



EMPLOYMENT TRIBUNALS

Claimant: Mr G Abia
Respondent: ABM Facility Services UK Ltd

Heard at: Watford Employment Tribunal **On:** 24 November 2022
Before: Employment Judge Daniels,
Members: Ms Hancock and
Mr Bury.

Appearances:

For the claimant: In person
For the respondent: Ms Dinnes (Solicitor)

JUDGMENT having been sent to the parties on 20 December 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, (and such request being shown to the Judge to be in time on 5 May 2023) the following full reasons are provided:

REASONS

1. In terms of the evidence, we firstly had a bundle of 227 pages. The claimant gave evidence on his own behalf and Mr Amowa gave evidence on behalf of the respondent.
2. The issues were clarified in the preliminary hearing on 9 March 2022 where the claimant further particularised his case. He had originally stated that he wished to rely on 12 cases of harassment on the grounds of his religion.
3. At the further preliminary hearing on 18 July 2022 four allegations were dismissed because they were not considered well founded and the claimant confirmed that he did not pursue a further six allegations.
4. There are two allegations of alleged harassment before the tribunal today. The claimant was also seeking to rely on certain “background” issues too.
5. The first allegation of religious discrimination is that in late November or early December 2020 Gbolahan Yekini greeted the Claimant, and the Claimant said the following happened: the claimant said

“if you wanted to greet me you should have done that at first meet not now, there is no need, stick to your job while I stick to my job except for ABM

related conversation that's it".

Mr Yekini allegedly responded: *"is that written in the bible?"*

The claimant (allegedly) angrily responded: *"yes Micah says go to your gods while we go serve our God and the New Testament says having a form of Godliness but denying his power from such turn away."*

The second allegation before us is that on 13 March 2021 Godwin Amoah said to the Claimant

"I thought you are a Christian, why are you listening to Bob Marley".

Having made findings of fact, the issues in the legal sense will be whether the claimant has proven, on the balance of probabilities, facts from which the Tribunal could infer an unlawful act of discrimination? If yes, did the alleged conduct take place on the basis of all the evidence? And was any alleged conduct unwanted and amount to harassment in law?

Facts

6. The claimant works cleaning trains at the Transport for London Site for the respondent. The claimant is a hard worker and a reliable member of staff (as stated by Mr Amowa).
7. The claimant's workplace is relatively diverse, there are five Christian employees working closely with him and two Muslims.
8. There have been no problems with any religious issues within the workforce prior to the claimant's case.
9. The evidence showed that the claimant has rather a tendency to be quite particular about the way his colleagues perform their jobs and how they should speak to him. He is quite sensitive about his personal space. At times he acted in a rather oversensitive and abrupt manner in relation to things arising in his work location. For example, if the order of tasks being done by other staff was different to the way he did things or sponges were left on site in a different place to where he left them. He ideally wanted everyone to work in the way he did. This inevitably caused some tensions with his colleagues. He also had a sensitive manner in discussions.
10. The claimant felt he had cause to report some of his colleagues for issues arising in the course of his employment. These did not relate to any religious or related matter. In his complaint of September 2020 he made a number of concerns known to the employer, none of which made any reference to any concerns about religious discrimination.
11. The claimant is a passionate Christian. We found that from time to time he handed out Christian or religious texts at work and he would frequently raise quotes from the Bible or quote the tenets of Christianity that he was passionate about to his staff colleagues. He had very strong views about his religion and from time to time he wished to persuade others in relation to

those views or even to somewhat “lecture” them based on those views.

12. On occasions his comments were discussed and challenged by his colleagues. However, the claimant took some dislike to his views about religion being in any way challenged. He tended to the view that he was right and did not like to hear other religious views (to his) stated.
13. This eventually led to him asking a manager at his employer that Christianity should not be raised at work going forward.
14. The claimant then raised what he claimed were a number of suspicious situations in his workplace which supported his view that there was a vendetta against him and that there was a campaign to belittle him and force him out of his employment on religious grounds. He relied on these, in this case, as background only and not separate acts of alleged discrimination.
15. The first alleged background evidence related to images of the word “Trap” being scratched onto a train carriage where he cleaned. The claimant appeared to accept that these images had not been written by a colleague but suggested in his evidence that his colleagues had been openly scratching their genitals at around this time in his view and this was deliberately done in this carriage in order to “trap” him and that the two matters were connected. The claimant did not articulate his view clearly at all, but it may be that he believed that it was thought by the others that he would take offence to the apparent scratching of genitals by staff as an “unclean” or inappropriate act for a Christian. There was no sound basis for this view by the claimant. The claimant had completely misunderstood the situation. This was an unrealistic allegation that had arisen in his mind only and had no substance in fact. This background issue provided no evidence in support of his discrimination claims.
16. The second background issue was that the claimant complained about images of the word “Lord” graffitied on the wall of a train carriage he would clean from time to time. He believed that those words were written at the location of an argument with a colleague about religion and that this was evidence that such graffiti was a deliberate act insulting his religion and his beliefs. The allegation with regard to “the Lord” graffiti was not credible and no cogent evidence was provided in support of the claimant’s case. He was unable to explain what his allegation was either. It was another unfounded conspiracy theory. This background incident provided no evidence in support of his discrimination claims.
17. The third issue was the claimant made a suggestion that removing or placing sponges in certain places and/or the placement of cleaning equipment at the workplace was an example (I quote as best I can) of the “using of objects and sounds” to follow up a projected gestural pollutant “with the aid of an evil spirit”. This was done, he felt, to pollute the dignity of the creator in the claimant. This allegation was similar to a quote from a section of the scriptures which the claimant apparently thought was of relevance to him. Unfortunately, the claimant was becoming rather confused at this stage. This allegation was unfounded and not one which we understood. Such background provided no support at all to his discrimination case.

