Case Number: 3305355/2022

EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mr Adeel Akhtar **v** BT PLC

Heard at: Bury St Edmunds **On:** 24-28 July 2023

Before: Employment Judge R Wood; Mrs J Mrs J Schiebler; Mrs L Gaywood

Appearances
For the Claimant: In Person
For the Respondent: Mr Sellwood (Counsel)

RESERVED JUDGMENT

1. The Claimant was not the subject of discrimination based on race by the respondent.

2. The claimant was not unfairly dismissed by the respondent.

3. The respondent did not victimise the claimant contrary to section 27 of the Equality Act 2010.

4. The respondent failed to make payments in respect of accrued but untaken holiday pay in the sum of £820.67. This is a gross sum. The respondent is liable to pay any tax on this sum.

5. The respondent made unauthorised deductions in respect of overtime payments in the same of £3846.14. This is a gross sum. The respondent is liable to pay any tax on this sum.

RESERVED DECISION

Claims and Issues

1. Page numbering referred to in square brackets in these reasons are to pages in the bundle, unless otherwise stated.

2. This is a claim which involves allegations of direct race discrimination, unfair dismissal, victimisation, and unlawful deductions from wages.

3. The claimant's ethnicity is of Pakistani origin. He grew up and was educated initially in Pakistan. He came to the UK in 2008 where he obtained a masters degree. He began working for the respondent in 2013. At the time of the relevant events, he worked as a senior delivery, operations and support engineer at the respondent's site in Martlesham, Ipswich. He was summarily dismissed with effect from 29th November 2021. The claimant says that he was the subject of a prolonged course of treatment which was, at least in part, based on his race. This included his dismissal, and the process that preceded it. The respondent denies any treated based on the claimant's race. It further asserts that the dismissal was on the grounds of misconduct. This was based on alleged breaches of it's policies concerning the secure and safe use of a laptop under the claimant's control.

Procedure, Documents and Evidence Heard

4. The Hearing took place on 24-28 July 2023. The claim was heard in person at the Employment Tribunal in Bury St Edmunds. We first of all heard testimony from the claimant. He also relied on other witness statements from a Mr A Siddiqui, and a Mrs M Barzegar, who did not attend but whose evidence was not disputed by Mr Sellwood, counsel for the respondent. From the respondent, we heard evidence from Mr R Fisk (Senior Manager of network Operations), Mr I Monteath (Senior Manager of Transformation and Network Operations), Mr R Day (Senior Operations Manager), and Mr A Mellor (Physical Director for the BT Group). Each of the witnesses who attended the hearing adopted their witness statements and confirmed that the contents were true. We also had an agreed bundle of documents which comprises 548 pages. We also heard helpful submissions from the claimant and Mr Sellwood.

5. In coming to our decision, the panel had regard to all of the written and oral evidence submitted, even if a particular aspect of it is not mentioned expressly within the decision itself.

Legal Framework

6. The relevant legislation in respect of the allegations of direct discrimination is contained in the Equality Act 2010 ("the Act").

7. Race is a protected characteristics as defined by section 4 of the Act. Sections 39 and 40 prohibit unlawful discrimination against employees in the field of work. Section 39(2) provides that:

> "*An employer (A) must not discriminate against an employee of A's (B) -*
>
> *(a) as to B's terms of employment;*
>
> *(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*
>
> *(c) by dismissing B; or (d) by subjecting B to any other detriment*."

8. Section 136 of the Act provides that:

> "*If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred".*

This provision reverses the burden of proof if there is a prima facie case of direct discrimination.

9. In summary, the Act provides that a person with a protected characteristic is protected at work from prohibited conduct as defined by Chapter 2. In addition to the statutory provisions, Employment Tribunals are obliged to take into account the provisions of the statutory Code of Practice on the Equality Act 2010 produced by the Commission for Equality and Human Rights.

10. Direct discrimination is defined in section 13(1) of the Act as "*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*". The application of those principles was summarised by the Employment Appeal Tribunal in London Borough of Islington v Ladele (Liberty intervening) EAT/0453/08, which has since been upheld:

> (a) In every case the Employment Tribunal has to determine the reason why the claimant was treated as he was. In most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.
>
> (b) If the Employment Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.

(c) Direct evidence of discrimination is rare and Employment Tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test. The first stage places a burden on the claimant to establish a prima facie case of discrimination. That requires the claimant to prove facts from which inferences could be drawn that the employer has treated them less favourably on the prohibited ground. If the claimant proves such facts then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If they fail to establish that, the Tribunal must find that there is discrimination.

