



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102007/2022

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Held in Glasgow on 7, 8, 9 and 10 November 2022

**Employment Judge Ian McFatridge
Members F S Paton and S Singh**

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Mr Muhammed Naeem

**Claimant
In Person**

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Telecom Service Centres t/a Webhelp UK

**Respondent
Represented by:
Mr A Maxwell -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

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1. the tribunal has no jurisdiction to hear the claims of disability and sex discrimination based on the incidents alleged by the claimant to have taken place in relation to his paternity leave in February 2021 and the recruitment exercise in September 2021 as these are time barred. These claims are dismissed.

2. the respondent did not unlawfully discriminate against the claimant on the grounds of race or sex. These claims are dismissed.

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3. the claimant's claim for unlawful deduction of wages is not well founded and is dismissed.

4. the claimant's claim that he had suffered a detriment or dismissal due to making a request for or for taking paternity or adoption leave is not well founded and is dismissed.

5. the claimant's claim of discrimination on the grounds of maternity/pregnancy is not well founded and is dismissed.

REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that he had been unlawfully discriminated against on the grounds of race and sex. He made allegations of discrimination in relation to taking paternity leave in February 2021 and also claimed arrears of pay and holiday pay. The respondent submitted a response in which they denied the claims. It was their position that the Tribunal did not have jurisdiction to hear certain parts of the claim on the basis they were timebarred. The claim was subject to a degree of case management and the claims for arrears of pay and holiday pay were withdrawn by the claimant and dismissed by a Rule 52 judgment issued on 30 June 2022.
2. The respondents had asked for a preliminary hearing on timebar but this was not granted by the Tribunal. It was agreed that the issue of timebar would be dealt with by the Tribunal dealing with the final hearing. The issues of the claim were set out in the note issued following the first preliminary hearing on 7 June 2022 subject to the claimant having been permitted to add a claim of harassment on the grounds of race or sex following the hearing on 3 August 2022.
3. The final hearing took place over four days. The claimant gave evidence on his own behalf. Evidence was then led on behalf of the respondents from Sadia Mahmood, Hailey Thorne, Sahar Khan, Atisham Ali, Jav Maqpool, Muhammed Saleem and Kris Conway. All witnesses gave their evidence in chief via a witness statement and were then subject to cross examination. Atisham Ali gave his evidence online using the Tribunal's CVP system. All of the other witnesses gave their evidence in person. A joint bundle of documents was lodged by the parties. This is referred to below by page number. On the basis of the evidence and the productions, the Tribunal found the following essential factual matters relating to the issues before the Tribunal to be proved or agreed.

Findings in fact

4. The respondents are a telecoms company whose business is providing outsourced call centres and revenue support services to major businesses at various locations throughout the UK. They employ approximately 6,500 employees. The claimant is a Pakistani national who was born in Pakistan and moved to the UK. He is male. The claimant was employed by the respondent as a customer centre associate from 30 November 2020 until his dismissal in the circumstances set out below on 28 January 2022.
5. The claimant was employed by the respondents on what was termed the “Byte Dance” campaign moderating content uploaded to the Tiktok site in Urdu.
6. Byte Dance which operates Tiktok requires content uploaded to the site from Pakistan or for the Pakistan market be moderated. They wish this moderation to be carried out by individuals outwith Pakistan and contracted with the respondent to provide this service. There was a requirement that all staff working on the campaign were able to understand and speak fluently in Urdu. Many also understood other languages commonly used in Pakistan as well as English.
7. The Byte Dance campaign was a large one and at times around 400 individuals were employed on this campaign.
8. The claimant and most, if not all of those employed on the Tiktok campaign worked from home using equipment provided by the respondent. Initially on commencing employment, the claimant was sent on two week training course which was based on the client’s policies and trained him on how to operate the respondent’s systems.
9. Subsequently the claimant spent two weeks in what was termed “gradbay”. Before he was integrated onto live moderations. The claimant worked from home. His line manager was a team leader who managed about 20 individuals in a “team”.
10. During the induction and during the course of his employment, the claimant was advised that the respondent’s policies and processes were available

online. The system was called "remote desktop" but was also referred by other names at other times. On occasions when remote desktop was not working, it would be possible for employees to obtain copies of the respondent's policies and procedures from the respondent's HR department by simply asking their team leader or HR business partner for them.

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11. There was also a system called Lark which was available to employees to exchange information and talk with each other over things like shift changes. This operated as a type of social media site and was made available to the respondent by their customer. The respondent had no direct control over what went on in the Lark system and had no way of moderating content put on it by their employees.

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12. At the time the claimant joined the respondent, his wife was pregnant and due to give birth in February 2021. Once the claimant moved from Gradbay and was allocated a team leader, the claimant asked his team leader how to apply for paternity leave. The team leader advised the claimant simply to inform him when leaving for hospital. The claimant was not given any other advice regarding paternity leave. The claimant did not seek to check the respondent's policies and procedures to see what paternity pay or paternity leave he was due.

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20 13. In actual fact, the claimant was not entitled to company paternity pay in terms of the respondent's paternity policy. The paternity policy was lodged (pages 138-140). The respondent's paternity leave procedure was lodged (page 141). The policy clearly states that an employee is only entitled to company paternity leave if he had at least 26 weeks continuous service with the respondent by the end of the 15th week before the baby's due date. The claimant did not meet this requirement.

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30 14. The procedure on page 141 provided that an employee had to provide the respondent with his wife's MAT B1 certificate as proof of pregnancy and this required to be sent to HR with at least 15 weeks' notice of the baby's due date. None of this was done.

