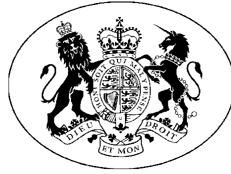
Case No: 2404841/2022



EMPLOYMENT TRIBUNALS

Claimant: Ms M Gregory

Respondent: The Emmaus Catholic Academy Trust

HELD AT: Manchester **ON:** 11, 12 & 13 April 2023

BEFORE: Employment Judge Johnson

MEMBERS: Mr T D Wilson
Ms A Berkeley-Hill

REPRESENTATION:

Claimant: Unrepresented
Respondent: Mr P Kirtley (counsel)

JUDGMENT

The judgment of the Tribunal is that:

(1) The complaint of race discrimination is not well founded which means that it is unsuccessful.

REASONS

(written reasons provided following a written request made by the claimant on 13 April 2023)

Introduction

1. These proceedings arose from the claimant's employment with the respondent education trust as a teacher from 7 August 2019 until her resignation on 25 July 2022.

2. She presented a claim form to the Tribunal on 21 June 2022 following a period of early conciliation. She presented complaints of race discrimination and breach of contract. It should be noted that she presented her claim before her date of resignation and did not present a further claim form following the effective date of termination.

3. A response was presented which resisted the claim, arguing that the Head Teacher and her senior leadership team at St Chad's School where the claimant worked treated her fairly and appropriately and in a way which was not connected with her race.

4. The case was subject to case management and was initially considered by Employment Judge (EJ) Shotter at a preliminary hearing case management (PHCM) on 1 September 2022. She was not able to finalise a list of issues and listed the case for a further PHCM to discuss these matters, as well as case management orders and the preliminary issue of whether the claimant could also bring a complaint of unfair dismissal.

5. The claimant's protected characteristic of race was confirmed as being a Black African Woman.

6. The next PHCM was heard by EJ Ross on 14 November 2022. She concluded that only the race discrimination complaint could proceed to a final hearing and finalised a list of issues accordingly. Effectively, they involved 5 allegations made against the respondent (the Head Teacher of St Chad's primarily) and pleaded as amounting to either direct race discrimination and/or harassment on grounds of race.

7. The question of a potential conflict of interest was discussed before the hearing of evidence began. Non Legal Member, Ms Berkeley-Hill referred to her membership of The National Education Union (known as NEU) and her role as a Lay District Officer for Bradford. She noted that her work was restricted to the Bradford District. She was not a union official and an employee of the NEU, but was a seconded teacher. Her work with the NEU apart from Yorkshire and Humber Region, did not involve working with any other regional offices and this included the NW Region which is relevant to this case. The respondent did not object to Ms Berkeley-Hill sitting on the panel and time was allowed for the claimant to consider her position given that she was a litigant in person. However, she confirmed that she was happy for the case to proceed with Ms Berkeley-Hill remaining as part of the Tribunal panel hearing this case. No application for recusal was therefore made.

8. The judgment was delivered as an ex tempore (oral) judgment and these written reasons were requested by the claimant by email to the Tribunal on 13 April 2023.

Issues

9. The list of issues was included within the hearing bundle as an Annex to EJ Ross's case management order which was sent to the parties on 17 November 2022, (pp39-40).

Direct race discrimination (section 13 EQA)

10. The claimant describes herself for the purposes of the Equality Act 2010 (EQA) as a Black African woman. Did the following matters occur:

    a) The Head Teacher changed the claimant's rota in January 2021 so that at playtimes the claimant was put on the rota from Monday to Friday, leaving her without a comfort or coffee break;

    b) The Head Teacher distracted the claimant and asked her to return to work during a video remote court appointment on 3 March 2021;

    c) The Head Teacher enquired about WhatsApp updates the claimant had issued during a childcare absence on 21 July 2021;

    d) In October 2021 the Head Teacher told the claimant to record a child protection incident on CPOMS when the claimant had not witnessed it; and,

    e) In December 2021 when the claimant requested to change her working days so she could attend university; her request was refused by the Head Teacher.

