



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. Ogunbayo  
**Respondent:** Royal Mail Group Limited

**HELD AT:** Leeds Employment Tribunal (By CVP)      **ON:** 5 September 2023  
**BEFORE:** Employment Judge Buckley  
Mr. K Lannaman  
Ms J Blesic

## REPRESENTATION:

**Claimant:** In person  
**Respondent:** Ms Griffiths (solicitor)

**JUDGMENT** having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## WRITTEN REASONS

### Procedural issues

1. The respondent applied on Friday to rely on a new witness. The claimant did not object. Even though the claimant did not object, as the claimant is a litigant in person the Judge spent some time with him asking if he would be caused any difficulties by the late disclosure. The Judge asked him specifically if he would have difficulties in, for example, preparing questions for the witness at such short notice.

2. The claimant was clear that he did not object. He explained that the statement was similar to the one already disclosed and stated that the late disclosure would not cause him any difficulties.
3. On that basis the tribunal agreed to allow the witness statement and adjourned to allow the claimant extra time to consider the statement and to prepare any questions.

**Issues**

4. This is a claim for victimisation.
5. The issues for the tribunal to determine are set out on p 67 of the bundle.
6. We heard evidence from the claimant. On behalf of the respondent we heard evidence from Helen Chapman, Service Manager for New Joiners and Vetting and Alison Hammond, who has an administrative role in the New Joiners and Vetting team, and was a Customer Service Advisor at the relevant time.

**Findings of fact**

7. The claimant was employed as an OPG (Operational Postal Grade) at the West Midlands Mail Centre from 12 December 2011.
8. On 18 March 2015 the claimant made a bullying and harassment complaint about a colleague that had allegedly called him a 'lying Christian'. On 6 June 2016, the claimant was informed that the complaint was not upheld.
9. In 2019, disciplinary proceedings were brought against the claimant for misconduct, The claimant was dismissed on 6 August 2019 for gross misconduct. The claimant appealed and the appeal was not upheld on 11 October 2019.
10. The claimant presented a claim to the Employment Tribunal on 3 August 2020 for unfair dismissal, race and religion or belief discrimination, holiday pay, arrears of pay and wrongful dismissal. The claim was struck out on 6 November 2020, on the basis that it was out of time. The claimant appealed to the Employment Appeals Tribunal. The appeal was dismissed on 10 November 2022.
11. The claimant still maintains that his dismissal was unfair and discriminatory.
12. The claimant applied for a position with the respondent in 2021, which was rejected on the basis that he did not have the right to work.
13. The claimant applied for the position that is the subject of this tribunal proceedings on 27 September 2022. This was an application for the role of Christmas 'Seasonal Mail Sorter' role at Northwest Midlands Mail Centre.
14. The respondent applies eligibility checks to all applications. Stage 1 of the process involves checking whether or not the applicant has ever been previously dismissed by the respondent and why. Those responsible are sent a report of leavers which contains the reasons for their exit. The respondent's use a table

called a 'dismissal matrix' to determine the consequences of any previous dismissal. If the applicant has been dismissed for gross misconduct, then the matrix indicates that the ex-employee 'can never return'. That means that any application by an employee that has previously been dismissed for GM is automatically rejected at this stage. That is what happened with the claimant.

15. We heard evidence from Alison Hammond who was the employee who carried out the checks in this case. At the time, she was not aware that the claimant had brought a previous claim to the ET, nor that he had made the complaint of harassment that had been dismissed in 2016. She was simply informed by the system that the claimant had previously been dismissed for gross misconduct, applied the matrix and therefore rejected the application. That was the entire reason for his rejection. The fact that the claimant had made a complaint of harassment in 2015/2016 was not something Ms Hammond knew about at the time, and it played no part whatsoever in her decision. The fact that the claimant had brought a tribunal claim in 2020 was not something Ms Hammond knew about at the time, and it played no part whatsoever in her decision.
16. Mr. Ogunbayo asserted in the hearing today that Royal Mail could have rejected his application because he did not have the right to work, but deliberately chose to reject it because of his previous dismissal.
17. There is no suggestion in her evidence that Ms Hammond was aware that the claimant had also, separately, not satisfied the eligibility checks in relation to having the right to work. It is not clear on the evidence whether that was in fact that case, although the claimant appears to assert that it was. Those right to work checks would not have been carried out by Ms Hammond, but by the Post Office, which is a separate entity. There is no evidence that she made a positive choice to rely on the previous dismissal rather than that the claimant did not have the right to work. Her clear evidence, which we accept, was that the application was automatically rejected simply because the system showed that the claimant had been previously dismissed for gross misconduct.
18. There are many applications for seasonal employment. Those assessing the applications simply rely on the information provided to them by the system. They are only provided with the reason for dismissal and are not given any other information. They do not undertake any investigation to ascertain whether or not the records are accurate. They certainly do not undertake any investigation to ascertain whether or not any previous dismissal for gross misconduct was justified or fair or discriminatory.
19. Although assisted by Ms Hammond's evidence, we would have made the same findings of fact on the basis of Ms Chapman's evidence which was along very similar lines and describes the same processes.
20. On 3 October 2022 the claimant was sent an email (p 158) which stated:

"We regret to inform you that your application for employment with Royal Mail Group is unable to progress.

Our Royal Mail eligibility checks have revealed information that does not meet the standards for employment.”

### **The law**

21. Under section 27 of the Equality Act 2010 a respondent victimises a claimant if the respondent subjects the claimant to a detriment because the claimant has done a protected act.
22. There are therefore three elements to a victimisation claim:
  - 22.1. The claimant must have done a protected act,
  - 22.2. The respondent must have subjected the claimant to a detriment and
  - 22.3. The reason why the respondent subjected the claimant to a detriment must be the protected act. In other words the tribunal must ask the question: “why did the respondent subject the claimant to a detriment?” and for the claim to succeed the answer must be “because the claimant did a protected act”.

### **Application of the law to the facts**

23. It is accepted by the respondent that the claimant did two protected acts: the first a complaint of discrimination in 2015/2016 and the second a claim brought in the employment tribunal in 2020.
24. It is also accepted that the respondent subjected the claimant to a detriment by rejecting his application for seasonal work in 2022.
25. The question for the tribunal to answer is therefore ‘Why did the respondent reject the claimant’s application for seasonal work?’
26. If the answer to that question is ‘at least in part because he made a complaint of harassment in 2015/2016 and/or, at least in part, because he brought a tribunal claim in 2020’ then the claim will succeed. If the answer is anything else, the claim will fail.
27. It is clear from our findings of fact above that we have found that the entire reason why the application was rejected was because the claimant had previously been dismissed for gross misconduct. The protected acts played no part whatsoever in the reason for the decision. The claim must therefore fail.
28. It would make no difference even if, as the claimant asserts, the previous dismissal was unfair or discriminatory. The claimant would still not have established the causative link between the refusal of the application and the protected acts. The dismissal itself is not be a protected act within the Equality Act, and therefore there is no protection for the claimant from being subjected to a detriment as a result of his dismissal, no matter how unjustified he believes it to have been.
29. It would also make no difference if, as the claimant asserts, the respondent had specifically chosen to rely on the claimant’s dismissal for gross misconduct rather

than his right to work. Even if this were the case, the claimant would still not have established the causative link between the refusal of the application and the protected acts.

30. For those reasons the claim is dismissed.

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Employment Judge Buckley

Date 22 September 2023

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