15. Page 139 also states that:

“if you do not qualify for SPP, we will automatically issue with an SPP1 form to advise you why you do not qualify. You may qualify for other financial support – please speak to your local benefits office for further advice.”

16. Given that neither the claimant nor his line manager had sent in a copy of the MAT B1 form and no application for statutory paternity pay having been made, the respondent did not issue an SPP1 to the claimant.
17. On 15 February, the claimant telephoned his team leader from the hospital to advise that his wife was about to give birth and that he wished to go on paternity leave. Initially, the team leader’s response was positive however after a short time, he asked the claimant to phone him back. He said that he had been in touch with HR and that the claimant was not eligible for statutory paternity pay. This conversation took place when the claimant was in the labour room with his wife and caused the claimant considerable upset.
18. The following day, the claimant’s team leader contacted the claimant and told him that in view of the situation, he had processed two weeks’ holiday for the claimant so that he could take the time off he wanted and still be paid. The claimant had not indicated that this was something he wanted to do.
19. The claimant was extremely disgruntled at this turn of events but did not take any action to escalate matters with his employers. He did not raise the matter until he did so during the course of a grievance process about something else which is noted below. The team leader who was involved in this incident had left the respondent’s employment by the time of the hearing.
20. One of the people who had started at the same time as the claimant and was initially on his team was a woman named Saadia Mahmood. Ms Mahmood is also a Pakistani national working in the UK on a work permit. She was born in Saudi Arabia but has spent most of her life in Pakistan. She has an HR degree and is CIPD registered. In 2020, she was completing a higher research degree at a university in Glasgow. She was concerned about her finances and heard that the respondents were seeking Urdu speaking contact centre associates. She applied for this role through an agency. When she attended for interview, she was advised that as well as contact centre

associates the respondents might also be looking for team leaders and operations managers for this contract. The agency felt these roles were more in line with Ms Mahmood's experience and qualifications. She indicated that she would be very much interested in these roles.

5 21. Subsequently, the agency offered Ms Mahmood a role as a contact centre associate which she accepted. She then asked them about the other roles they had mentioned of team leader and operations manager. She was advised by the agency that given they had appointed her to the position of contact centre associate, they were no longer in a position to try to recruit her
10 for the other roles but that they had made the respondents aware of her qualifications and background and that what she should do is take up her post as contact centre associate and apply internally for their roles of team leader or operations manager which were available.

15 22. Ms Mahmood duly did this and was advised to apply for an available post of operations manager. Ms Mahmood duly did this and was appointed as operations manager. The claimant was aware that Ms Mahmood had been in his team for a time although he had no direct contact with her. He considered it strange that she had been promoted directly from contact centre associate to operations manager being completely unaware of the
20 background situation. He formed the belief that Ms Mahmood must have been promoted because she had family members in the company although in fact she did not.

25 23. In or about September 2021, the respondents started a recruitment process with a view to recruiting team leaders. Around 25 individuals expressed interest in the post and submitted CVs. The claimant was one of them. His CV was lodged (page 179-181). It does not mention his nationality or where he grew up. It gives his work experience; that he was a bar supervisor from 2005 to 2006, a fire health and safety officer and supervisor from 2006 to 2008, worked for a company called Top Success Inc Limited from 2008 to
30 2011 and was a store manager for Tool Station between July 2011 and October 2018. He had then worked as a customer service advisor and content moderator since January 2019.

24. The claimant considered that his work as a store manager and other supervisory experience would assist him in applying for the role.
25. Although the claimant has a degree from a university in Pakistan, the claimant did not include reference to this degree in his application.
- 5 26. Once the respondent had received 25 CVs, they decided to carry out an initial sift for taking the applications further. Ms Mahmood and another operations manager named Nighat Ali were asked to carry out this task.
27. The respondent's position was that they would prefer the team leader to be educated to degree level or its equivalent. It was part of their contract with
10 their customer that this was the case. Although this was a requirement, they had not made it clear to potential applicants that this was the case.
28. The respondents were ideally looking for someone with team leader experience in the contact centre environment but if people did not have that experience (which most did not) then they would be looking at other
15 experience which would indicate to the respondent they would be a good fit. They were looking for evidence of good communication skills, public speaking etc. Ms Mahmood and her colleague shortlisted a number of CVs by applying the criteria of whether someone had this relevant experience together with a degree. The claimant's CV was not shortlisted.
- 20 29. The claimant's CV did not show any kind of relevant work experience that was related to a contact centre or similar environment. There was no degree. He did have experience as a store manager however Ms Mahmood and her colleague did not consider this to be relevant. What the respondents were looking for was someone with experience of managing a large number of
25 people within a big team. Ms Mahmood did not see anything in the claimant's CV which would have made her think he would be a good fit for the role at all and there was nothing which grabbed her attention. There was nothing in the CV which made him an appealing candidate or anything that made her think he had the skills or competency to do the job.