11. Did the claimant reasonably see the treatment(s) as a detriment(s)?

12. If so, has the claimant adduced facts from which the Tribunal could conclude that in any of those respects the claimant was treated favourably than a hypothetical white comparator in the same material circumstances was or would have been treated? The claimant relies upon a hypothetical comparison.

13. If yes, has the respondent shown a non discriminatory explanation for the treatment?

Harassment related to race (section 26 EQA)

14. In the alternative, the claimant relies on the same allegations of harassment related to race.

15. Did the respondent do the following:

a) The Head Teacher changed the claimant's rota in January 2021 so that at playtimes the claimant was put on the rota from Monday to Friday, leaving her without a comfort or coffee break;

b) The Head Teacher distracted the claimant and asked her to return to work during a video remote court appointment on 3 March 2021;

c) The Head Teacher enquired about WhatsApp updates the claimant had issued during a childcare absence on 21 July 2021;

d) In October 2021 the Head Teacher told the claimant to record a child protection incident on CPOMS when the claimant had not witnessed it; and,

e) In December 2021 when the claimant requested to change her working days so she could attend university; her request was refused by the Head Teacher.

16. If so, was it related to conduct?

17. If yes, was it related to race?

18. Did the conduct have the purpose or effect of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? The Tribunal will take into account (in an effect case only) the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect.

<u>Remedy for discrimination</u>

19. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? what should it recommend?

20. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

21. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

22. Did the claimant suffer a loss of earnings during her absence on sick leave?

23. If yes, was that attributable to any of the allegations of harassment/direct discrimination?

Evidence used

24. The claimant gave evidence and did not reply upon any other witness evidence.

25. The respondent called two witnesses who were both relevant to the issues under consideration:

    a) Ms Stacey Brackenridge (Head Teacher/Designated Safeguarding Lead)
    b) Ms Megan Carlson (formerly Assistant Head Teacher/Deputy Designated Safeguarding Lead)

26. An agreed hearing bundle was available at the hearing and consisted of the proceedings documents, policies and procedures, correspondence and relevant documents relating to the issues in question where available.

Findings of fact

<u>The respondent school</u>

27. The respondent is a small multi academy trust running a number of schools and which consists of 5 Catholic academies in Manchester. This case involves St Chad's Primary School (the school). At the time which this case relates to (2021 and 2022), Ms Brackenridge was the Head Teacher and Ms Carlson was the Deputy Head Teacher.

28. Safeguarding and special educational needs were understandably a significant part of the responsibilities of these senior leaders at the School. Ms Brackenridge was the Designated Safeguarding Lead (DSL) responsible for managing day to day safeguarding matters within the School, ensuring record keeping is kept in order and referring matters of concern to the relevant services managed by the local authority. Ms Carlson was the Deputy Designated Safeguarding Lead (DDSL) and was the relevant point of contact when Ms Brackenridge was unavailable as well as assisting her in these duties.

29. The school used a system to record any incident which could be safeguarding concern called 'CPOMS'. All staff members with an individual email account could access the system to record any issues of concern. They were expected to not only record the incident in a non-judgmental way, but also to explain any action that they took to remedy the situation. Once the incident had been logged, the member of staff would not be able to amend it and they could not see their logged submission once it was posted. However, an automatic notification took place to the DSL and DDSL who could examine all of the recorded incidents, give feedback and request additional actions as appropriate. All data inputted would be permanently recorded and the time and person responsible for any changes would be recorded.

30. Ms Carlson was also the Special Educational Needs Coordinating Officer (known as the SENCO) for the school and was responsible for ensuring that children who had Educational and Health Care Plans (known as EHCPs) were implemented within the school setting. These can often involve a child with an EHCP having 1:1 support from a Teaching Assistant during lessons and sometimes during breaks. As children with EHCPs progressed through the school system they moved to secondary school or other educational provisions and therefore Teaching Assistants would be redeployed to other duties, which could include 1:1 supervision of another child.