(d) The explanation for the less favourable treatment does not have to be a reasonable one. In the circumstances of a particular case unreasonable treatment may be evidence of discrimination such as to engage stage two and call for an explanation. If the employer fails to provide a non-discriminatory explanation for the unreasonable treatment, then the inference of discrimination must be drawn. The inference is then drawn not from the unreasonable treatment itself - or at least not simply from that fact - but from the failure to provide a non-discriminatory explanation for it. But if the employer shows that the reason for the less favourable treatment has nothing to do with the prohibited ground, the burden is discharged at the second stage, however unreasonable the treatment.

(e) It is not necessary in every case for an Employment Tribunal to go through the two-stage process. In some cases it may be appropriate simply to focus on the reason given by the employer ("the reason why") and, if the Tribunal is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test.

(f) It is implicit in the concept of discrimination that the claimant is treated differently than the statutory comparator is or would be treated. The determination of the comparator depends upon the reason for the difference in treatment. The question whether the claimant has received less favourable treatment is often inextricably linked with the question why the claimant was treated as she was. However, as the EAT noted (in *Ladele*) although comparators may be of evidential value in determining the reason why the claimant was treated as he or she was, frequently they cast no useful light on that question at all. In some instances, comparators can be misleading because there will be unlawful discrimination where the prohibited ground contributes to an act or decision even though it is not the sole or principal

reason for it. If the Employment Tribunal is able to conclude that the respondent would not have treated the comparator more favourably, then it is unnecessary to determine the characteristics of the statutory comparator.

12. The relevant case law in relation to unfair dismissal is to be found in the Employment Rights Act ("ERA") 1998 at section 98:

"*General*

(1) In determining for the purpose of this part whether the dismissal of an employee is fair or unfair it is for the employer to show–

(a) the reason (or if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it-

(a) relates to the capability of qualifications of the employee for performing work of the kind which he was employed to do,
(b) relates to the conduct of the employee,
(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment."

Findings

13. Based on the evidence that we heard and read, the Employment Tribunal made the following primary findings of fact relevant to the issues that we had to determine.

14. On or about 27th July 2021, the claimant was quizzed by his line manager about a suggestion that malware had been downloaded onto a laptop issued to him for work purposes by the respondent. It is common ground that this had been downloaded when the laptop was used to access a gaming site called 'Roblox'. In response, the claimant carried out an examination of his primary laptop i.e. the one he mainly used for work purposes at the time. This had been issued to him in about 2019. Prior to the issuing of this new laptop, the claimant has used a device with a ID number of 'BTP 147725' (his "old laptop"). It transpired that it was this device which had been the subject of the malware download. There had been confusion on the

respondent's part to begin with as to which of the claimant's devices had been affected.

15. The affected device could not be located. It was the claimant's position, when initially asked, that he did not have the old laptop, and that he had handed it back to his line manager, Mr Silva, in or around April 2021 i.e. some 18 months after he had been issued with the new computer. An investigation followed. There were five separate investigation meetings involving the claimant. The Tribunal considered in detail the record of those meetings, and in particular, the various explanation given by the claimant as to the location of the old laptop, and in relation to the activities identified as having been carried out on the computer.

16. We are satisfied that the note of the investigation meetings, and for that matter, the disciplinary meetings, were accurate. We find that after each meeting, the claimant was invited to check each set of minutes, to either confirm their accuracy, or to make amendments before doing so. Each set of notes clearly evidences this process in the sense that the claimant either signed that the notes were correct, or that he made annotations before signing. We did not accept that this process took place under pressure or duress. The fact that some changes were made by the claimant, apparently freely, contradicts this proposition. Each record of the meetings was clearly set out. They were impressive documents showing proper regard to the importance of the events, and to conducting a fair procedure. It was common ground that these notes were often typed up immediately after each meeting, and were checked by the claimant in the few hours after the conclusion of the meetings. We took the view that this was a highly efficient process.

17. There was some criticism of the selection of the note taker, Lee Hodgson, being someone who the claimant suggested had been involved in the investigation previously. The claimant was correct, in that Mr Hodgson had been involved in collating some data. However, this seemed to us to be, at most, a peripheral role. There was no suggestion of specific bias against Mr Hodgson. In the light of our findings about the notes, we could see no unfairness arising out of the choice of note taker.