30. Ms Mahmood rejected around 13 applications at this stage and 12 applications went through to the final stage. Eventually, two individuals were selected and both of these were women. One was Rakina Pervaiz. Her CV is at page 182-183. The other was Saha Khan. Her CV is at page 184-185.
- 5 Sahar Khan was like the claimant, born in Pakistan, albeit the claimant's understanding was that she was born in Britain. Both of those appointed had extensive experience in managing people and successfully heading up a team. Sahar Khan had been on a graduate management trainee programme with a PLC. Ms Rakina Pervaiz did not show the same amount of relevant
- 10 experience. The respondents decided that her experience was sufficient as she was a good performer with a very positive attitude. There was also a recommendation from her team leader that she was ready to step up to management.
31. The claimant was extremely angry and upset that his CV did not pass the sift.
- 15 He discovered that Sahar Khan and Rakina Pervaiz had been appointed. He was aware that in fact both of these individuals were sisters. This was something which Ms Mahmood and her colleague had been entirely unaware of at the time they were appointed. The claimant considered that he had been treated unfairly and submitted a grievance.
- 20 32. The claimant's grievance letter was lodged (page 187-188).
33. He complained about the lack of feedback and that he had applied and then heard nothing until he heard that two individuals had been selected. He referred to previous correspondence with Nighat Ali over other matters. He said that he had been told that he was not selected for interview due to not
- 25 passing the initial screening and accused the company of favouritism.
34. The claimant was then invited to a grievance hearing which took place on 11 October 2021. The grievance hearing was conducted by Hayley Thorne who was the head of operations responsible for the Byte-Dance campaign. Lauren McNamee of the respondent's HR department attended and took notes. Her
- 30 notes were lodged (pages 190-197). During the meeting, the claimant also raised a number of other matters which he was concerned about. He referred

to the issue relating to paternity pay in February 2021. The claimant raised the point that he felt he was victimised based on his background as he stated (incorrectly) that all of those who were promoted were British born Pakistani as opposed to Pakistani born. He complained that he had asked for details of the successful candidates and had not been provided with these. He also complained that only females had been promoted.

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35. Following the meeting, Ms Thorne investigated matters. She wrote to the claimant on 5 November 2022 setting out her findings. This letter was lodged (pages 198-201). She rejected all of the claimant's grievances save that she apologised that the respondents had not followed the usual process of sending emails to those who were unsuccessful for the role. She did not find any evidence of discrimination. As noted above, Ms Khan was in fact Pakistani born just like the claimant. In any event, Ms Thorne found absolutely no evidence of discrimination in the organisation between those who were British born Pakistanis and those who were Pakistani born Pakistani. She found no evidence of sex discrimination. The claimant had not passed the sift because his cv showed he did not have sufficient experience. She did not mention the lack of a degree albeit she was aware that the role did require education to degree level.

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36. On 25 November, the claimant sent an email to Ms Thorn indicating that he felt his grievance had still not been resolved or answered but indicating that he did not wish to appeal. His email was lodged (page 202).

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37. As noted above, the respondents provided a chat facility to members of staff known as Lark. One of the groups on this was set up with the intention of allowing content moderators to swap shifts. This particular webchat had team leaders and other members of management as members as well as contact centre associates. On 11 December 2021, the claimant was online in this group. A discussion was taking place about customer centre associates working from abroad and in particular working from Pakistan. Given that all of the service centre associates worked from home using equipment supplied by the respondents, there was no physical reason why they could not work from overseas. In particular, given that all of those who worked on the Byte

Dance campaign were Urdu speakers, it would have suited many to work from Pakistan while they were visiting there on holiday or seeing family. As noted above, the respondent's policies and procedures did not allow this. In particular, it was part of their contract with Byte-Dance that the operatives would be based in the UK. There were also concerns about taking the respondent's equipment overseas.

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38. Screenshots of the claimant's contributions to this discussion were lodged (pages 204-207). The claimant started by saying to a member of management who had been in the group earlier, "please leave the group right now unless you fancy hearing something nasty". After it had been confirmed that this individual had left, the claimant then typed a lengthy post (pages 205-207). He started off by confirming that "as per contract, our working locations are our home address and no one should be working from abroad however...". He then went on to say that if an associate is working abroad and is contacted by the team leader who asked to do a check in order to establish location, then the associate should immediately turn the system off and claim they are having internet problems. The associate should then go off sick and use the time to return to the UK so that next time they log on, they are logging on from a UK IP address. He made various other comments which were derogatory to the company.
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39. At some point subsequent to this, a member of this chat who had seen the claimant's post drew it to the attention of management. Hayley Thorne, who was in charge of the campaign, contacted Ms Mahmood, the operations manager, and told her that she wished the matter investigated.
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40. The respondents have a conduct and capability procedure and a conduct and capability policy. The procedure was lodged at pages 92-103. The policy was lodged at pages 104-117. The first step which Ms Mahmood required to take was to arrange for an investigation to take place. It was her normal practice to ask a team leader to do this. Often, the associate's own team leader would be tasked with carrying out an investigation however in this case, the claimant's team leader was not on shift.
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41. Normally, a team leader would be on shift at the same time as the associates being managed by him but on occasions a team leader might be absent due to holiday, sickness or other reasons. In any event, Ms Mahmood looked to see which team leaders were available. She tasked two of the available team leaders namely Sahar Khan and Atisham Ali to carry out the task.
42. At this point, Sahar Khan was still in her probationary period as a team leader which with the respondent usually lasts for six months. During this period however, she has the full powers and is expected to carry out the full duties of a team leader. Sahar Khan was at that stage entirely unaware that the claimant had raised a grievance about the recruitment process which had led to her being appointed. Ms Khan had never spoken to the claimant and did not know anything about him. Ms Mahmood was aware in general terms that the claimant had raised a grievance and she had been asked about how she had carried out the sift of CV's by Hayley Thorne but she did not know the detail of the claimant's grievance or its outcome.
43. When two team leaders are tasked with an investigation, they usually agree amongst themselves that one will take the lead role and the other act as notetaker. It was agreed in this case that Ms Khan would take the lead role and Mr Ali would act as notetaker.
44. The meeting took place online using a video platform on 14 December 2021. Ms Khan was used to carrying out such meetings having done about 30 since she became team leader with the respondent. From the very start of the meeting, the claimant was hostile and aggressive towards Ms Khan and Mr Ali. Mr Ali took notes of the meeting which were lodged (pages 208-210). The claimant effectively refused to answer any questions. Ms Khan put to him that the two of them were trying to investigate allegations relating to the messages he shared in the Lark group on 11 December. They alleged that he used inappropriate language and behaviour and showed an unacceptable and unprofessional attitude towards other team leaders, that he was teaching other colleagues how to avoid contract issues and advising other moderators to call in sick and turn their desktop off if a spot check was done to see if they were working from abroad. The claimant indicated that he did not recognise

