



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 6, 7 and 8 July 2022

Claimant: Mr J Veer

Respondent: Wilson James Ltd

Before: Employment Judge Mr J S Burns
Members Dr V Weerasinghe and Mrs S C Dengate

Representation

Claimant: In person

Respondent: Mr P Chadwick (consultant)

JUDGMENT

The claims are dismissed

REASONS

The issues

1. The Claimant was directed in a CMO on 29/10/21 as follows: *“The Claimant having confirmed that his claims under both claim numbers are restricted to matters in 2021 onwards, and having withdrawn any claims in relation to any earlier matters in 2020 (which may nevertheless be referred to as background only), and that the types of claims he is making are as set out in the Schedule only, by 11/11/21 the Claimant is to provide in writing to the Respondent and file with the tribunal (both by email) the information requested in the Schedule.”*
2. The Schedule to the CMO set out four different types of claims namely direct race discrimination, victimisation, harassment and detriment in employment for making a protected disclosure. The Claimant was directed to provide concise lists of matters such as the acts complained of, the names of comparators and the protected acts/disclosures relied on.
3. The Claimant purported to comply with the CMO by providing a lengthy and vague document (page 57 onwards in the bundle), not in the form of concise lists, which omitted particulars of victimisation and harassment and was also not on all fours with the Consolidated Grounds of Resistance which was subsequently served by the Respondent. Consequently, the Tribunal judge had to spend about 90 minutes on 6/7/22 discussing the issues with the Claimant. The Claimant sought to supplement his further particulars and expand his complaints by pointing to material in his witness statement which had been served (late) in May 2022. We were unwilling to allow him to do so to the extent that the matter was not already flagged in his further particulars and/or dealt with as a live claim in the Consolidated Grounds. Having gone through that process, the Tribunal decided that the Claimant claims would be limited to the matters in the Schedule to this judgment. This was notified to the parties in writing before any evidence was called. To have done otherwise would be incompatible with a fair trial.
4. At the start of his oral evidence the Claimant confirmed that he did not suggest that Mr L Reed (“LR”) - the Respondent’s Security Business Partner - was guilty of direct race discrimination or victimisation, but that he was guilty of applying a detriment to the Claimant in response to his claimed protected disclosure; and that the race discrimination and victimisation claims were directed at the claimed acts and omissions of Mr D Vaitkunas (“DV”) the Claimant’s former line manager and Security Manager.

5. We heard evidence from the Claimant and his witnesses Florin Ciobanu, Abid Ali, Ron Wharton, Baldeep Verdi and Marvin Beharie and then from the Respondent's witnesses LR and DV. The Claimant's further witnesses Frank Kendrick and David Templeman were unable to attend the hearing either by video or telephone so we did not hear from them, but read their statements.
6. The Respondent's witnesses gave clear and concise evidence while the Claimant's evidence was rambling and unclear. The various witnesses whom the Claimant called did not always give evidence consistent with their written statements and where they did give comprehensible answers, these did not support the Claimant's case.
7. The Claimant struggled to engage with the issues and to ask relevant questions during his cross-examination of the Respondent's witnesses. The tribunal judge tried to assist by asking a number of questions on his behalf. The Claimant cross-examined LR for about 1 hour, and asked for 1 hour to question DV but after 2 and a half hours we had to put a limit on his questions of DV

The bundle

8. Directions were given on 29/10/21 for disclosure. Following postponement of the trial at the Claimant's request and relisting, and on the Respondent's application dated 5/4/22 and the Claimant's response dated 22/4/22, and on the Claimant having failed to deal with disclosure properly, I made an Order on 26/4/22 in the following terms: "*The Claimant will be debarred from referring at the trial to any documents which do not either (i) appear in the paginated bundle already produced by the Respondent for the adjourned hearing or (ii) are sent by email in an indexed PDF bundle by the Claimant to the Respondent by 5pm on 6/5/22....*"
9. Following this the Claimant did not and has not provided the Respondent with any documents in "*an indexed PDF bundle*" as ordered by 6/5/22 or at all. The Claimant sent through to the Respondent's representative and the Tribunal numerous separate miscellaneous documents, many of which were unable to be opened as they were sent by Google Drive without access being granted. There is no index and no pagination and no supplementary bundle in PDF form or otherwise. To try to deal with the numerous unpaginated additional documents would have required a further adjournment of the trial which would be disproportionate. The only bundle of documents before the Tribunal was that prepared by the Respondent for the previously adjourned trial (containing 403 pages) and the Claimant was debarred from referring to other documents. We made one exception to this regarding the original of pages 265 and 266 of the bundle, the first of which was different from that in the bundle and which, at our request, the Claimant emailed to us during the hearing.