18. In summary, we found the approach of the claimant in these meetings to be unsatisfactory. It was our view that his explanations were inconsistent in the sense that they evolved as new evidence was presented to him. It was our view that the claimant often deliberately tailored his answers to fit the information being presented to him at the investigation meetings. It is clear from the evidence presented to us at the hearing that this was the view adopted by the respondent's witnesses. It seem to us that it is entirely reasonable that they should have come to this view.

19. It is important that we add a little more detail to these observations. The first investigation was held on 17th August 2021. Although the claimant maintained that he had returned the old laptop and that it was not in his possession, further enquiry by the respondent revealed that the laptop was

connecting to a home network. BT security were also able to confirm the name of the router to which the old laptop was connecting, and that both the claimant's old and new laptop had multiple instances of connecting to this same router. It also appeared that the use of the laptop had ceased from 1st April 2021, which seemed to coincide with the commencement of the investigation. These matters are set out in a report at [206]. The respondent's witnesses concluded that the person who was using the old laptop, must have been aware of the investigation. In our view, this was an almost inescapable inference. Mr Silva was later questioned as to the whereabouts of the device. He recalled that it had not been handed in, although he was not sure. We found that his uncertainty was the result of an absence of a thorough process for the return of old devices, and any proper audit trail.

20. There were two further meetings on 23rd August 2021. The identity of the relevant home router was put to the claimant. He confirmed that it was his home router. He went on to suggest that it might be someone hacking into his home broadband and connecting with the old laptop i.e. use by 'proxy'. He stated that it would have to be someone in close proximity to his home with the old laptop. The claimant was provided with a list of URL's that the laptop had accessed with dates [167]. He continued to deny knowledge of the use of the device. The claimant was suspended on 23rd August 2021. There is little, if any, criticism of the this aspect of the decision. In any event, we find that it was reasonable in the circumstances, given the continuing uncertainty as to the location of the device, and the risk it posed to the integrity of the network, giving the presence of malware on the device. We find that the claimant was asked on this occasion whether he had any personal possessions to take from the office. He replied "no".

21. On the following day, 24th August, the claimant contacted the respondent to say that he had located the old laptop. He attended a meeting on 25th August during in which he stated to Mr Day that he had found the laptop under his son's bed. His son was 8 years old at the time. He also stated that his son had been using the device for gaming on 'Roblox', and that his son knew of the password details to access the laptop because they were the same as the passwords for his home devices. He said he had been unaware of his son using the laptop.

22. The laptop was further interrogated. It was discovered that it had been used for accessing banking websites, which were consistent with the claimant's bank. The respondent concluded that this was not suggestive of use by a small child. There were other listings in the browsing history relating to electric scooters, listed by a company called 'Ebrit Ltd' of which the claimant was director. To quote Mr Fisk in his witness statement, it became apparent that the information the claimant was providing, did not match the data they were extracting from the old laptop.

23. There was a further investigation meeting on 6th October 2021 during which the claimant, when presented with the browsing history, confirmed that he had been helping out a friend with his scooter business. He maintained that

it was not his business. I should add that the claimant continued with this account at the hearing before us, notwithstanding that he admitted that he was a director of the business, and that the trading address of the business was the claimant's home address. It was our view that this position was untenable.

24. At the meeting, the claimant speculated that the browsing history might be explained by the fact that his personal chrome account might be 'syncing' with the old laptop, thereby giving the misleading appearance that he had been using the old lap. The respondent performed further analysis of the old laptop. This identified that there were details of non-synced locally accessed files on the device i.e files created on the old laptop, and not on another device. Moreover, use of the old laptop had stopped on 1st August 2021, which suggested that if 'syncing' were an issue, it would have carried on beyond that date, assuming that the claimant continued to use his domestic devices. At the conclusion of the investigation process, Mr Fisk submitted a report recommending that the matter should proceed to a disciplinary process [288].

25. We can make no criticism of this decision. It was reasonable and based on sound evidence. In keeping with the disciplinary and appeal hearings that followed, we find that the investigation was detailed and thorough. It gave the claimant several opportunities, over an extended period of time, to provide explanation where appropriate. He was able to fairly engage with the process. We do not accept that he was never provided with the evidence. Sometimes, documents were given to him in advance of the meetings, and sometimes at the meetings. On occasions, he was given a summary of the evidence. Where this occurred we find that the summaries were fair and helpful. If the claimant needed time, then such time was provided. As we have stated, the investigation went on for a couple of months. It was in no way hurried.