a breach and repeatedly asked to know what policy was breached. The claimant then accused the other two of making fun of him and victimising him and accused them of intimidating him. He said that Sahar Khan should be grateful for the team leader job as she was not capable of being a team leader and said that he would not answer any questions as Ms Khan and Mr Ali were biased. Eventually, they were unable to continue with the interview as the claimant simply refused to answer any questions.

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45. At no point during the meeting did Ms Khan or Mr Ali make fun of the claimant or behave in any way inappropriately. During the meeting, Mr Ali had to intervene since he felt the claimant was speaking in an inappropriate way to Ms Khan. Following the meeting, Mr Ali and Ms Khan contacted the respondent's People Advisory Service (PAS) which is an internal HR provider. Ms Khan was then told that she should suspend the claimant and make sure that he could no longer access Lark to spread his advice around any further. The decision was confirmed by the operations team. Ms Khan was told that she and Mr Ali should contact the claimant the following day in order to deliver the message.

46. The following day, on 15 December, the meeting was reconvened. Again, it was online using a video platform. Once again the claimant was aggressive and hostile from the outset. At the beginning of the meeting, Ms Khan advised the claimant that he was suspended. The claimant said he would prefer any correspondence to be via email. He said to Ms Khan, "why did you call me to hear my voice? I am not shaking and Sahar if you were standing in front of me you would not be laughing for the rest of your life." He then said that he would terminate the call which he did. At no point did Ms Sahar laugh at the claimant. Ms Sahar was extremely upset and concerned at what she saw as a physical threat. The claimant's demeanour was such that she felt physically threatened. Although the call was online, she felt that if she had been in the same room as the claimant, she would have been in physical danger. She also felt that the way the claimant had asked to be contacted via email in future was inappropriate.

47. Mr Ali took a note of this meeting also. This was lodged (page 212-213).

48. Following this meeting, Ms Sahar was concerned the claimant might try to find her and do her injury. She could not understand his hostility to her.
49. On 15 December, the claimant submitted a written grievance to the respondent. This grievance letter was lodged (page 240-241). The claimant referred to the two meetings and indicated that he was intimidated, bullied and victimised by the two team leaders. He set out his position that moderators may write whatever they wished on these webchats. He alleged that Ms Khan and Mr. Ali had been laughing at him and intimidating him. He indicated that he believed the allegation was self-made and being interpreted incorrectly and said that he had been bombarded with questions. The letter was lodged (page 240-241).
50. The claimant then wrote a further grievance the following day following his suspension. He stated that during the meeting on 15 December, Ms Khan had told him that he would be dismissed anyway.
51. The claimant's grievance was investigated by Jav Maqbool, an operations manager with the respondent. Mr Maqbool was generally aware that management were investigating some moderators who were sharing information with each other in chats on the Lark group about how to avoid detection and allow them to work from abroad. He was aware working abroad was not permitted and that the issue was of concern to the respondents, but he had not previously been involved in any way with the claimant and he was not aware of the claimant's background or where he had been born. He met with the claimant on 24 December 2021 and held a grievance meeting with him. A minute of this meeting was prepared by Muhammad Saftar, a team leader with the respondent who took notes. These were lodged (pages 243-2447).
52. During the grievance hearing, the claimant again indicated that in his view, Sahar Khan and Atisham Ali had acted unprofessionally at the meeting and were laughing at him. The claimant mentioned the grievance he had raised about the appointment of Ms Khan and her sister as team leaders. The claimant indicated that he felt Ms Mahmood had deliberately chosen Ms Khan

and Mr Ali for the investigation to victimise him. He accused someone of spying on him by passing on the comments he had made on the Lark group chat. Mr Mahmood also went through the claimant's alleged comment at the hearing. He put it to the claimant that he had said "why did you call me? If you were laughing in front of me you would never laugh again." The claimant denied it but said that he had said, "if you were sitting in a Tribunal and having a laugh you would never be laughing again during another investigation." The claimant then sent Mr Mahmood an excerpt from the group chat from some months earlier which had been made by Sahar Khan. The circumstances were that a colleague had been told that she could not have time off for her wedding. Sahar Khan joined the chat stating, "if I was you, I would just call in sick for two days. Losing two days wages is better than being stressed on your own wedding." This was lodged at page 377.

53. The claimant told Mr Mahmood that no action had been taken against Saha Khan. This was in fact incorrect as the matter had been reported to Saadia Mahmood who had called Ms Khan and given her an informal warning. Ms Khan (who had not been promoted at that point) had immediately apologised and promised that she would not do this again. The claimant also sent another message from another employee who had left the company and who had made a post which was derogatory towards the company. . Mr Mahmood said that the company were aware of this message but since the employee had left, they had not taken any action over it.