Findings of fact

10. Until 1/10/21 the Respondent was the contracted provider of security services at the White City Place Estate ("WCPE"). DV started working there for the Respondent on 3/2/2020. The Claimant had been employed by the Respondent since 2012 and worked at the WCPE since August 2016. He had not applied for or achieved promotion during the period 2012 to 2020.
11. In early 2020 the security workforce at WCPE were subject to an organisational restructure. The Claimant applied for one of the new Duty Security Manager (DSM) roles which would have represented a minor promotion. The new role would no longer be solely on nights (as the Claimant had been working) but on a 4 on 4 off shift pattern on days and nights.
12. In March 2020, only a few days after meeting the Claimant for the first time, DV with his colleague Adam Czajda ("AC") carried out the interview assessment for these roles. Neither recommended the Claimant for the role. Another Asian applicant was also not selected. Four white applicants were appointed namely Frank Kendrick, David Smith, Szymon Benedyk, and Ronald Wharton. Two of these were Security Supervisors at other Wilson James's contracts

and had been recommended for these roles. One was an external candidate and had been an Operations Manager at Guardian UK Security Company and the fourth - Ronald Wharton - one of the Claimant's witnesses - was an internal promotion. No complaint is made by the Claimant against AC who in fact gave the Claimant a lower score in interview in one respect than did DV.

13. As a temporary measure the Claimant was allowed to act-up as a DSM pending the permanent appointments being finalised.
14. The Claimant wrote a letter of protest on 31 March 2020 to Mark Megally the Contract Manager P124. This contained a complaint about discrimination in relation to his working pattern and the restructure and then by subsequent email on 17 April 2020 he raised concerns about the selection process for the DSM roles P126. This grievance was dealt with subsequently by Mr Megally on 24 April 2020 and the grievance process was continued under Mr Ely who made a recommendation in his outcome letter that the Claimant should work a mixture of days and nights as his lack of knowledge of the day shift was a stumbling block in any application for a rolling roster supervisory position.
15. In April 2020 the Claimant fell out with Tim Scanlon, an Engineering Manager employed by the client at WCPE. They had a dispute over fire alarm checks. The Claimant escalated the matter within WCPE to a director (the Claimant recalled his name as J Bylen or similar). This made Mr Scanlon "very cross" (the Claimant's term) with the Claimant thereafter and may well have accounted for or contributed to Mr Scanlon subsequently making a series of complaints about the Claimant to the Respondent.
16. DV started receiving a series of complaints about the Claimant from Mr Scanlon and other employees of the client at WCPE. For example on 28/4/2020 Mr Scanlon sent an email starting "*May I ask when we are getting our new DSM positions filled as I have strong reservations about the ability of the acting DSMs?*" (131) This was a reference to the Claimant and others.
17. On 13 May 2020 another WCPE manager Tim Scourfield emailed DV with a complaint about the Claimant, who had not sent the necessary details of a replacement part. Mr Scourfield wrote "*(This) is a perfect example of why I don't feel Vijay is suitable to be a DSM, even a cover one.*" P139. On 20 August 2020 Mr Scanlon sent two separate further complaints about the Claimant (P197 and 200) in one of which Mr Scanlon stated that he had "*more than serious concerns about the Claimant's ability to perform in his role and he was genuinely worried about his level of understanding*". A further concern was raised by Mr Buckley by email on 24 August 2020 P201 and an additional concern about the Claimant forgetting to log a call about a failed lift was raised by Mr Scanlon on 4 September 2020 P206.
18. We were told that LR and DV were advised by the Respondent's employee relations (HR) that they should not embark on disciplinary or performance procedures against the Claimant in response to these complaints, and that any such action should be put on hold while the Claimant's grievances were being dealt with, so most of these complaints were not brought to the Claimant's attention by DV at the time they were made. There was no contemporaneous record of this advice produced to us in evidence, but on balance we accepted this explanation for the Claimant being kept in ignorance of the complaints.
19. However, on 23 October 2020 DV received another complaint about the Claimant from yet a further source within WCPE, and DV did instruct Mr Kendrick (the Claimant's DSM) to raise this complaint with the Claimant in a performance meeting P211. This resulted in an improvement notice being issued to the Claimant by Mr Kendrick p214-215.