26. It particular, we were impressed by the way the respondent repeatedly responded to the claimant's explanations by returning to the raw data on the old laptop. We are satisfied that this was objective evidence, procured by the BT security team. There is no suggestion that anyone in this team were familiar with the claimant, or that they bore the claimant any ill will on the grounds of his race, or for any other reason. The claimant repeatedly alleged that he felt like he was treated as a criminal, and that the respondent was building a case against him. We can see how it might have been perceived as such. In a sense, he was right in that he was being accused of serious matters, including theft, and that the effect of the continuing investigation was to increase the evidence against him. However, we are satisfied that this was not unfair, but the inevitable result of a thorough inquiry into his, as it tuned out, false explanations. The claimant was, to an extent, the architect of the atmosphere in which the process evolved.

27. We do not accept that the claimant was, on the occasion of one of the meetings, 'detained' by Mr Day for several hours. It was our judgment that this was not true, and we accept Mr Day's evidence on this point. We

couldn't see why, or how, this would have taken place. We note that the claimant made no mention of it at the time.

28. We also find that Mr Fisk did not swear at the claimant as alleged. This was an allegation first made by the claimant during the hearing. There was no mention of it previously, either at the time, or in his various documents created during these proceedings, including his witness statement. It seemed to us that Mr Fisk was genuinely upset and shocked by the allegation. We accepted his evidence on this point as he, along with the other witness for the respondent, had given their evidence in a thoughtful and consistent way. They had been variously prepared to accept points which were not favourable to the respondent, when it was appropriate to do so. They were far superior witnesses to the claimant.

29. The claimant attended a disciplinary meeting with Mr Monteath on 5th November 2021. The claimant was represented by someone from his union, as he was at subsequent meetings. We are satisfied he was given proper notice of the allegations, and of the evidence relied upon. He could hardly have been unaware in the light of the protracted investigation. Mr Monteath concluded that even on the claimant's own case, he had shared, or given access to, his security information, which had enabled others to use a device which gave access to BT's global network. Mr Monteath assessed this as a significant security risk, which huge implications for the company. We find his assessment in this regard to have reasonable and evidence based.

30. There was a further meeting on 29th November 2021 involving he same people. The claimant was presented with further evidence that there were files stored locally on the old laptop which were not on 'Onedrive' which suggested that they could not have got there by reason of someone else using another device, and subsequent 'syncing'. At this point, the claimant admitted using the device.

31. During the hearing before us, it had been difficult to obtain clear and consistent testimony from the claimant on this point. His evidence vacillated between having little, if any, knowledge of the laptop before 1st August 2021, to having used it on an almost daily basis consistent with the browsing history taken from the device. His evidence was simply unreliable on this issue, either during the processes carried by the respondent or at the hearing before us.

32. The claimant was dismissed on 29th November 2021, the respondent having found multiple breaches of it's IT policies, particularly those concerned with the use and storage of BT devices, as well as theft. We are satisfied that this was a reasonable and genuine decision, wholly based on a proper assessment for the evidence.

33. There was a appeal of this decision which was heard on 19th January 2022. It was chaired by Mr Mellor of the respondent via Microsoft Teams. On occasions, the claimant made criticism of the selection of those appointed

to deal with the investigation, disciplinary and appeal hearings. We found there to be little in this. In our judgment, those involved were appropriate managerial figures, whose seniority escalated as the process continued. This was normal in our view. Some were more familiar with the claimant than others. We could find no unfairness in the selection. Indeed, we could find insufficient evidence of the claimant taking issue with the personnel at the time. Neither could we find any objection to the appeal meeting being conducted via Teams, particularly considering the issue of Covid at the time. In any event, we could identify no unfairness which might be attributed to the meeting being held remotely.

34. It was Mr Mellor's experience of the claimant that he seemed to have little insight into the gravity of the matters with which he was accused. This was consistent with our experience of the claimant throughout the tribunal hearing. Mr Mellor noted that the claimant apologised but only for the fact that his son has used the computer using his security details. It was plainly the respondent's view that it did not accept this version of events. It took the view that the claimant had retained and used the old laptop for his personal use, including business use. He may have also allowed his son to use it. He had then repeatedly lied about this. In the Tribunal's judgment, the evidence more than justified this conclusion on the respondent's part. It was clear that the claimant, even before us, continued to show little contrition or insight in relation to these matters.