54. Following the meeting, Mr Maqbool met with Sahar Khan and Atisham Ali. He obtained statements from them. These were lodged. The notes of the meeting with Atisham Ali are at pages 235-237. The notes of the meeting with Sahar Khan are at 238-239. Both of them confirmed that the claimant had been aggressive and rude from the start of the call and was not prepared to listen. Both confirmed that he had made remarks along the lines of that mentioned in the minute. Mr Ali had said that if the claimant had made the remark in a face to face meeting, he would have been escorted out of the building. Mr Ali confirmed the remark was very threatening, particularly the way it was said. Ms Khan also confirmed this. Ms Khan said that she would

expect action to be taken as she should not have to deal with this kind of behaviour.

55. Mr Maqbool had previously decided that a formal investigation should be carried out in respect of the remark made by the claimant. He arranged for this to be taken by another team leader, Mr Saleem. He met Mr. Saleem on 5 23 December. Notes of the meeting were taken by a note taker, Mr Mansur. This note was lodged at pages 227-234. The claimant was invited to make comments on the notes and the notes together with his comments were also lodged (pages 219-226). Mr Saleem understood that it was his task to look 10 into the claimant's behaviour at the meeting on 15 December. He was not tasked with reinvestigating the issue of the comments the claimant had posted on the Lark webchat. During this meeting, the claimant was asked if he recalled the remarks made to Ms Khan. He did not answer the question. His response was that he said the notes were one sided and that "they could write 15 anything". He said that the investigation from the start was not authentic. He was asked again and again made an unresponsive answer stating that the original hearing had been scrapped.

56. Following the investigation, Mr Maqbool decided that it would be appropriate for the claimant to proceed to a disciplinary hearing. He also wrote to the 20 claimant with the outcome of his grievance. The claimant's grievance outcome letter was lodged (page 248-250). It was sent to the claimant on 18 January. Mr Maqbool did not uphold the claimant's grievance. The claimant decided to appeal the grievance outcome and wrote a letter of appeal on 27 January. This was lodged (page 252). He again criticised the witness 25 statements. He again questioned why Sahar Khan and Atisham Ali had been asked to chair the investigation when he said that others were available.

57. The claimant was invited to a disciplinary hearing by a letter dated 26 January 2022. This was lodged (page 274-275). He duly attended the meeting which was conducted by Chris Conway, a team leader from another campaign who 30 had no contact with the claimant and was not involved in any way with anyone involved. A note of the disciplinary hearing was lodged (pages 280-284). The claimant denied having made the comment and said that his words had been

twisted. He stated that both team leaders were trying to cover their own wrongdoing. He accepted that if he had said the words alleged, then it would have been unacceptable and unprofessional. He denied behaving in any way inappropriately at the meeting on 14 and 15 December. At the end of the meeting, the claimant read a statement which he then emailed over. A copy of this statement was lodged (page 285-290). The claimant had prepared this in advance of the hearing but added to it during the first part of the meeting with Mr Conway.

58. Mr Conway adjourned the meeting for a short time. He then reverted to the claimant and indicated he had formed a reasonable belief that the words the claimant were accused of saying were said. He indicated that he accepted the evidence of the two team leaders. He indicated that in the circumstances, given the seriousness of the allegation the claimant was being summarily dismissed.

59. An outcome letter was sent to the claimant dated 1 February. This was lodged (page 307-309). The claimant lodged an appeal. His appeal letter was lodged (page 310-311). He again denied threatening behaviour towards the team leaders. His position was that it was pre-planned to dismiss him and that he would have been sacked anyway. It was his position that the original allegation was not proven.

60. An appeal was held however on 2 March 2022. The notes of this were lodged at pages 402-433. The claimant's appeal was not upheld.

61. Following the termination of the claimant's employment, the claimant obtained other work fairly quickly. He had no wage loss up to the date of the Tribunal.

25 **Observations on the evidence**

62. The respondent's position was that whilst this was not a personal comment on the claimant, the claimant's evidence was neither reliable nor credible. The Tribunal agreed with this assessment. We were in no doubt that the claimant's view that he had been ill treated, discriminated against and victimised was his honest view of the situation but we did not accept that this

was correct. The claimant was not a good witness. During cross examination, he refused to accept simple matters put to him. He would not accept that the respondent's policies in the bundle were the correct policies. It was clear that from an early stage in his employment, the claimant considered that the respondent's practices were "dodgy", to use a word which he frequently applied. He would make fairly astonishing deductive leaps and was simply not prepared to accept anything which contradicted his world view. The claimant's position was that he was at the centre of a conspiracy which must logically have involved all of the respondent's witnesses. Whilst he put it to some of these witnesses that they were discriminating against him on the grounds of race or sex, he did not even put it as a proposition to all of the witnesses.

63. There was a particular difficulty regarding his claim based on race discrimination. As noted below, the claim had been subject to extensive case management and the claimant had set out his position which was that he was discriminated against because he was a Pakistani national born in Pakistan as opposed to others who were all British born Pakistanis. It was pointed out to him that his principle comparator Ms Khan was herself Pakistani born and that Ms Mahmood was not British born as he had assumed. He then changed his position to indicate that the issue was that he had been brought up in Pakistan as opposed to Ms Khan who had moved to Britain when she was a young child. The reality of the situation however was that he did not succeed in establishing that any of his alleged discriminators had any real knowledge of his background at all. He did not even challenge the evidence to the effect that they really had no knowledge of who he was.