20. The Claimant in evidence accepted that he had some mental health and other issues in 2020 and that he had made a series of mistakes at work and that these complaints about his performance from the client were genuine.
21. On 13 November 2020 the Claimant raised another grievance against DV P216-217 complaining of victimisation by DV following his earlier complaint of discrimination. On 27 November 2020 during a grievance appeal conducted by Mr B O'Shea, the Claimant complained orally that the WCPE restructuring process was affected by "bias and racism". (page 220)
22. In December 2020 the Respondent started advertising to recruit further DSM posts. The Claimant applied but was not shortlisted because it was clear to DV and other relevant managers that the Claimant, as a DSM at WCPE, would be unacceptable to the client. The successful candidate was Mr S Rajnovic, a white man of Eastern European origin. He did not have client complaints against him and the client had not made it clear that he would be unacceptable as a DSM.
23. The Claimant had a period of absence from work due to a fracture. He had fallen down stairs when he was carrying too many objects and had failed to hold on to a handrail.
24. After returning to work the Claimant covered a shift as temporary DSM cover as DV had late notification that the DSM due on site was not available due to a family emergency. However, in response on 1 February 2021, DV received an email from Mr Scourfield asking about the Claimant "*Can I just ask, why, with all the know issues we have with him, is VJ covering the DSM role?*" P228.
25. On 6/5/21 the Claimant attended a grievance hearing conducted by LR. The Claimant made complaints about bias and racism. (page 238)
26. On about 12/5/21 the Claimant and another employee Mr Wharton, whilst on duty, took the leading role in organising the drafting, typing and signing by them and 5 other security officers (mainly in Mr Wharton's shift) of a petition addressed to Joanne (in HR) complaining about DV. The total number of persons being managed by DV at the time at WCPE was in excess of 35, although we do not know how many of these in total were aware of or were asked to sign the petition. In the event however, the signatories represented about 20% of DV's reports. The signatories were of various races, (including one from Eastern Europe namely Mr F Ciobanu - one of the Claimant's witnesses).
27. The petition reads as follows: *'We the staff of the Wilson James site collectively express our vote of no confidence in the site security Manager Mr Darius Vaitkunas under the Wilson James Policy document HR20 - disclosure in the public interest/whistleblowing. Mr Vaitkunas is causing damage to the working environment (WJPolicy Document HR20) at the site due to his biased running of the team. The undersigned feel that Mr Vaitkunas lost the confidence of the team as he maintains his own group of people out of all the employees and targets those who are not in his charmed circle contravening the One Team spirit of the Wilson James and its core values. He is not keeping up with the three of the five core values of Wilson James - ie Respect, Honesty and Communication. He is lacking in these core values to lead the team. Those who cannot tolerate him have already left the job, company (David Templeman, Harry Young, Baldeep Verdii to name a few). Some are on the way to leave. We feel that he is undermining the name of the company as well as his team members'*
28. An employee who had been asked but had declined to sign the petition, namely Daniel Robinson, phoned DV to say that he felt concerned and unhappy that the petition was being got up. DV passed the matter on to LR who went to the WCPE site to discuss the matter with

the Claimant and Mr Wharton on 14/5/21. At that point the petition had not been sent to its intended recipient and LR had not and did not read it. He however cautioned and advised the Claimant and Mr Wharton against canvassing employees to sign a petition against a manager in this way.