35. Mr Mellor upheld the dismissal of the claimant, albeit he did uphold that part of the appeal relating to the allegation of theft, on the basis that the device had been returned.

36. The claimant submitted his claim to the Employment Tribunal on 5th May 2022.

Reasons and Decision

37. The parties had agree a list of issues for the Tribunal to consider. They were as follows:

> *"**Unfair Dismissal***
>
> *1. What was the reason (or principal reasons if there was more than one reason) for the Claimant's dismissal?*
>
> *2. Was it one of the fair reasons falling within s.98(2) ERA 1996 or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held pursuant to s.98(1)(b) ERA 1996?*
>
> *3. The Respondent asserts that it was a reason relating to conduct and SOSR, which is a potentially fair reason pursuant to s.98(2)(b) ERA 1996.*
>
> *4. In the circumstances, did the Respondent act reasonably in treating the Claimant's conduct as a sufficient reason for dismissal?*

5. If so, did the decision to dismiss the Claimant for reason of his conduct fall within the band of reasonable responses open to a reasonable employer?

6. Did the Respondent follow all of the necessary policies and procedures correctly in all matters that led to the dismissal of the Claimant?

Race Discrimination

7. The Claimant describes himself that he is of Pakistani origin, that is the protected characteristic.

8. Did the following incidents occur:

a. Did R treat C unfairly during his wife's pregnancy by not allowing C to work from home?

b. Did R inform C that there would be financial consequences if he did not return to work? C asserts this was on the 14th June 2020.

i. The actual comparator that the Claimant relied upon is Baba

c. Did R cease C's language allowance without any notice. C asserts this was stopped by Rob Fisk in August 2020 (or he was instructed to stop it). C asserts that Iain Monteith had incorrectly stated that C did not wish to continue this argument.

d. Did R or employees of R ignore C after the Covid issue? C asserts that Rob Fisk started to ignore C from June 2020 until his dismissal, Nathan ignored C from June 2020 until Jan 2021, and Ricardo De Silva ignored C from the point at which he took over as his manager.

e. Was C treated like a criminal during the investigation stage and was C treated differently on the issues surrounding the dismissal? C asserts that the investigations were unfavourably handled by Rob Fisk and Richard Day and he should not have been dismissed. R asserts investigation was impartial and independent.

f. Did R and in particular, Rob Fisk, ignore C's emails/text messages and calls after his dismissal about his wages and property? C asserts initially contacted Iain Monteith and he made calls on or around the 26th January until 9th April and Rob Fisk and Andrew Mellor ignored the Claimant.

9. Did the Respondent subject the Claimant to a disciplinary process and summarily dismiss him because of his race?

10. Are the incidents labelled at 8(a)-(c) made out of time?

Unlawful deductions from wages

11. Did the Claimant suffer unlawful deductions contrary to s.13 ERA 1996 as follows:

a. Failure by the Respondent to pay accrued but untaken holiday entitlement;

b. Due payments for overtime and other pays in rewards system

Victimisation – S27

12. Did the Claimant do a protected act? If so, what was it?

• Claimant states he told Nathan Nabi via telephone conversation around June 2020 that he was being treated unfairly

• C asserts that he was treated badly because of his race which led to his dismissal and he complained in June 2020 re unfair treatment about coming to work, unfair treatment re coming to work but this was ignored.

13. Did the Respondent believe that the Claimant has done, or may do a protected act?

14. How did the Respondent make the Claimant suffer a detriment as a result of the protected act?

• C asserts that he asked for his belongings from the locker but did not get this back and did not get the stuff back because of the protected act and because of his race

• C asserts Richard Day refused to give C his stuff back on 23rd August 2021, after the investigation hearing

• C asserts that Rob Fisk told the C on the 17th May 2022 that he could not locate his locker and therefore could not give him hi stuff back

• C asserts that at some point between his suspension and dismissal, unknown to C, someone from the Respondent accessed his locker because of race or because of the protected act."

Discrimination

38. We first consider the question of race discrimination under section13 of the Act. In general terms, as stated above, we did not find that claimant to be a reliable witness. It was our impression of him that he was prepared to tailor the information he provided, both to the respondent, and to the Tribunal, to suit the particular situation (at least as he perceived it). Indeed it was a prevailing characteristic of the investigation and disciplinary process engaged in by the respondent. We found the claimant to be at times vague, evasive and inconsistent. In comparison, the respondent's witnesses we found to be consistent and considered.

