



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr H Sargazi

**Respondent:** Liverpool John Moores University Higher Education Corporation

**Heard at:** Liverpool

**On:** 17-21 July 2023

**Before:** Employment Judge Ainscough  
Ms L Heath  
Mr A Wells

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr Wood (Counsel)

**JUDGMENT** having been sent to the parties on 9 August 2023 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:

# REASONS

## Introduction

1. This was a claim of direct race discrimination and harassment related to race brought by the claimant arising out of her ongoing employment with the respondent. The claimant is a BAME employee of the respondent.

## Evidence

2. The Tribunal heard evidence from the claimant, Heather Thrift, the Director of Library Services, Andrew Fox, the claimant's initial line manager, Dr Casey Beaumont, the claimant's next line manager and Barbra Steele from the respondent's Human Resources department. The Tribunal had a bundle of 1158 pages. The claimant also provided a supplementary bundle of 55 pages.

## Issues

3. Employment Judge Grundy finalised the List of Issues at the case management hearing on 16 February 2023.
4. At the outset of the hearing the claimant submitted that the List of Issues was incorrect. The claimant was reminded that her application to amend her claim had been unsuccessful and the List of Issues prepared by Employment Judge Grundy were those issues to be determined by this Tribunal.
5. The List of Issues appears in the Annex to this set of written reasons.

## Relevant findings of fact

6. The claimant began working for the respondent in 2014 when it set up a Maths and Resource Support Centre. The Centre sat within the Student Advice and Wellbeing Service, and it was to provide support to students in which Maths was part of their degree.
7. In July 2014 the claimant was appointed as the Centre's Coordinator, which included leadership of the Centre, and to provide specialist maths support teaching to the students. The claimant's contract was an academic contract initially for a two year fixed period for 10.5 hours per week. The contract did not specify the days on which those hours would be worked. Part of the claimant's role was to staff a drop-in centre for the students.
8. The claimant's line manager was Andrew Fox. Andrew Fox had a hands-off approach to line management and the claimant felt able to work some of her hours from home. The Tribunal does not accept the claimant's allegations that during his line management Andrew Fox humiliated the claimant by laughing at her. Andrew Fox categorically denied this and confirmed he would not condone such behaviour. The Tribunal prefers the evidence of Andrew Fox to that of the claimant on this point.
9. In or around November 2016 Andrew Fox was informed that the respondent's Executive level had made a decision that the academic support for students would move from the Student Advice and Wellbeing Service to Library Services. This was to be achieved by the setting up of the new Academic Achievement Unit. The Pastoral Student Support Services remained under the remit of the Student Advice and Wellbeing Service.
10. Following Andrew Fox learning of this change he provided details of all staff who would be affected by this move to senior managers and expected that they would communicate the move to all affected staff. The move took place on 5 December 2016.
11. There was no discussion with the claimant about this move. The decision had been taken by at Executive level. The claimant only became aware of the change when Dr Beaumont discussed changing the claimant's job description at a PDPR meeting in January 2018.
12. In January 2017 Dr Beaumont and the claimant had applied for the role of Academic Achievement Manager. The vacancy reference that was supplied with the job description confirms that this job was within Library Services.

13. The claimant's application was rejected at the shortlisting stage. Dr Beaumont was invited to an interview and was successful. The Tribunal accepts the evidence of Dr Beaumont that despite the HR system saying the nobody was successful in this role, she had gone through a process and was properly appointed.

14. The Tribunal also accepts the evidence of Heather Thrift, who as on the selection panel, that Dr Beaumont's application was superior to that of the claimant because it gave examples of her skillset.

15. Heather Thrift gave evidence that there was no requirement for a maths, statistics or a managerial qualification in the role. It was Heather Thrift's view that the claimant only provided details of her skillset rather than examples and Heather Thrift could not make assumptions about the claimant based on the claimant's performance of a role.

16. Heather Thrift gave evidence that Dr Beaumont had backed up all of her examples at interview. The claimant in fact gave evidence that she did not give examples in her application form because this was something that would be given at interview. This was a concession the Tribunal determines by the claimant that the application did not contain the examples that were required by the respondent.