64. The claimant appears to have on various occasions jumped to conclusions and assumed that nothing untoward was happening. A typical example of this was his view of the circumstances surrounding Ms Mahmood's quick promotion to operations manager. He immediately assumes that there is something untoward going on and that it must be because she has relatives within the company. He did not cross examine her evidence to the effect that she was not related to anyone who already worked for the company. He has

assumed that there must be something 'dodgy' about the fact that Ms Khan and Ms Pervaiz being appointed as team leaders without any real knowledge of their background and training. He assumes that they will have been told about his grievance without any basis. He then assumes that Ms Mahmood has deliberately chosen Ms Khan to do the investigation to get at him. There was absolutely no evidence for any of these propositions other than the claimant's assertion.

65. Whilst he is very quick to see wrongdoing in the actions of others and impute improper motives for everything they have done, he took a much more benign view of his own behaviour. Although when pushed he eventually accepted that the post which he had made in the Lark chat was inappropriate, he still sought to challenge the respondents for seeking to carry out a disciplinary investigation of this. The Tribunal also considered that he sought to very much minimise the aggressive tone with which he responded to Ms Khan and Mr Ali at the two investigation meetings.

66. The Tribunal was not prepared to accept his evidence as reliable but, in any event,, even if we had, he was unable to bring forward any cogent evidence from which the Tribunal could possibly draw an inference that discrimination had taken place. We accepted his evidence regarding what happened over his paternity pay since there was absolutely nothing to gainsay it. The respondent's position was that the team leader at the time was no longer in their employment. He was not called as a witness.

67. In general terms, the Tribunal were happy that all of the respondent's witnesses were making a genuine attempt to assist the Tribunal by giving truthful evidence. We found their evidence credible and reliable. It was clear that Ms Mahmood and Ms Thorne were genuinely puzzled by the claimant's apparent attitude. We accepted Ms Khan and Mr Ali's evidence about what had happened at the hearings on 14 and 15 December. We accepted Ms Khan was genuinely upset and intimidated by the claimant's aggressive tone. She was unaware of the grievance he had raised about her appointment and had never met him and could not understand why he started off the meeting by being so aggressive. Mr Ali in his evidence made the point that most of

his family was born in Pakistan and that he would be very unlikely to wish to discriminate against the claimant for this reason even if he had known this about the claimant's background. We considered that Mr Maqbool who had taken over the investigation of the claimant's grievance and was involved in the disciplinary process was doing his best to deal with a situation which had arisen. We also considered that Mr Saleem and Mr Conway who were involved in the decision to dismiss the claimant were simply trying to do their job and apply the company's policies.

Issues

68. The issues in the case were as set out following the preliminary hearings on case management which took place in this case. The claimant claimed that he had been discriminated against on the grounds of race and sex. There were four allegations of direct discrimination. The first related to him not being allowed to take paternal leave in 2021. The second was him not being progressed to the team leader position in September 2021. The third was that he was investigated and disciplined in December 2021 and that the appropriate processes were not followed correctly. Finally, he relied on the dismissal itself.
69. The claimant claimed that he had been victimised as a result of raising the grievance in September 2021. The respondents accepted in their submissions that this was a protected act. The claimant said that he was not promoted to team leader and was dismissed as a result of that. The respondents pointed out that given the grievance was about his failure to be appointed as team leader, it is logically impossible that this failure to promote could be an act of victimisation for raising the grievance.
70. The claimant also claimed harassment in respect of the meeting on 14 and 15 December 2022. The claimant also mentioned in earlier hearings that he was seeking damages for breach of contract and making a claim to have been victimised for requesting paternity leave. These latter claims were not mentioned by him in evidence and there was not a scintilla of evidence to support them.

71. The respondent's position was that the alleged acts of direct discrimination relating to paternity leave and to the failure to promote to team leader were timebarred. At the conclusion of the case, the claimant was invited to make a submission. The claimant indicated that he did not wish to do so but wished to place himself in the hands of the Tribunal. The respondent's agent made a full submission, the terms of which the Tribunal essentially agreed with. Rather than set this out at length, we shall refer to the respondent's submission in our discussion below.

Timebar

72. As noted above, it was the respondent's position that the claim of direct discrimination relating to the claimant's paternity leave and of direct discrimination relating to the recruitment process in September were timebarred. The Tribunal considered it as well to deal with these matters first.

73. Section 123 of the Equality Act 2010 provides that proceedings on a complaint to an Employment Tribunal may not be brought after the end of:

- (a) the period of three months starting at the date of the act which the complaint relates or;
- (b) such other period as the Employment Tribunal thinks just and equitable.

74. Section 123 (3) goes on to state:

"for the purposes of this section –

- (a) *conduct descending over a period is to be treated as done at the end of the period;*
- (b) *failure to do something is to be treated as occurring when the person in question decided on it;*

....

- (4) *In the absence of evidence to the contrary, a person P is to be taken to decide on failure to do something:*

- (a) *when P does an act inconsistent with doing it; or*
- (b) *if P does no inconsistent act on the expiry of the period in which P might reasonably have been expected to do.”*