31. The school had a number of Trust policies and procedures in operation which applied to all staff and included within the hearing bundle were:

    a) Sickness absence policy
    b) Staff use of social media policy
    c) Flexible working procedure

32. The school did have a governing body whom the Head Teacher answerable, but she was responsible for day to day management. Like all senior leaders in Schools, the Tribunal noted that Ms Brackenridge and Ms Carlson had

many responsibilities, were hardworking and conscientious and would often work during School holidays, which was effectively unpaid time.

The claimant

33. The claimant (Ms Gregory) was employed by the respondent as a Teaching Assistant Level 2 from 7 August 2019 and worked at St Chads. It was understood that she would be allocated to various roles within the school, and this could include 1:1 support for children with EHCPs.

34. Her hours of work were 21.25 hours per week. Originally, she worked from 9am to 1:15pm and later this was varied to 8:45am to 1pm. The Tribunal had sight of Ms Gregory's attendance records from 6 January 2020 to 18 December 2020 (p113-8) and 5 January 2021 to 30 November 2021 (pp119-124) and she regularly struggled to arrive at School in time for the 8:45am. This meant of course, that she would normally have to go straight into class and there was little or no time available for discussions with management. Ms Gregory used the word *'in a school setting'* on a number of occasions during the hearing and it appeared that she was aware of the differences between working in a School when compared with say, working in an office. Once lessons began, there was a constant need to manage and support children with little time for staff meetings.

35. What is important to note in relation to Ms Gregory's working day, is that she would never work more than 6 hours continually, which meant that she was not entitled to have a minimum break as provided by the Working Time Regulations. This did not mean she was prevented from taking comfort breaks such as going to the toilet or getting refreshments. We accepted Ms Brackenridge's evidence that this was the case and we were not convinced by Ms Gregory's suggestion that she was not allowed any breaks at all.

36. Ms Gregory's contract of employment expected her to be flexibly in relation to her duties and made no provision for a contractual entitlement to breaks. Her misunderstanding appeared to arise from a resentment that colleagues who worked longer hours, were entitled to statutory breaks.

37. The impact of Ms Gregory's hours was that she was available to provide cover for break times and lunches where children required supervision and where she was not currently looking after a child with an EHCP who required 1:1 support outside of lessons.

Allegation one – change of rota January 2021

38. Ms Gregory said that the Head Teacher changed the rota for play time supervision in January 2021 following the Christmas break which placed her on the rota for Monday to Friday each week. Unfortunately, the actual rota was not available within the bundle because they would be updated every half term and overwritten on the IT system used. An example was available of the rotas which were in use for September 2021 to January 2022 and which showed break time and lunches and who was providing cover for each break.

It typically involved 2 or 3 members of staff and included teachers and members of the senior leadership team including the Head Teacher.

39. There was a slight confusion between the witnesses as to precisely when the offending rota was in operation, but it agreed that for a brief period, Ms Gregory moved from 3 days supervision to 5 days supervision, reverting to 3 days when more Teaching Assistant Support became available due to changes in support for children with EHCPs.

40. Ms Gregory did make some mention in her witness statement relating to health issues which affected her ability to remain outside during breaktime supervision in cold weather. She did not deal with these matters during the hearing in evidence. Moreover, this was not a case where the issues involved health related discrimination, whether involving a disability or some other protected characteristic. We did not have sufficient evidence to make any finding concerning this matter and in any event, we find it to be an irrelevant matter to determine the issues before us.

41. Ultimately, taking into account the evidence available we found on balance that a rota change took place in early 2021 and which temporarily involved Ms Gregory working 5 days of breaktime cover rather than her more usual 3 days. However, this was necessitated by the operational need to provide cover at that time and it was reduced as soon as additional TA resources became available.

<u>Allegation two – the Head Teacher distracted claimant and asked her to return to work during a video remote court appointment on 3 March 2021</u>

42. There was no dispute that Ms Gregory was supporting her brother in relation to an immigration case being dealt with in the courts and tribunals system. There was a document available within the bundle (p102-3) which was a notice of a hearing remotely by CVP (the courts and tribunals online hearing platform), on 3 March 2021 at 10:30am and which she needed to attend.