#### Lecturer in Research Method application

17. On 13 November 2017, the claimant applied for the role of Lecturer in Research Method within the Business School. The claimant was not shortlisted for this role and feedback was provided by David Bryde on 30 November 2017 when he explained that the claimant's PhD did not fit with the Business School and that her knowledge and experience was lacking compared with other candidates.

18. The claimant asserted that somebody was appointed to this role, but she could not provide any evidence of this. The respondent's evidence from the HR Department was that nobody was appointed to this role. Barbara Steele gave evidence that in 2017 there was a hybrid HR system that consisted of both paper and digital records.

19. As of March 2023, the job was still vacant on the respondent's digital system and the claimant cannot say who was recruited. Therefore, on the balance of probabilities the Tribunal concludes that nobody was recruited to this role.

#### Role of Statistics Tutor

20. The claimant applied for the role of Statistics Tutor in July 2017. Carol Davenport also applied for this role. The claimant was successful at shortlist stage but unsuccessful at interview. Carol Davenport was appointed to the role.

21. Heather Thrift, Andrew Fox, Dr Beaumont and Mark Taylor were on the selection panel. Heather Thrift relied upon the justification for Carol Davenport's appointment as set out in the post interview summary sheet. In summary, Carol Davenport was appointed because of her superior lesson plan and superior presentation to those of the claimant. The claimant did not challenge Heather Thrift's evidence on this point, and therefore the Tribunal accepts Heather Thrift's explanation for the appointment of Carol Davenport.

Change to the claimant's hours and timetable

22. The Tribunal notes that in January 2018 during the PDPR discussion between the claimant and Dr Beaumont, Dr Beaumont raised issues about the claimant's hours, timetable and location of work.

23. By March 2018 Dr Beaumont was concerned (and discussed the matter with Heather Thrift) that the claimant was only attending the university three times per week for three hours. Dr Beaumont was concerned that the claimant was not working her contracted hours.

24. The claimant and Dr Beaumont met to discuss the matter and the claimant's location of work. Dr Beaumont reminded the claimant that she was contractually required to work at any of the four locations operated by the respondent.

25. The claimant asserted that she had previously been allowed to work "flexitime". During evidence it became apparent to the Tribunal that the claimant equated "flexitime" with flexible working. This was the case in March 2018, as evidenced by an email sent by Dr Beaumont in which she points out to the claimant that flexitime was about claiming extra hours back as time off in lieu and not flexible working.

26. It is clear to the Tribunal that the claimant had imposed her own flexible working pattern under Andrew Fox's line management and Dr Beaumont wanted to make sure the claimant was fulfilling her contractual hours on site. As a result, the claimant was asked to conduct two 3.5 hour drop-in sessions and a 3 hour drop-in session on site each week. This pattern afforded the claimant 30 minutes' worth of administration time each week.

27. By early April 2018 Dr Beaumont had concerns over the accuracy of the claimant's timesheet and they agreed to meet on 12 April 2018. At the meeting on 12 April 2018 the claimant was presented with a timetable which equated to work over three days which was two four hour drop-in sessions on two separate days and 2.5 hours of teaching and resource preparation. There was also a note at the bottom of the timetable that made reference to the claimant working at more than one location depending on the need of the service. The timetable was due to start on 23 April 2018.

28. The claimant informed Dr Beaumont that she was only able to perform her contracted hours over 2 days.

29. On 13 April 2018 Dr Beaumont sent an email to the claimant with a link to the flexible working application process. In response the claimant told Dr Beaumont that she would only work over two days the following week and would discuss her flexible working with HR in due course. As a consequence, and in the absence of any flexible working application from the claimant, Dr Beaumont imposed the three day timetable.

30. The Tribunal finds that there was no agreement between the claimant and Dr Beaumont that the claimant had until 23 April 2018 to take advice about her working pattern. The new timetable began on 23 April 2018. In light of the claimant's response on 13 April 2018 Dr Beaumont imposed a three day timetable. This pattern was taken forward in the timetables from 30 April 2018 to 3 August 2018.

31. The claimant subsequently went off sick for a period of two months. In June 2018 on the claimant's return from sick leave, she submitted a flexible working request to work her hours over two days each week, and this request was granted. The claimant never worked at any other location than that to which she was originally assigned.

