contract. These are set out on page 9 of the record.

3. **The law**

The Tribunal has to have regard to the following provisions of the law in relation to unfair dismissal - sections 98(1), 98(2) and 98(4) Employment Rights Act 1996 (ERA). In relation to breach of contract the law is set out at section 86 ERA.

4. **Facts**

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

4.1. The claimant was employed by the respondent as a driver from 8 August 2016 until his dismissal on 4 May 2021. The respondent is in the automotive parts business.

4.2. On 21 April 2021 the claimant is alleged to have used the word “nigger”, by which he is alleged to have referred to a black person, in the workplace. As it happens this comment was alleged to have been made in the presence of a black colleague, Mr Delroy Rudd, who gave evidence before us and whose evidence was largely unchallenged.

4.3. The branch manager at the branch in question, which was in Ripon, was instructed by Mr Roger Bailey, the area manager, who also gave evidence, to interview those involved, which he did, including the claimant.

4.4. Based on the statements taken by a Mr Ledgeway, the claimant was suspended on full pay on 22 April 2021.

4.5. Mr Bailey conducted a disciplinary hearing on 4 May 2021, in which the claimant confirmed he used the word “nigger”, maintaining that its use was appropriate, because he said it related to a conversation with colleagues about an incident involving a black person in America. The claimant said he did not understand how anybody could be offended by the use of that word, including Mr Rudd.

4.6. Mr Bailey formed the view that the claimant showed no remorse for the use of that word.

4.7. Mr Bailey referred to the fact that the claimant’s conduct amounted to racial harassment and the claimant said that Mr Bailey’s assertion was offensive and irrelevant.

4.8. The claimant subsequently referred to two other employees, a Mr Wild and a Mr Giles (Mr Giles gave brief evidence before us), who the claimant said had been treated differently from him. We will deal with their positions below.

4.9. Mr Bailey decided that the claimant had used racially offensive language and the claimant was summarily dismissed.

4.10. The claimant appealed his dismissal and Mr Richard Goulbourne, divisional manager of the respondent, heard the appeal, which was based on five points, on 24 May 2021. Mr Goulbourne dealt with those points, but the claimant told us that the most important point related to the manner in which the respondent dealt with the conduct of Mr Rudd on the day in question. The respondent found that after the use of the

word “nigger” Mr Rudd used words which he intended to be used to explain the hurtful nature of the claimant’s conduct, knowing that the claimant’s wife was Asian, making a reference to a “chink”. The claimant thought this was on the level at least with his reference to a “nigger” but the respondent found otherwise, namely that Mr Rudd was trying to make a point about the hurtful nature of the claimant’s conduct, to the claimant.

4.11. To assist in the claimant understanding the nature of the offence Mr Goulbourne re-ordered the interviews which Mr Ledgeway had done, by an independent manager and Mr Goulbourne examined them.

4.12. The cases of Wild and Giles were raised and Mr Goulbourne looked into these.

4.13. The claimant apologised three times towards the end of the hearing but Mr Goulbourne did not believe the apologies were said with any genuine remorse.

4.14. In the event the claimant failed in his appeal which was confirmed in writing on 27 May 2021.

4.15. In no particular order it is necessary to find facts relating to the attitude of the claimant to the use of the word “nigger” and also importantly to the effect that this had on the decision making process of the respondent:

4.15.1. The claimant told the Tribunal that he did not consider that the language used by Mr Rudd was worse than the language he used.

4.15.2. The claimant did not consider that his language was racially based and that that language could be used in different contexts. Mr Bailey made it clear that the claimant’s language was used in the workplace.

4.15.3. We find that the claimant’s language was used within earshot of Mr Rudd.

4.15.4. The claimant told us that he never realised that the word “nigger” was so offensive.

4.15.5. The claimant told us that he thinks differently to the way other people think.

4.15.6. The claimant told us that he did not understand the hurt and meaning of the word “nigger”.

4.15.7. The claimant told us that he would use the word to make a point.

4.15.8. During the disciplinary hearing the claimant said “one nigger gets killed and there’s uproar”. Mr Doug Ross, a colleague who was present on 21 April 2021, said that the claimant had said something similar.

4.15.9. The claimant also said in the disciplinary hearing that the word “nigger” was “appropriate language considering subject.” This he repeated in the same meeting.