43. Ms Gregory asserted during the hearing that she had given advance notice of her brother's immigration hearing to Ms Brackenridge. This was denied by Ms Brackenridge and she explained convincingly that the usual process which took place was that a member of staff would complete a special leave request form asking for permission to be released. This leave if allowed, could be paid or unpaid depending upon the circumstances, including the nature of the absence and the number of absences requested. No written request (and consequential decision) was included within the bundle and no convincing evidence was available to persuade us that on balance and advanced request was made by Ms Gregory. The Tribunal noted that in her evidence, Ms Gregory accepted that she understood the special leave policy and how it applied.

44. We find on balance that the school's version of events is more accurate and that Ms Gregory only gave notice of the court hearing on the day that it was taking place. understandably, this placed a burden upon the school given that she would have been already allocated to duties for the entirety of her day.

However, they nonetheless allowed her to attend the remote hearing and we accept the evidence Ms Brackenridge that she asked Ms Carlson to provide her with the SEN/Quiet room (which was also effectively her office), and with suitable IT equipment to join the CVP hearing.

45. The Tribunal accepted that there were no interruptions as such. Instead, before the hearing Ms Carlson had to assist Ms Gregory with logging on to CVP. Ms Brackenridge did enter the room shortly before 12pm, but that was to check whether the hearing was likely to finish soon because she wanted to check whether she needed to provide alternative break cover if the hearing was to continue after 12pm. This was not a continual interruption as alleged and Ms Brackenridge explained that she tried to attract Ms Gregory's attention by gesturing from the side window to the room, but her back was turned and it was necessary for her to enter the room and check when the hearing would finish.

Allegation three -WhatsApp updates during childcare absence on 21 July 2021

46. On 21 July 2021, Ms Gregory contacted Ms Brackenridge at 8:39am on WhatsApp to say that she could not come into School *'due to unprecedented second circumstances overnight till this morning, we have to see the doctor'.* It was not entirely clear what the precise reason was for the leave absence request, but Ms Brackenridge accepted it was childcare related and the Tribunal accepted that this was a leave request.

47. The sickness absence policy provided that Ms Gregory should have telephoned the Head directly between 7 and 7:45am, but no real issue was taken with this at the time.

48. Later in the day, Ms Brackenridge said that she received a notification on her phone to say that the status icon of one of her contacts had been changed. Not surprisingly, this prompted her to look at what this related to and when she checked her phone it revealed that Ms Gregory had posted a video of her with her two sons on a red London bus. She did not carry out any further searches on her phone such as looking at Facebook or another similar platform to see whether there was any evidence of inappropriate conduct, but she did make enquiries with HR which is consistent with section 10 of the respondent's staff use of social media policy.

49. HR advised her to raise the matter with Ms Gregory when she came back to work. She did act upon this advice and Ms Brackenridge accepted the explanation given by Ms Gregory that she had been updating her social media profile using old historic videos during her day off work.

50. The Tribunal notes that no further action was taken and indeed Ms Gregory's NEU representative John Morgan (at a meeting on 28 February 2022 concerning an absence review meeting), that *'it was reasonable for the school to ask questions relating to these actions and had you been in London that day, your actions could have amounted to gross misconduct'.* Under the circumstances, the school appeared to deal with this matter in a relatively informal and reasonable way.

Allegation four - CPOMS

51. There was no dispute that the allegation incorrectly recorded the relevant incident as taking place in October 2021 when it should have been recorded as 25 November 2021. We understood that the event in question related to a PE lesson involving a Sports Coach Mr Belston. He was not a school employee and who did not have a School email address so could not access CPOMS.

52. A child behaved inappropriately (the claimant says he was rude and disrespectful). Ms Gregory said she did not witness the incident but was *forced* to record the incident on CPOMS by Ms Brackenridge, nonetheless. There was no evidence she actually informed Ms Brackenridge that she did not observe the incident and she certainly did not record this to be the case on CPOMS.