39. In our view, there was insufficient evidence even to come close to establishing a prima facie case of discrimination. We found it instructive that the first time the claimant had mentioned any race related motivation for his treatment was in a document sent to the respondent dated 12th April 2021 upon receipt of the appeal determination letter [424]. There was no mention of race during the investigation or disciplinary processes. We are satisfied

that he could have mentioned such concerns if they had been genuine. He told us that he had not mentioned it because he was concerned of the ramifications of doing so. We did not accept his evidence on this point, for all of the reasons set out above as to his credibility.

40. We also accepted the respondent's witnesses explanation for their actions. We were completely satisfied that they had acted in response to serious and genuine IT concerns. They could not have done anything else but investigate and then engage in the disciplinary process. This was made inevitable by the claimant's own response to the raw data from the old laptop. In our judgment, none of this was motivated by the race of the claimant. The respondent's witnesses were clearly shocked and offended by the suggestion. We accepted this evidence.

41. The appellant set out of number of examples of less favourable treatment (paragraph 8 of the list of issues) which we spent some time scrutinising during the hearing. We will touch upon each in turn here.

42. Paragraph 8(a-b) relates to the the refusal to allow the claimant to remain working from home in June 2020. We were satisfied that there was a conversation between the claimant and his manager, Nathan Nabi, on 12th June 2020, to the effect that the claimant felt he was eligible to work from home by reason of his wife being pregnant, and thereby at risk from Covid. Mr Nabi sent an email on the same day, setting out the policy and inviting the claimant to submit medical evidence. It was common ground that he did not do this, and simply returned to work on or about 15th June 2020.

43. We are satisfied that the request to return to work was issued to the whole of the shift team, not just the claimant, or those of the claimant's race. It was our view that he may have had a good argument for remaining at home. It was a confusing time, and it is difficult now to be precise as to the exact state of the advice being given to employers and staff. However, the matter was not followed through by the claimant. It was not a question of the respondent treating the claimant less favourably, on the grounds of race, or for any other reason.

44. The claimant had put forward a comparator, i.e. someone who had been allowed to work from home in circumstances that he suggested were the same as the claimant's. We found his choice of comparator to be curious. Baba Zanjani was the husband of Mrs M Barzegar, the witness. It was common ground that 'Baba' was of German/Egyptian ethnic background. His wife was Iranian. In her statement, she explained that the respondent had shown understanding and flexibility in allowing her husband to work from home, which seemed at odds with the claimant's case. We also noted that Baba had his own health issues, and that he later died from Covid related complications. So it seemed possible that the decision in relation to him may have relied on both his and his wife's vulnerability. We therefore found insufficient support for this part of the claim.

45. Paragraph 8(c) related to the removal of a language allowance in or around October 2020. We were shown a number of documents relating to this, which demonstrated that there had been a process of phasing out all allowances, not just language allowances, since about 2018. It was clear that this was applied to the group in general and not just to the claimant. It was plainly a cost cutting exercise. We find that there was an attempt to remove the allowance from the claimant in March 2020 but that, for whatever reason, Mr Nabi had failed to take action. This resulted in him retaining the allowance for a further 6 months. This was a lucrative allowance of about £450 per month. It was our judgment that this was a stroke of good fortune for the claimant. It was clear that a colleague of his, a white Italian female member of staff, who the claimant had identified as a comparator in this regard, had lost her language allowance in March 2020. Again, this seemed at odds with the claimant's case that there was animosity towards him on the grounds of his race.

46. Paragraph 8(d) referred to the claimant being ignored. This was, as with many other aspects of the claimant's case, very poorly particularised. We were unable to clarify the issue.

47. Paragraph 8(e) is an issue we have already addressed above. We could see why the claimant may have been given the impression of being treated like a criminal. It seemed to us that this was the result of being the subject of an investigation into serious allegations. As stated, there was nothing unfair about this in our view. Neither was it the result of his race. It was a fair and necessary process.

48. Finally there was paragraph 8(e). We were able to identify delays in communication between the claimant and Mr Fisk post his dismissal, when the latter was dealing with outstanding wage and property issues. Then again, when the claimant was chasing Mr Mellor for a decision in relation to his appeal. This was put to both Mr Fisk and Mr Mellor who in turn, apologised for the delays. It was our view that these delays were explicable, if not wholly justified. In part, it seemed to arise from the security issues created by the invasion of Ukraine, and the impact this had on BT assets abroad, and on the network. We accepted their testimony on this point. We could see insufficient evidence that it was race motivated.