18. The claimant apparently also remained concerned after the above incidents that his colleagues were scratching their genitals (in his sight) in a way in order to deliberately offend him. It is not clear that he ever explained this to his colleagues or explained to them how it had any connection with his religious views.
19. As this belief continued the claimant appeared to correlate every single perceived occasion of this nature as a personal slight on him. He became rather obsessive and fixated on this, unknown to his other colleagues. He felt that they were “playing games” in this way to get at him.
20. As accepted during his evidence, the claimant accepted that these perceived games affected him mentally. By Spring 2021 the claimant was beginning to suffer from significant mental and psychological confusion. We are not aware if this was in the form of a mental illness or not. We had no medical evidence either way. It appeared that there was a possibility of the claimant having a mental illness at the time which may have impacted on his judgment at times.
21. We find that the claimant’s allegations in relation to the staff conspiracy around the deliberate itching of their genitals to upset him on religious grounds had no foundation. He provided no cogent evidence to support his case in this regard.
22. The claimant made a complaint about a number of perceived issues of concern to management in early 2021.
23. We find that the investigation into those matters was rather slow and could have been dealt with more quickly and with a little more attention to the issues that the claimant was concerned about. Had the investigation been dealt with more quickly it might have nipped some of these issues in the bud. The failure to investigate promptly also perhaps contributed to the claimant’s feelings that some people were against him. This was unfortunate as a thorough and more committed investigation may have brought the matter to a close there and then.

The first incident

24. We find that the claimant had been impolite to Mr Yakini as stated above. Mr Yakini had attempted to greet the claimant in an innocent manner and the claimant then said:

“If you wanted to greet me you would have done that at first meet not now. There is no need to stick to your job while I stick to my job except for ABM related conversations that’s it.”

25. This response from Mr Abia was impolite and rude. In response to that rude reply, Mr Yakini asked the question,

“Is that written in the Bible?”

26. This was a simple question to the claimant in the way in which the claimant would frequently refer to text from the Bible to others.

27. The claimant responded angrily, he said, in reply:

“Yes, Mica 4 says “Go serve your Gods while we go serve our God” and the New Testament says, “Having a form of godliness but denying its power from such turn away”.

28. The second incident
29. Dealing with the second incident, we do not accept that Mr Amowa referred to Christianity when he referred to Bob Marley. We find that a comment was made during a break when the claimant was listening to music and was allowed to listen to music, where Mr Amowa queried “why are you listening to Bob Marley”.
30. It was the claimant’s perception that the comment was made based on his religious views. It certainly was not the intention of Mr Amowa to make any religious comment in that regard. Mr Amowa is himself a Christian who himself enjoys Bob Marley and there is or was no negative connotation whatsoever about the claimant or his religion in relation to that context.
31. It was just a question out of curiosity as he simply did not have the claimant down as a Bob Marley fan. No less no more.
32. We also found that Mr Amowa had a good relationship with the claimant and considered him to be a good worker who did his job and was reliable and there was no evidence of Mr Amowa having any issue with the claimant at all.

Relevant legal provisions

33. Section 26 of the Equality Act states:

“26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, 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.

.....

(4) In deciding 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.”

34. The respondent drew our attention to a number of other important cases

which are worth reminding ourselves of at this stage.

35. In Richmond Pharmacology v Dhaliwal [2009] ICR 724 EAT the Employment Appeal Tribunal found:

“We accept that not every racially slanted adverse comment or conduct may constitute a violation of a person’s dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to hurt that can be caused by racially offensive comments or conduct or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase ”

36. We also were drawn attention to the case of Hughes in the Employment Appeal Tribunal 0179/13 where the Employment Appeal Tribunal stated:

“The word violating is a strong word offending against dignity hurting is insufficient. Violating may be a word the strength of which is sometimes overlooked. The same might be said of the word intimidating etc. All look for effects which are serious and marked and not those which are the real truly lesser consequence.”