- 5 75. It is clear that the issue around paternity leave and pay happened in February 2021. The respondent's failure to pay the claimant any paternity pay would have taken place by the end of February 2021 at the latest. With regard to the recruitment issue, the claimant was aware by at the latest 30 September 2021 when he submitted his grievance that he was not being recruited to the post of team leader.
- 10 76. It is therefore clear that the initial three month period in respect of the paternity pay issue expired on or about 27 May 2021 and the three month period in respect of the recruitment exercise expired on or about 29 December 2021. The claimant did not raise his claim until 10 April 2022 having applied for early conciliation to ACAS on 11 March 2022 and the ACAS certificate having been
15 granted on 14 March 2022. It is therefore clear that on the face of it, these two allegations are out of time. The Tribunal required to consider whether these allegations could be regarded as part of a course of conduct extending over a period and including the later allegations made by the claimant. The Tribunal did not accept that this was the case. We applied the guidance set
20 out in the case of **Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 CA.**
- 25 77. It appeared to us that the claims surrounding the meetings on 15 and 16 December and the claimant's dismissal are entirely separate from and of a different nature to the earlier claims. They involve different individuals apart from the fact that the claimant's grievance relating to the recruitment exercise is relied to as a protected act in respect of his victimisation claim relating to
30 the two later matters. There is absolutely nothing to link them. The claimant failed to show that they reflected an ongoing situation or a continuing state of affairs. They were entirely distinct and unrelated to the issues in December 2021 and his dismissal in January 2022.

78. In the circumstances, the Tribunal's view was that the claim was timebarred unless the Tribunal exercised its discretion to extend time on just and equitable grounds. In relation to this, the Tribunal is required to take account of the case law. The case of *Robertson v Bexley Community Centre* [2003] IRLR 434CA confirms that the Tribunal has a wide discretion in determining whether or not it is just and equitable to extend time. On the other hand, there is no presumption that they should extend time unless they can justify failure to exercise the discretion. A Tribunal cannot hear a complaint unless the claimant convinces it that it is just and equitable to extend time. The exercise of discretion is just the exception rather than in the rule. In this case, there is absolutely nothing from the claimant to suggest that it would be just and equitable to extend time. He did not give any reason why he had not lodged his claim at an earlier stage. He avoided the questions asked in cross examination designed to elicit whether he had had any knowledge of the tribunal system at the time of the earlier events. On the other hand, we did have a submission from the respondent that given staff turnover, they had some difficulty in providing cogent evidence particularly in respect of the earlier of the two matters. There would be an injustice to them if time were extended. The team leader who had been involved in decisions around the paternity pay was no longer with the company.
79. In the circumstances, the Tribunal did not see any reason to exercise its discretion to extend time. Accordingly, the first two claims of direct discrimination fall to be dismissed on the basis they are out of time.
80. The Tribunal then required to consider the remaining claims.
81. With regard to claims of discrimination, the law recognises that discriminators may not be open in the way they discriminate and section 136 of the Equality Act seeks to deal with this issue by making detailed provisions as to the approach which Tribunals are required to take when assessing the evidence in discrimination cases. This guidance has been subject to considerable discussion in the higher courts and a useful summary of the approach is set out in the well known case of *Igen Limited v Wong* [2005] IRLR 258 CA. This states:

“the guidance issued by the EAT in Barton v Investec Henderson Crosthwaite Securities Limited in respect of sex discrimination act cases which has been applied in relation to race and disability discrimination would be approved in amended form as set out below.

- 5 (1) *It is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the Tribunal could conclude in the absence of inadequate explanation that the respondent has committed an act of discrimination against the claimant which is unlawful. These are referred to below as such facts.*
- 10 (2) *If the claimant does not prove such facts, he or she will fail.*
- (3) *It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination even to themselves. In some cases, the discrimination*
15 *will not be an intention but merely based on the assumption that he or she would not have fitted in.*
- (4) *In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis why the Tribunal will therefore usually depend on what inference it is proper to*
20 *draw from the primary facts found by the Tribunal.*
- (5) *It is important to note the word could in section 136 (2). At this stage, the Tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage, the Tribunal is looking at the primary facts*
25 *before it to see what inferences of secondary fact could be drawn from them.*
- (6) *In considering what inferences or conclusions can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for these facts.*

- (7) *These inferences can include in appropriate cases any inferences that is just and equitable from an evasive or equivocal reply to a questionnaire or any other statutory question.*
- 5 (8) *Likewise, the Tribunal must decide whether any provision of any relevant code or practice is relevant and if so take it into account. This means that inferences may also be drawn from any failure to comply with any relevant code or practice.*
- 10 (9) *Where the claimant has proved facts which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex then the burden of proof moves to the respondent.*
- (10) *It is then for the respondent to prove that he did not commit or as the case may be is not to be treated as having committed the act.*
- 15 (11) *To discharge that burden is necessary for the respondent to prove on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of sex since no discrimination whatsoever is compatible with the burden of proof directive.*
- 20 (12) *That requires a Tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.*
- 25 (13) *Since the facts necessary to prove an explanation would normally be in possession of the respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the Tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.”*

82. The case of *Madarassay v Nomura International plc* [2007] IRLR 246 CA makes it clear that the Tribunal is not prevented at the first stage from hearing accepting or drawing inference from evidence produced by the respondent disputing and rebutting the claimant's evidence of discrimination.

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83. Although the Igen v Wong case dealt with discrimination under the old legislation, it is generally accepted that this is the approach to be taken in cases under the Equality Act involving all types of discrimination.

5 84. The difficulty for the claimant in this case was that there was absolutely no credible or reliable evidence from which the Tribunal could draw any inference that discrimination on the basis of either of the two protected characteristics alleged took place. As noted above, we did not accept the claimant's evidence as credible and reliable in any event but even if we had, the factual evidence which he gave did not in any way support an inference of
10 discrimination.