49. Further, as will be apparent from our findings as to the claim of unfair dismissal, we are perfectly satisfied that neither the disciplinary process or the dismissal were motivated by the claimant's race. In short, there was not even a prima facie case of race discrimination here.

Victimisation

50. It seemed to us that the claim under section 27 of the Act was the result of a misunderstanding as to the nature of the relevant section. Nonetheless, we spent some time carefully examining the basis of the claim.

51. At the start of the hearing, we asked the claimant to clarify the nature of the protected act claimed. He explained that the it related to his attempt to continue to working from home in June 2020. He stated that he had been refused this right on the grounds of race. We have already made findings about this. We are satisfied that his request was not refused as such. In any event, we find that there was no race element to the limited process which took place so far as the respondent was concerned. In our judgment, this was at the time an innocuous event, which neither party pursued to a significant extent. The claimant had subsequently chosen to exaggerate its significance as a way of attempting to deflect attention from his own misconduct.

52. In any event we find that there was no detriment to the claimant as a result. Those matters which he highlights at paragraph 14 of the list of issues, all occurred after August 2021, and largely in 2022. It seemed to us that there was insufficient evidence to connect the event in 2020, with the alleged detriment. They all related to the claimant's allegation that personal belongings in his locker were never returned. This too, was in our view, an innocuous issue with very little evidential basis. On two occasions during the investigation and disciplinary process, he was asked if he had any personal belongings to recover from the premises. Twice he said no.

53. We also heard that Mr Fisk engaged in what seemed to us to be an excruciating exercise in trying to locate the claimant's locker, which resulted in a 'Teams' video call during which Mr Fisk invited the claimant to identify his locker. On this occasion, and on others, it was our judgment that the claimant inexplicably failed to identify his locker. On balance, we find that he did not have a locker, and that he subsequently created this issue as a means of making life difficult for the respondent. It was clear that he was aggrieved about his treatment, and that this as a way of venting his frustration. We reject the claim of victimisation.

Unfair Dismissal

54. We then addressed the claim of unfair dismissal. For all of the reasons set out above, we were satisfied that the principal reason for the dismissal was misconduct, and specifically the serious breaches of the respondent's policies relating the safe use and storage of IT devices. As stated above, the need for the respondent to act in the light of the alleged breaches was pressing and obvious, made more so by the conduct of the claimant during the investigation. We are satisfied, having heard the witnesses for the respondent, that the genuine reason for dismissal was misconduct.

55. As this is a case of an alleged misconduct related dismissal, the Tribunal was required to apply the guidance in the case of *BHS v Burchell [1980] ICR 303*, which requires that an employer have a genuine belief in misconduct, based on reasonable grounds, having undertaken a reasonable investigation.

56. We have already set in some detail that we were impressed by the thoroughness and detail of the investigation in this matter. There were several significant occasions where the respondent reacted to matters raised by the claimant, investigated the matter, and then returned to the claimant for his further comments. As it turn out, this proved to be a problem for the claimant.

57. We then went on to consider whether the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted? It was our view, that having regard to the nature of the gravity of the breaches of the respondent's policy, and the potential risk to the integrity of BT's global network, that the decision to dismiss fell within a band of reasonable decisions.

58. There clearly were some mitigating features here. The claimant had an unblemished record working for the respondent. He was clearly a highly valued and gifted employee. We are satisfied that the respondent's witnesses expressed genuine regret about having to lose the claimant, Both Mr Mellor and Mr Monteath made the same point, that things might have been different if he had immediately accepted that he retained the old laptop. In essence, it was his inability to be honest about the use and whereabouts of the device which exacerbated the situation. They stated that there was an important trust and confidence issue here, given the importance of the systems to which the claimant had access. We accepted this point. As a result, it was our view that the decision to dismiss was within a band of reasonable decisions.

59. In summary, the claim of unfair dismissal is dismissed.

Unlawful deductions from Wages/Unpaid Holiday

60. We allowed this claim. In short, the parties came to an agreement as to what was owed, the claimant having submitted a break down of it for the first time during the hearing itself. In relation to unpaid overtime, the agreed gross sum was £3846.14. In relation to holiday pay, the agreed gross sum was £820.67

Employment Judge R Wood

Date: 1 September 2023

Sent to the parties on:
12 September 2023

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For the Tribunal Office