53. However, the Tribunal accepted that incidents such as this needed to be recorded. Mr Belston was unable to gain access to CPOMS and logically, Ms Gregory was the next best person available (being present in the lesson), to record the incident. However, there was initially a genuine belief on the part of Ms Brackenridge that Ms Gregory witnessed the incident. She only took issue with the CPOMS entry when she reviewed it on 29 November 2021 and noted that Ms Gregory had inappropriately expressed an opinion rather than simply describe the actions of the child reported and did not include details of what action had been taken. She raised an Action Point on CPOMS with Ms Carlson who was unable to read until she had finished the school day on 1 December 2021. It was only at this point that Ms Carlson discovered that Ms Gregory did not witness the incident.

54. The Tribunal noted the importance of CPOMS and the need for all staff with access to the system to record any relevant incident to ensure a completed safeguarding record is in place. Each record over time can form a picture of underlying issues involving particular children and while a single incident may appear to be innocuous, it formed part of a bigger picture revealing genuine safeguarding concerns requiring the involvement of outside agencies. Had Ms Gregory expressed reservations about her knowledge of the incident to Ms Brackenridge at the time, it may have been have dealt with differently. But nonetheless the incident needed recording, and this did not represent any detrimental behaviour towards Ms Gregory. This incident was simply an illustration of the School taking safeguarding seriously.

Allegation five – claimant requested December 2021 working days

55. In the autumn of 2021, Ms Gregory was undertaking a foundation pathway BA(Hons) Criminology and Psychology on a part time basis. She made an application on 20 October 2021 in writing seeking permission to work flexibly so that she could attend two days each week on campus (Tue and Wed). She requested permission to vary her hours so that she worked 3 days a week, but with her hours extended from 8:45am to 3pm.

56. Although she did not use the standard application form, the school treated this request as a Flexible Working Request under the provided procedure. The application was however, a brief one and did not cover all the information required for consideration of application under the policy in accordance with 6.2 of policy (p81). It was not clear whether a formal discussion took place, and there were no minutes available in the bundle, however, both Ms Gregory and Ms Brackenridge confirmed that a discussion took place following the presentation of the application. A decision letter was sent on 1 November 2021 rejecting the request and providing a list of the standard reasons for refusal including:

    a) the burden of additional costs
    b) inability to recruit additional staff
    c) inability to reorganise work amongst existing staff
    d) a detrimental impact on quality and on school's ability to meet customer demand.

    A detailed explanation over two pages was provided as to the reason behind these conclusions being reached. A right of appeal was offered, but which Ms Gregory did not exercise.

57. Ms Gregory had made it very clear before the half term break in October 2021 that she needed a decision upon her return and Ms Brackenridge worked on this application during half term as a consequence. Indeed, the Tribunal noted that the flexible working policy provided that the school had 20 working days in which to consider an application and Ms Brackenridge agreed to waive this time period to accommodate Ms Gregory's request for a more urgent response. It was clear that in a school setting involving a relatively small primary school, it was often difficult to allow a flexible working application, however laudable the reasons were behind the request. Schools face significant burdens in terms of staffing and resources and there were examples of other applications for flexible working made by other employees (which had been redacted) included in the bundle and which also involved rejections. There was no evidence available to suggest that race played a part in these rejections and on balance, we accepted that the reasons given within the school's refusal to Ms Gregory's application for flexible working, were the actual and genuine reasons which prompted this decision.

<u>The claimant's resignation</u>

58. Ms Gregory was absent on sick leave from 6 December 2021 until 25 July 2022 when she gave notice of her resignation on 27 June 2022. During this period, she was subject to the School's Sickness Absence management procedure and had 3 absence review meetings with an OH report being provided. She was supported by her union representative at each of these meetings.

59. As this case does not involve issues relating to the absence or the dismissal itself, it is not necessary to make any specific findings regarding the absence and resignation. However, for the avoidance of doubt, the Tribunal did not hear of any behaviour taking place on the part of the respondent during this

final period of Ms Gregory's employment which could reasonably be connected with Ms Gregory's race. She did however, make reference to discrimination on grounds of race in her grievance raised during this period and it was also inferred in her letter of resignation.