The allegation that Dr Beaumont and Andrew Fox mocked or made fun of the claimant

32. In evidence the claimant contended that such treatment was the main reason that she became ill.

33. The Tribunal finds that there was no complaint about this issue from the claimant in her grievance or in her complaint to the Vice Chancellor. Equally, there is no mention of such behaviour in the claimant's GP or Occupational Health records. There was also no standalone complaint from the claimant during her correspondence with HR. Therefore, the Tribunal has concluded that it prefers the evidence of Dr Beaumont and Andrew Fox that no such behaviour took place.

The contractual issues

34. In the PDPR meeting in January 2018 Dr Beaumont told the claimant that there was a need to look at her job description and align it with the move into the Academic Achievement Unit which had taken place in December 2016. Following this meeting the claimant agreed to change her job title to Statistics Tutor and she used that title when signing correspondence. The claimant did not however, agree to the job description.

35. From December 2016 until January 2018 there had been no change to the claimant's duties. In April 2018 the claimant met with Sally Ann Costello to discuss her job description and by 24 April 2018 the claimant went off sick.

36. During her absence the claimant met with Valerie Stevenson and Sally Ann Costello in May 2018 to discuss a stress risk assessment. It was accepted that there had been a period of change following the move to Library Services. In June 2018 the claimant was referred to Occupational Health.

37. In August 2018 the claimant submitted a proposal for a new Statistics Centre to Mark Power (the Registrar and Deputy Chief Executive) which was not progressed.

38. In September 2018 the claimant applied for a place on a training course involving BAME professionals and the respondent agreed to fund her attendance.

39. In December 2018 a new timetable was published and the claimant complained that Carol Davenport had been (and continued to be) excluded from hosting the drop-in centre sessions. The Tribunal concludes, based on the evidence given by Dr Beaumont, that Carol Davenport's exclusion from this timetable was entirely reasonable because Carol Davenport had been assigned to a particular project.

40. On 2 January 2018 the claimant complained to Valerie Stevenson that the timetable was unworkable because she had no time to teach. The claimant subsequently withdrew her teaching programme and went off sick.

41. In February 2019 the claimant raised a grievance.

42. By 14 February 2019 the respondent had conducted a stress risk assessment and the claimant had returned to work under the management of Valerie Stevenson on a phased return.

43. By May 2019 the claimant was back to full duties. Between May 2019 and September 2019 there were discussions between the claimant and Valerie Stevenson about the claimant's job description which culminated in the second grievance in September 2019.

44. The second grievance was dealt with by John Gillon, and in January 2020 he reported and confirmed that the grievance was unsubstantiated. He recommended that the claimant's job description be updated but he confirmed that the claimant's complaints against Dr Beaumont and Andrew Fox were rejected. The claimant did not appeal the outcome of this grievance.

45. In light of the grievance recommendations, at the end of February 2020 Valerie Stevenson proposed a new job description to the claimant. On 2 March 2020 the claimant said that she wanted to discuss it with her union. The resolution of the matter was then delayed by the Covid-19 pandemic.

46. By 1 October 2020 Paul Chin took over the line management of the claimant.

47. On 22 October 2020 the claimant complained to the Vice Chancellor, Ian Campbell, about her job description and Barbara Steele was appointed to be a point of contact for the claimant.

48. On 19 November 2020 the claimant and Paul Chin met. At this meeting the claimant was still using the job title "Statistic Tutor". Whilst the claimant had adopted that title, she had still not adopted or agreed to the job description.

49. The Tribunal has determined on the balance of probabilities that there was a discussion at that meeting between the claimant and Paul Chin about the job description which prompted the claimant to ask Paul Chin whether she was at risk of redundancy.

50. The Tribunal has determined that on the balance of probabilities Paul Chin advised the claimant that her old job description was not aligned with her role in Library Services. The Tribunal has also determined that the respondent did not revoke the claimant's contract. The requirement that the claimant agree a new job description did not have this effect. Consequently, the claimant was never removed from Library Services. The role of Statistics Tutor sat within that department.