Conclusions

37. The first question is whether the conduct with regard to the November/December 2020 incident was unwanted.

38. We find that the claimant had been impolite to Mr Yakini and that Mr Yakini had attempted to greet the claimant in an entirely innocent manner and the claimant said, in reply:

“If you wanted to greet me you would have done that at first meet not now. There is no need to stick to your job while I stick to my job except for ABM related conversations that’s it.”

39. The response from Mr Abia was impolite and rude.

40. In response to that, Mr Yakini asked the question, “Is that written in the Bible?”

41. This was a simple question in the way in which the claimant would from time to time refer to text from the Bible. The claimant responded angrily, when he said:

“Yes, Mica 4 says “Go serve your Gods while we go serve our God” and the New Testament says, “Having a form of godliness but denying its power from such turn away”.

42. The immediate entering into of detailed and specific debate about extracts from the Bible is entirely inconsistent with the claimant’s case that he was entitled to be offended by religious comments in work. At this stage he had agreed with the respondent that there would not be discussions of a religious nature. So his reply was not consistent with any wish to avoid religious discussion entirely.

43. The claimant did not say, “please don’t speak about those matters, that’s for out of work”. He did not say that there had been a complaint to management of which he had reported that. In fact, he gave as good as he got. In fact, he went well beyond Mr Yakini by launching into quite an angry tirade at him in response to his comment.
44. Mr Yakini was simply reflecting and/or conscious of the way in which the claimant had regularly, and at least on five or six prior occasions, quoted religious text against other people in order to pursue his own passionate arguments about his religion.
45. This exchange indicated a degree of double standards on the part of the claimant. The language used by Mr Yakini had to be understood in the context of the claimant habitually raising Christianity and quoting the Bible to other colleagues when he had a disagreement.
46. There is no finding by us that Mr Yakini was being negative about Christianity in any shape or form. He was essentially encouraging the claimant to be polite and not to be rude based on a positive view of Christianity.
47. We also find that there was no purpose or effect whatsoever to violate the claimant’s dignity etc. The conduct clearly did not amount to harassment within the legal definition of harassment.
48. This was a simple question in context where the claimant had robustly thrown his own comments about religious views to Mr Yakini and others and Mr Yakini was simply asking a question in reply. They were very mild comments which certainly were not intended to have the purpose of creating a degrading, humiliating or offensive environment.
49. We unanimously find that the effect of those comments was not of an effect which could reasonably be considered by the claimant to have the effect of violating his dignity. This was a question of perception for the tribunal, and we concluded it would not be reasonable for the claimant to regard the effect as having the effect which was as required by the statute to be unlawful.
50. At this stage we would also note that the claimant repeatedly made reference both in today’s hearing, in the evidence and in the paperwork in the bundle, to his concerns about events which arose before he ever raised there being a religious motive. None of those “background” events supported his case.
51. The claimant is and was clearly very upset about the issue in relation to alleged itching of genitals but we found any such perception has got no connection with any religious issue or any discrimination.
52. Further, the conduct in regard to this conversation did not have the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
53. Therefore, we find that there was no unwanted conduct or conduct of a nature which was sufficiently serious to amount to potential harassment under the Equality Act 2010

The Bob Marley comment

54. Dealing with the second incident, we do not accept that Mr Amowa referred to Christianity when he referred to Bob Marley.
55. We do accept a comment was made during a break when the claimant went the claimant was listening to music (and he was allowed to listen to music), where Mr Amowa queried why the claimant was listening to Bob Marley. It was the claimant's perception that was a comment based on a religious view, but it certainly was not the intention of Mr Amowa to be making any religious comment in that nature.
56. Mr Amowa is a Christian who himself enjoys Bob Marley and there is or was no negative connotation whatsoever about the claimant or his religion in relation to that context, it was just a curious question.
57. For the same reasons as before, we unanimously found that there was no unwanted conduct in relation to the claimant being asked about him listening to Bob Marley during a break.
58. In all the circumstances this conduct certainly was not unwanted.
59. We find that there was no purpose from these comments of violating or creating a workforce which violated his dignity or created an intimidating, hostile, degrading, humiliating or offensive environment.
60. We follow the approach in the case of Richmond Pharmacology v Dhaliwal [2009] ICR 724 EAT the Employment Appeal Tribunal found:

“We accept that not every racially slanted adverse comment or conduct may constitute a violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory particularly if it should have been clear that any offence was unintended.
61. In any event, the effect of the comment made would not have reasonably been considered to have that affect by Mr Abia in the context of the discussion with Mr Amowa.
62. Therefore, the claimant has not proven, on the balance of probabilities, facts from which the Tribunal could infer an unlawful act of discrimination. Further, any such conduct was not unwanted.
63. Further, the conduct did not have the purpose or effect of violating his dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
64. Therefore, for all these reasons, the case of Mr Abia is dismissed in its entirety.

Employment Judge Daniels

Date: 15 May 2023

Judgment sent to the parties on

16/5/2023

N Gotecha
For the Tribunal office