Law

Direct discrimination

60. Section 39 of the Equality Act 2010 provides that an employer must not discriminate against an employee of his by, amongst other things, subjecting him to a detriment.

61. Section 13 of the Equality Act 2010 sets out the legal test for direct discrimination. A person (A) discriminates against another (B) if, because of a protected characteristic (race in this case), A treats B less favourably than A treats or would treat others.

62. For the purposes of direct discrimination, section 23 of the Equality Act 2010 provides that on a comparison of cases there must be no material difference between the circumstances relating to each case. In other words, the relevant circumstances of the complainant and the comparator must be either the same or not materially different. Comparison may be made with an actual individual or a hypothetical individual. The circumstances relating to a case include a person's abilities if on a comparison for the purposes of section 13, the protected characteristic is disability.

63. In constructing a hypothetical comparator and determining how they would have been treated, evidence that comes from how individuals were in fact treated is likely to be crucial, and the closer the circumstances of those individuals are to those of the complainant, the more relevant their treatment.

Harassment

64. Section 40 of the Equality Act 2010 provides that an employer must not, in relation to employment by him, harass an employee. The definition of harassment is set out in section 26(1) of the Equality Act 2010. A person (A) harasses another (B) if:

(a) A engages in unwanted conduct related to a protected characteristic (race in this case); and

(b) the conduct has the purpose or effect of : -

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

65. Section 26(4) provides that whether conduct has the effect referred to in subsection 1(b), each of the following must be taken into account:

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

The burden of proof

66. Section 136 of the Equality Act 2010 sets out the burden of proof that applies in discrimination cases. Subsection (2) provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that person (A) has contravened the provisions concerned, the Tribunal must hold that the contravention occurred. However, subsection (2) does not apply if A shows that A did not contravene the provision.

Discussion

67. There was no dispute that the Tribunal had jurisdiction to hear this complaint of race discrimination and the respondent accepted that the claim had been presented in time.

Direct discrimination

68. Ms Gregory relied upon 5 allegations during 2021 which she says amounted to direct discrimination on grounds of race. Race is a protected characteristic and Ms Gregory describes herself as a Black African woman.

69. The first allegation involving the rota was related to the school's operational circumstances and it was clear that rotas would frequently change as the intake and composition of the children attending the School changed on a term to term basis. As a Teaching Assistant who did not at the relevant time have responsibly for 1:1 support during the breaks in question, she was available for allocation along with the other staff in the school.

70. She argued that was singled out to work 5 days break time duty rather than 3 or 2 days. However, it was noticeable that she was the only TA2 working part time with fewer than 6 hours being worked each day. This meant that statutory breaks did not need to eb factored into the planning of the rota. Ms Gregory typically worked breaks on 3 of the 5 days that she worked and the period when the rota allocated her to 5 days was a brief one with the normal pattern being quickly restored.

71. The school's witnesses were credible in terms of their evidence supporting the reasons given for the rota being temporarily allocated in this way. It was about the temporary need to support children, the availability of suitable staff and Ms Gregory's suitability by reason of her hours of work. No convincing evidence was advanced that race played any part and although no specific comparators were identified, we were unable to find that a hypothetical comparator who worked the same hours as Ms Gregory and who did not share her protected characteristic would have been treated any differently in a similar situation.

72. In relation to Ms Gregory's attendance at the video remote court appointment on 3 March 2021, the Tribunal was unable to find that on balance of

probabilities Ms Gregory was subjected to constant interruption as alleged in her evidence.

73. We concluded that in this instance she had actually been well treated, especially as she had not alerted the school to the hearing until the day it was due to take place. she was actually afforded a quiet room with IT equipment and support from Ms Carlson, and she should consider herself well treated.