51. Barbara Steele was clear in evidence that there was not a failure to acknowledge that the claimant had an academic contract. In particular, the Tribunal notes that the claimant, has a teaching role and is allowed to take part in research projects.

Lecturer in Education application

52. On 8 June 2021 the claimant applied for the Lecturer or Senior Lecturer in Education and Early Childhood Studies (reference number 3240). The claimant was unsuccessful at the shortlisting stage. The feedback provided by Dr Bolton was that the claimant had a lack of specific subject knowledge or experience. The successful candidate was selected because she was the strongest candidate at interview; she was also a BAME employee.

53. The Tribunal has determined on the balance of probabilities that an application for this role did not include an application for the role of Senior Lecturer in Education and Professional Learning, for which, the claimant asserts, she would have had the relevant experience.

Respondent's reference to Disciplinary proceedings

54. By the end of November 2020 and into December 2020 the claimant was off sick. On 16 December 2020 the claimant informed Paul Chin that she would not accept the updated job description.

55. In January 2021 the claimant had a meeting with Barbara Steele and the outcome of that meeting, in summary, was that the claimant wanted the Academic Achievement Unit to sit within the Maths Department rather than Library services; she wanted an academic contract on full-time hours, and in the absence of either, a move to another department under an academic contract. The claimant did not want to pursue a grievance. There was extensive correspondence between the claimant and Barbara Steele about finding a way forward.

56. By 1 April 2021 the claimant said she did not want to engage with anybody in Library Services.

57. On 20 April 2021 Barbara Steele offered the claimant assistance with applications, and there continued to be extensive correspondence between the claimant and Barbara Steele into May 2021.

58. On 25 May 2021 the claimant told Barbara Steele that she would only allow the respondent until October 2021 to take action and deal with her concerns. Throughout July and August the claimant was on annual leave.

59. On 30 September 2021 Barbara Steele advised the claimant that if she refused to work as part of Library Services it would amount to a potential disciplinary matter.

60. In October 2021 the claimant went off sick and remains off sick.

**Relevant Legal Principles**

61. Discrimination against an employee is prohibited by section 39(2) Equality Act 2010:

**“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;
- (d) by subjecting B to any other detriment.”

62. Harassment during employment is prohibited by section 40(1)(a).

63. The protected characteristic of race is defined by section 9(1) as including colour, nationality or ethnic origins.

#### Direct Discrimination

64. The definition of direct discrimination appears in section 13 and so far as material reads as follows:

**“(1) 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”.**

65. The concept of treating someone “less favourably” inherently requires some form of comparison, and section 23(1) provides that:

**“On a comparison of cases for the purposes of section 13 ... there must be no material differences between the circumstances relating to each case”.**

66. It is well established that where the treatment of which the claimant complains is not overtly because of race, the key question is the “reason why” the decision or action of the respondent was taken. This involves consideration of the mental processes of the individual responsible: see the decision of the Employment Appeal Tribunal in **Amnesty International v Ahmed [2009] IRLR 884** at paragraphs 31-37 and the authorities there discussed.

#### Harassment

67. The definition of harassment appears in section 26 which so far as material reads as follows:

**“(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 sub-section (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.

(5) The relevant protected characteristics are ...race”.

68. The Tribunal was mindful of the Code of Practice on Employment issued by the Equality and Human Rights Commission which came into force on 6<sup>th</sup> April 2011, particularly chapter 7 which deals with harassment.

#### Burden of Proof

69. The burden of proof provision appears in section 136 and provides as follows:

“(2) 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.

(3) But sub-section (2) does not apply if A shows that A did not contravene the provision”.

70. In **Hewage v Grampian Health Board [2012] ICR 1054** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong [2005] ICR 931**, as refined in **Madarassy v Nomura International PLC [2007] ICR 867** where Mummery LJ held that “could conclude”, in the context of the burden of proof provisions, meant that a reasonable Tribunal could properly conclude from all the evidence before it, including the evidence adduced by the complainant in support of the allegations, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. Importantly, at paragraph 56, Mummery LJ held that the bare facts of a difference in status and a difference in treatment are not without more sufficient to amount to a prima facie case of unlawful discrimination. Further, unfair or unreasonable treatment by an employer does not of itself establish discriminatory treatment: **Zafar v Glasgow City Council [1998] IRLR 36**. It cannot be inferred from the fact that one employee has been treated unreasonably that an employee of a different race would have been treated reasonably. However, whether the burden of proof has shifted is in general terms to be assessed once all the evidence from both parties has been considered and evaluated. In some cases, however, the Tribunal may be able to make a positive finding about the reason why a particular action is taken which enables the Tribunal to dispense with formally considering the two stages.