4.15.10. In the investigation report Mr Ledgeway found the word "nigger" was used on more than one occasion.

4.15.11. Before us the claimant maintained that what happened was not his fault and that the word just came out. He told us that "nigger" is just a black person.

4.15.12. In his witness statement the claimant says that Mr Bailey was incorrect that the word "nigger" is no longer acceptable in today's society, citing that it was widely used in the black community and films. He also said that in his world race discrimination never even existed and everybody was treated equally. He told us that he had never found about discrimination.

4.16. During the disciplinary process the claimant sought to encourage the respondent to view a programme known as "The Wire" for justification of his use of the word "nigger". The respondent decided the use of the word "nigger" itself was sufficiently offensive, regardless of "The Wire" and we find that that programme was discussed during the disciplinary process. The programme apparently relates to the location of Baltimore on the subject of drug trafficking and policing.

4.17. Very late in the proceedings the claimant produced a mitigation document. That contained 15 names, including the name of the Prime Minister, and the document contained no explanation whatsoever as to what it was and the claimant subsequently described it as irrelevant.

4.18. I also find that the claimant, who says that he did not know, ought to have known of some key documents of the respondent, which I find were issued to him. It is quite clear that the claimant signed for the Code of Conduct and received training on it. This contains important information on equality and diversity. The claimant told us glibly that he had not read it because it was not relevant. He maintained that following the takeover of the respondent everything would be the same and he had a letter to that effect, which he did not produce to the Tribunal. He said he did not read the disciplinary policy which would have explained to him that an act of race discrimination, including an act of harassment, was an offence liable to summary dismissal for gross misconduct.

4.19. As far as Mr Wild is concerned he resigned before his alleged misdemeanour reached a point of discipline and the claimant agreed before us that there was no comparison between his case and that of Mr Whild.

4.20. In the case of Mr Giles, this was dealt with informally at Mr Rudd's request, who was the alleged complainant at the time. Mr Giles told us that he received a verbal warning but it was never produced to the Tribunal. In fact Mr Giles said he never received a copy of it.

5. **Determination of the issues**

After listening to the factual and legal submissions made by (and on behalf of the respective parties) I find as follows:

5.1. I find that the reason for the claimant's dismissal was conduct. I have taken the trouble to spell out at paragraph 4.15 evidence of the attitude

of the claimant to what he did on 21 April 2021. It was clear to me during the hearing that this was conduct the nature of which the claimant did not understand when everybody around him clearly did. He had some source materials which he never bothered to read and sought to justify his conduct by reference to names on a sheet of paper and an American television programme. None of this did anything to make an already serious position better.

5.2. Did the respondent act reasonably?

5.2.1. I find that the respondent had reasonable grounds to believe that the claimant perpetrated the use of wholly unacceptable language. Indeed the claimant admitted the use of the word, even if he apparently failed to appreciate its significance and went on to argue that its use was justified.

5.2.2. The respondent carried out a proper investigation. First Mr Ledgeway, then Mr Bailey and then the appeal when the original source material was revisited.

5.2.3. I find that there is no evidence of improper procedure in this case. The claimant relies on the difference in treatment between Mr Rudd and himself and also between himself and others. I find that Mr Rudd did not use foul language aimed at the claimant or his wife. He was trying to make the claimant realise the gravity of his conduct. As to the others, in relation to Mr Wild that claim by the claimant did not even get off the starting blocks and in Mr Giles' case the differences are obvious, as set out in paragraph 4.20 of my findings of fact.

5.2.4. It is not for this Tribunal to decide what it would or would not do or have done in this case. The question is was what the respondent did within the range of reasonable responses? I have no hesitation in deciding that dismissing the claimant for gross misconduct in the circumstances of this case was well within that range.

5.2.5. In all the circumstances the claimant's claim for unfair dismissal fails and accordingly the claim for breach of contract also falls.

5.2.6. The Tribunal in the record ordered a deposit on the grounds that are set out in the record and that deposit amounted to £300.00 and was paid by the claimant. I have had to consider what to do with that £300.00 and I have regard to paragraph 39(5) of the Employment Tribunal Rules, which says that if the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party was for

substantially the reasons given in the deposit order then the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument unless the contrary is shown and I can and I do order that the deposit be paid to the respondent in those circumstances.

J Shulman

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Employment Judge
Date: 25 April 2022

JUDGMENT SENT TO THE PARTIES ON
Date: 26 April 2022