74. At its highest, Ms Brackenridge simply entered the room for the genuine reason of enquiring as to when the hearing would finish so she could make a safeguarding decision regarding cover arrangements at lunch. While Ms Gregory may have perceived this as a detriment, it was not the case, and we find that anyone else not sharing her protected characteristic in the same circumstances would have been treated in exactly the same way. It was not direct race discrimination

75. In terms of the WhatsApp incident, the Tribunal was unable to find that Ms Gregory was subjected to any detrimental treatment. There was an enquiry made by Ms Brackenridge which arose from a notification concerning Ms Gregory updating her WhatsApp status. Ms Brackenridge had no control over these updates and had not specifically sought them. Understandably given Ms Gregory's absence that day, she assumed the change in status involving the video raised a concern. This was because she was off work that day having given her reason that she needed to look after her sick child. Ms Brackenridge did not carry out any surveillance of Ms Gregory's social media and only held a meeting as a result of HR advice. Ms Gregory's trade union representative certainly felt that this was a reasonable step to take, and we agree and find that an employee not sharing her race would not have been treated any differently in similar circumstances. It was not less favourable treatment in any way.

76. The CPOMS incident on 25 November 2021 arose out of a misunderstanding and the blame for this rests with Ms Gregory's failure to tell Ms Brackenridge that she did not observe the incident in question nor did she make that clear in her CPOMS submission. CPOMS was essential part of safeguarding and a record needed to be kept by the school. An employee not sharing Ms Gregory's race in a similar situation where they failed to explain that they had not observed the incident in question would not have been treated any differently and we fail to see how this could amount to race discrimination.

77. Finally, the flexible working application made in October 2021 was if anything an illustration of how well Ms Gregory was treated by the school. While the application was refused, it was refused properly and using the correct reasons for doing so. Ms Gregory failed to follow the flexible working procedure both in terms of the form used and the content provided, yet nonetheless, Ms Brackenridge was willing to forgo usual policy requirements and expedite a reply even though this meant she worked on it during half term. The redacted examples of other refusals demonstrated on balance that in the same circumstances as Ms Gregory's application, a person not sharing her race would not have been treated any differently and would have faced the same refusal.

78. Ultimately, flexible working applications are always difficult in school settings, and this is caused by the requirements of the job, the minimum staffing presence required during each school day and limited resources available.

79. Accordingly, the direct discrimination complaint cannot succeed, and the allegations do not amount to detriments, except in relation to the flexible working application. However, for the reasons given above, they are not discriminatory on grounds of race as she was not treated any differently than a hypothetical comparator not sharing her race in the same material circumstances would have treated.

<u>Harassment</u>

80. In relation to the harassment complaint, Ms Gregory relied upon the same allegations as she made in her direct discrimination complaint.

81. We were unable to conclude that any of the five allegations made could amount to unwanted conduct related to Ms Gregory's protected characteristic. Clearly, she believed that the rota allocation (however temporary), the way in which the remote court hearing was handled, the WhatsApp incident, the CPOMS incident and the refusal to permit her flexible working application were unwanted and were in connection with her being a Black African woman. However, we are unable to conclude by any objective consideration that this could reasonably be the case. There was simply no evidence to suggest that her protected characteristic played a role in this case, and she was not treated any differently than her colleagues, although clearly her hours of work played a part in the rota decision. Indeed, there were occasions where she was treated more favourably than would be expected such as in relation to the remote hearing and the processing of the flexible working application.

82. For these reasons we were also unable to conclude that any of the five allegations had the purpose or effect of violating Ms Gregory's dignity or creating an intimidating hostile, degrading, humiliating or offensive environment for her. She may well have felt that race played a part in the decisions which she complained about, but as we have explained above, it was not reasonable to conclude that this was actually the case. She was treated fairly at all times and in a reasonable way which made allowances for her own shortcomings in relation to keeping management informed of her personal circumstances.

Conclusion

83. Accordingly, the claim of race discrimination both on grounds of direct discrimination and harassment must fail.

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Employment Judge Johnson

Date_____20 April 2023_________

JUDGMENT SENT TO THE PARTIES ON
21 April 2023

FOR THE TRIBUNAL OFFICE