29. LR then sent emails later that evening to the Claimant and Mr Wharton in the same terms. The operative part of the emails reads as follows *“We spent sometime this evening discussing the appropriate action for reporting of situations that may make people feel they are not treated suitably within the workplace. Specifically, we discussed that it is each individual’s right to speak freely regarding any concerns they may have in the workplace, guidelines and methods to achieve this are within the HR policy and the employees’ handbook. I offered advice that if an individual were to take it upon themselves to ask or be involved in asking other WCP WJ employees to sign a petition against people who work for WJ@WCP, this was not suitable, the guidelines regarding this are to be found with the HR32 WJ HR policy. (I) have included some segments which may be relevant. Therefore please ensure any (sic) that should you be involved in any such behaviour is (sic) ceases with immediate effect. Please note these are words of advice....”*Conduct on Company or client’s premises or business that violates common decency or engaging in behaviour that brings the Company or our client’s name into disrepute; Making derogatory comments about the Company its clients, employees or assignments...”
30. The Claimant and Mr Wharton did not heed this advice and a few days later sent the petition to Joanne.
31. On 24 May 2021 Mr T Scourfield (one of the WCPE managers who had been making complaints against the Claimant) sent an email to LR requesting the Claimant’s removal from the WCPE site in the following terms *“The site management team reported several months ago our concerns regarding the performance of Officer VJ on site. We are yet to see any improvement and continue to have serious concerns regarding his continued attendance on site. We feel at this point we have given Wilson James ample time to resolve the situation and this has not happened. Therefore, I’m left no choice but to request his removal from site. Please provide me with a time frame for his removal and strategy to fill his position.”*
32. Clients are entitled to make such requests under their contracts and the Respondent is obliged to act upon such requests.
33. The Respondent has a Removal from Site policy which provides for example that *“Wilson James will take all necessary steps to ascertain the reason why the client has objected to the employee remaining on site. All reasonable steps will be taken to mitigate any injustice to the employee and identify any scope for resolution”* (section 2.0) and *“As soon as is practically possible, the employee should be advised of the removal request and the reasons why, this should be followed up in writing to the employee...”* (section 3.1)
34. LR met with the Claimant on 24/5/21 to explain and discuss the request. A site removal brief document was created in draft and sent by LR to HR together with a copy of Mr Scourfield’s email. HR issued a version of the document to the Claimant which did not have Mr Scourfield’s email embedded in it, but the HR file copy (which was disclosed to the Claimant for the first time during the Tribunal process) did have the email embedded and therefore was in a different format.
35. LR on 24/5/21 did not give the Claimant a copy of the Mr Scourfield email, nor did he tell the Claimant why he was being removed, beyond saying that *“the client has required his removal”*. The Claimant was therefore removed from site without knowledge of most, if not all, of the

specific client complaints which had been made against him during the previous year. This breached the Site Removal Policy. The Claimant read these complaints for the first time when they were disclosed during the Tribunal process.

36. The Claimant applied for jobs at other sites where security services were provided by the Respondent, and was redeployed not long afterwards to one such site occupied by Facebook, where at the date of this decision he still works for the Respondent, at a higher rate of pay than he received at WCPE. He has applied subsequently for promotion within the Respondent at Facebook, but so far without success, which the Claimant attributed to his previous record of site removal from WCPE.
37. Mr R Wharton, the other main instigator of the petition, was also removed from the WCPE site shortly afterwards and redeployed. We were told that the reason for this was not because of a client request but because he had performance issues and had been demoted.
38. On 1/10/21 the Respondent lost the security contract at WCPE, and DV, together with the remaining security officers at that site, had their employment TUPE transferred to Bidvest Noonan, the successful bidder. Hence DV was no longer an employee of the Respondent when he gave us his evidence.

Relevant law

39. Section 4 Equality Act 2010 (EA) provides that race is a protected characteristic and section 9 provides that race includes a person's colour, nationality or ethnic or national origins.