85. We have found the claim relating to paternity pay to be timebarred but even if we had not, it is absolutely clear that on the facts, there was no discrimination in this case. The reason the claimant was not paid paternity pay was because he was not eligible based on his length of service. The claimant sought to
15 dispute the policies provided but it was clear to the Tribunal that these were the respondent's policies. They are fairly standard policies. It is clear that the reason the claimant did not receive paternity pay was because he was not entitled to it. There may have been issues around the issue in that he may have been right to feel aggrieved that he was not immediately told by his team
20 leader what the problem was but even if we accept that happened (and given we could not hear evidence from the team leader, we would accept that), there was absolutely nothing to suggest that this was done on any grounds relating to the claimant's race. The claimant's assertion that a woman would not have been treated in this way is based on simple assertion. It cannot stand scrutiny.
25 A woman would not be entitled to paternity leave. Even if we were to take the claimant's extrapolation to include maternity leave, if we had accepted all of the claimant's evidence (which we did not), there was nothing other than mere assertion on the part of the claimant to suggest that events would not have happened in a similar way in relation to maternity leave. A woman who was
30 not entitled to maternity pay would not have received it from the company.

86. Similarly, with regard to the recruitment exercise, the claimant's evidence was essentially that others had been appointed whom he did not rate as highly as

himself. There was absolutely nothing in the claimant's own evidence to suggest this was linked to race or sex. We are also entitled to take into account the evidence adduced by the respondents to show that there were in fact good non discriminatory reasons for making this decision. On this basis, we are in no doubt that even if we had decided that the claim based on the recruitment exercise was not timebarred, the claimant's claim of direct discrimination could not succeed.

87. With regard to the issue of what happened at the hearings on 14 and 15 December, the Tribunal preferred the evidence of Ms Khan and Mr Ali. This was backed up by the contemporary notes. They were clear and concise in their evidence and answered questions properly during cross examination. We did not accept the claimant's evidence. It was absolutely clear to us that having been aggrieved at Ms Khan having been promoted instead of him, the claimant went into the meeting on 15 December in an aggressive frame of mind. This was spoken to by Mr Ali. The way he was treated had absolutely nothing to do with his race. He was being investigated because he had made extremely inappropriate comments in a webchat about his employers. He had a strong belief (without having any evidence) that Ms Khan should not have been promoted over him and allowed this resentment to come out in extremely aggressive and inappropriate behaviour at both meetings. We accepted the evidence of Ms Ali and Ms Khan they had no idea who he was or what his background was.

88. With regard to the claimant's dismissal, it was absolutely clear that Mr Conway who made the decision was entitled to come to the decision he did based on the information before him. It was not even put to Mr Conway that his decision had been based on the claimant's race or sex.

89. At an earlier stage the claimant had indicated he was making a claim of discrimination based on the protected characteristic of pregnancy/maternity. Our understanding is that this claim had been dropped at an earlier stage because the claimant accepted it was incompetent however for the sake of completeness, we should say that this claim is also dismissed. We consider the claim to be time-barred as it could only relate to the events in February

2021 but in any event, we would agree that the claimant could not himself competently make such a claim. In any event we heard no evidence to support such a claim.

5 90. The claimant's claim that the disciplinary investigation and subsequent dismissal were an act of victimisation for bringing a grievance simply does not hold up to any kind of examination. It is entirely unsupported by any evidence. There was also absolutely no evidence to suggest he was being victimised for requesting paternity pay.

10 91. It was not disputed by the claimant that he had been responsible for writing the comments in the webchat. The Tribunal had no hesitation in finding that it was reasonable for the employer to seek to investigate this with a view to perhaps instituting disciplinary proceedings. We considered it highly likely that any employer would do this. We accepted the evidence that working in Pakistan was a matter of some sensitivity for the company given the terms of their contract with Byte Dance Limited.

15 92. We did consider the claimant's suggestion that he had been treated more severely than others and in particular considered the evidence regarding the comment made by Ms Khan. It was clear however that this comment was much less serious than the comments made by the claimant. It was made at a time when Ms Khan was, like the claimant, working as a moderator and it was also clear that Ms Khan had actually been spoken to about it at the time. We accepted the evidence of Ms Thorne who said that if on the scale of 1-10, Ms Khan's comment could be regarded a 3 whereas the claimant's would be regarded as an 8 or 9. It was clear that he was seeking to advise fellow employees how to avoid detection. It was clear from Mr Maqpool's evidence that the likely outcome had the claimant behaved appropriately at the investigation meeting would have been that the claimant would have received some kind of warning. At the end of the day, the respondent decided not to proceed with this allegation but to bring the claimant to a disciplinary based on the far more serious allegation relating to the way he behaved at the disciplinary. It was entirely reasonable for them to do this. The suggestion by

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the claimant that this somehow meant the original allegation was invalid is incorrect.

5 93. The respondents were entirely within their rights in coming to the decision they did as to what had transpired at the investigation meetings and to decide that it was appropriate to dismiss the claimant for that reason. The decision had nothing to do with the claimant's sex or race. The claimant was not being victimised either for raising a grievance about the recruitment process or requesting paternity leave.

10 94. The claimant's claim for breach of contract was not articulated properly at the hearing and, like the respondent, we had no idea what this was about given that the claimant had confirmed he was not seeking notice pay. For what it is worth the tribunal could not detect any breach of contract in what had been narrated to us. The claimant's previous claims relating to holiday pay and for unlawful deductions had been dismissed following withdrawal by the claimant at an earlier stage.

15 95. At the end of the day, the Tribunal found none of the claimant's claims to be well founded and all the claims are therefore dismissed.

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25 **Employment Judge: I McFatridge**
Date of Judgment: 22 November 2022
Entered in register: 24 November 2022
and copied to parties

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