Direct Racial Discrimination

40. Section 13 EA provides that a person discriminates against another if because of a protected characteristic, he treats another less favourably than he treats or would treat others.
41. The requirement is on the Claimant to show less favourable treatment by comparison with an actual or hypothetical comparator whose relevant circumstances must be the same or not materially different.
42. Victimisation is defined in section 27 of the EA and it occurs where the victimiser subjects another to detriment because the other has done a protected act or the victimiser believes the other has done or may do a protected act. A protected act is defined to include bringing proceedings under the EA or giving evidence in such proceedings or doing anything in relation to the Act or alleging a breach of the Act, (provided the allegation is not both false and made in bad faith) .

Onus of proof

43. Section 136 provides that if there are facts from which a court could decide, in the absence of any other explanation that a person has contravened a provision under the EA, the court must hold that the contravention occurred, unless the person shows that he did not contravene the provision.

Protected disclosures and whistleblowing

44. A protected disclosure is a disclosure of information which in the reasonable belief of the worker (which term includes but is not limited to "employee") making the disclosure, is made in the public interest and tends to show one of the states of affairs listed in section 43B(1)(a) to (f) and it must be made in accordance with any of the sections 43C to 43H ERA 1996.
45. A "disclosure" does not include behaviour related to or leading up to the disclosure. The belief must be reasonable, judged at the time, even if the information is incorrect.

46. By virtue of section 47B a worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure.
47. Detriment is not defined by statute. The question to be asked is whether in all the circumstances a reasonable worker would or might take the view that he had been disadvantaged in the circumstances in which he had to work.
48. Whether or not the detriment or dismissal flows from a protected disclosure is a question of causation. The detriment must be more than just related to the disclosure for a link to be established. It is not enough to establish that but for the disclosure the employers act or omission causing the act of detriment would not have happened. The Tribunal must consider the mental processes that caused the employer to act or fail to act to determine whether the disclosure actually caused the detriment or dismissal.
49. Section 48(2) provides that in a complaint about detrimental treatment it is for the employer to show the ground on which any act or deliberate failure to act was done.

Conclusions

50. It is unfortunate that the Claimant was not informed about the fact that the client was complaining about him. Had he been informed at the time he might have been able to take remedial steps to prevent the situation worsening to the point where the client asked for his removal. However, we accept that the reason for the complaints not being addressed at the time was the fact that the Respondent's HR had advised that any such process should be postponed until after the Claimant's grievances had been determined.
51. It is also unfortunate that when the client requested the Claimant's removal, he was not given a proper explanation of the reasons for this by LR. This breached the Respondent's own policy and naturally lead to him feeling ill-treated and suspicious of the Respondent's motives. However, these matters are not the subject of the claims.
52. The Claimant's numerous grievances, grievance hearings and grievance appeals during 2020 and 2021, appear to have been handled properly by a variety of managers but we have not found it necessary to record all the details of these in our reasons.
53. The Claimant's theory is that DV (who is from Lithuania) favoured Eastern Europeans who share the same or similar language to him, and disfavoured all other races and nationalities, and it was because of this that he (the Claimant, from an Asian background), was not appointed as DSM both in 2020 and in 2021.
54. We do not find that proved. Of the four DSMs appointed by DV and AC in March 2020, three out of four were not Eastern European. While Mr Rajnovic (who was appointed DSM in early 2021) is Eastern European, DV subsequently extended his probation period and did not confirm the appointment.
55. Furthermore, one of the signatories of the petition against DV and a witness for the Claimant was Mr Florin Ciobanu, who is from Eastern Europe.
56. Furthermore, during many years before April 2020 and after his removal to Facebook, (ie when managed by persons other than DV) the Claimant has failed to achieve promotion.
57. The Claimant accepted that the numerous client complaints against him were genuine and he had made some mistakes. Even if some of these complaints were made because the Claimant had fallen out with Mr Scanlon, the complaints came from several different WCPE managers

at different times about different performance issues, and resulted in the WCPE client telling the Respondent that it would not accept or tolerate the Claimant acting as DSM at WCPE.

58. This was the non-discriminatory reason, (which had nothing to do with the Claimant's race), for the fact that the Claimant was not allowed to undertake supervisory roles and was not shortlisted for the DSM role which was filled in early 2021.
59. The Claimant's comparator Mr Rajnovic is not a good comparator because, in contrast to the Claimant, Mr Rajnovic was not the subject of complaints and objections from the client.
60. The Tribunal finds that the Claimant has not adduced facts passing the onus of proof to the Respondent. In any event we are satisfied by the non-discriminatory explanation. Hence the direct race discrimination claim fails.
61. In final submissions it was not disputed that the Claimant's communications on 31/3/2020, 3/11/2020, 27/11/20 and 6/5/21 were each protected acts, but these were not the reason for the Claimant not being allowed to undertake supervisory roles and not being shortlisted for the DSM role which was filled in early 2021. As stated, the reason was the WCPE client telling the Respondent that it would not accept or tolerate the Claimant acting as DSM at WCPE. Hence the victimisation claim fails.
62. We do not find that the petition dated 12/5/21 was a protected disclosure as defined in section 43B ERA 1996. It did not disclose information but was a generalised complaint about DV's management style. It contained a vague reference to the Respondent's internal policies but did not identify any specific legal obligation as being not complied with. The reference to "*damage to the working environment*" appears to have been contrived to try to bring the petition within section 43B(1)(e), but we do not find that that subsection refers to conflict in workplaces but rather to damage to ecology or the natural world. We do not find it was made with a reasonable belief that it was in the public interest. It was designed to try to advance the Claimant's and Mr Wharton's personal campaign against DV. To their knowledge the majority of DVs reports did not support or at least did not sign it.
63. In any event, even if the content of petition had the potential to become a protected disclosure once communicated to its intended recipient, that communication had not yet occurred when LR spoke to the Claimant and Mr Wharton about it and sent them emails about it on 14/5/21. It is necessary for a breach of section 47B that the detriment be applied because the worker has already made the protected disclosure.
64. Further, we do not regard LR's warning and advice in the email of 14/5/21 as having been a detriment. It was sensible advice and not a threat of discipline. It is not wise, even if one has problems with a manager, to do what the Claimant and Mr Wharton were doing - namely canvassing and organising employees to get up a petition. LR pointing this out is not something which would cause a reasonable worker to take the view that he had been disadvantaged in the circumstances in which he had to work.
65. The Claimant's removal from WCPE was caused not by the petition dated 12/5/21 but by the Mr Scourfield request dated 24/5/21. We have considered the possibility that LR, because of the petition, asked Mr Scourfield to make his request, which is perhaps suggested by the timing of the two, but on the other hand there is a clear pattern of genuine client complaints about the Claimant prior to the petition which complaints were consistent with and a natural precursor to the request, so on balance we do not find that LR procured the removal request. On the available evidence we find that the site removal was caused by the request and was unrelated to the petition.
66. Hence the whistleblowing claim also fails.

Schedule of Claims and Issues

The following alleged acts will be examined under the following sections to determine whether they were direct race discrimination, victimisation or whistleblowing detriment;

- Not allowed to undertake supervisory roles in 2021 - (page 5 para 14 of witness statement)
- not shortlisted for Duty Manager in 2021 (page 13 and 14 of witness statement)
- threatened with discipline by Mr Reed for having signed a petition (page 22 page 23 of witness statement)
- removed from site 24/5/21 (page 22 page 23 of witness statement)

Section 13 Equality Act 2010: direct discrimination on the grounds of his race (Claimant is of Asian- background),

Only actual comparator identified is Spasoja Rajnovic East European - white who was given Duty Manager Role in 2021

Claimant accepted that persons of various race were given supervisor roles and that Mr Ron Warton - white English - was also removed from site after signing the petition.

Section 27 Equality Act 2010: Victimisation

The protected acts are the Claimant's complaints about discrimination made on;
31/3/2020 (page 124)
13/11/2020 (page 216)
27/11/20 (page 218)
6/5/21 (page 236)

Sections 43A, 43B and 47B Employment Rights Act 1996: detriment in employment for making a protected disclosure. ("whistleblowing")

The claimed protected disclosure is the petition signed by the Claimant and others on 12/5/21 (page 257) in which complaints were made about Mr D Vaitkunas.

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