#### Time Limits

71. Finally, the time limit for Equality Act claims appears in section 123 as follows:

“(1) Proceedings on a complaint within section 120 may not be brought after the end of –

(a) the period of three months starting with the date of the act to which the complaint relates, or

(b) such other period as the Employment Tribunal thinks just and equitable...

(2) ...

(3) For the purposes of this section –

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

72. In considering whether conduct extended over a period we had regard to the decision of the Court of Appeal in **Hendricks v Metropolitan Police Commissioner [2003] IRLR 96**.

## **Submissions**

### Respondent’s submissions

73. The respondent submitted that the claimant had not proven facts from which the Tribunal could conclude that she had been subjected to unlawful discrimination. It was the respondent’s position that the claimant had not established any decision was made because of her ethnicity.

74. The respondent submitted that the evidence in fact proved that the claimant had been subject to positive treatment because she was a BAME employee.

75. The respondent maintained that there was no evidence of institutional racism or coercion by panel members. It was the respondent’s position that it would not allow the claimant to dictate the structure of the department or her role within that department.

76. The respondent submitted that the claimant was not a credible witness. The respondent contended that if the Tribunal did believe the claimant any treatment of the claimant was not on the grounds of her ethnicity.

### **Claimant’s submissions**

77. The claimant submitted that she had proven facts from which the Tribunal could conclude that she had been subject to unlawful discrimination because she was a BAME employee.

78. The claimant contended that her evidence was credible and should be preferred to that of the respondent’s witnesses.

79. The claimant maintained that the evidence proved the recruitment processes were inconsistent and misleading such that the Tribunal should infer that the decisions made amounted to unlawful discrimination.

80. The claimant submitted that the respondent had removed her academic contract and sought to make her redundant because she was a BAME employee.

## **Discussion and conclusions**

### Direct race discrimination claim

81. Did the following amount to less favourable treatment?

- (a) *Claimant not being told about the proposed new Academic Achievement Unit*

82. There was no discussion with the claimant about the establishment of the Academic Achievement Unit. The Tribunal has determined that there was no discussion with Andrew Fox or anybody in Andrew Fox's team. Andrew Fox confirmed in evidence that he was informed of the changes once the decision had been made and provided details of the affected staff to Heather Thrift and Andrew Barker on 29 November 2016.

83. The Tribunal has determined that the comparator for this issue is hypothetical – a white employee who was the Centre Coordinator. The Tribunal determines that such a comparator would not have been involved in discussions because the decision was taken at Executive level, and even Andrew Fox as the claimant's line manager was not privy to such discussions. Therefore, the claimant was not treated less favourably.

*(b) The rejection of the claimant's application for Academic Achievement Manager*

84. The claimant's application was rejected. Dr Beaumont was appointed because her application was superior, therefore Dr Beaumont is not the correct comparator for this issue. The comparator is hypothetical – a white candidate who submitted an application form with a list of skill sets but who did not give examples of the deployment of those skills.

85. The Tribunal has determined that such a comparator would not have been shortlisted. Heather Thrift was clear in her evidence that the respondent required specific examples. Therefore, the claimant was not treated less favourably.

*(c) Rejecting the claimant's application for Lecturer in Research Methods*

86. The claimant's application was rejected. The hypothetical comparator was a white applicant with the same PhD qualification and the same knowledge and experience as the claimant.

87. The Tribunal has determined that such a comparator would similarly have been rejected a shortlisting stage and therefore the claimant was not treated less favourably.

*(d) Rejecting the claimant's application for Statistics Tutor*

88. The Tribunal has determined that whilst Carol Davenport was successful, this was because her lesson plan and presentation were superior to all other candidates at interview. Carol Davenport was not the correct comparator for this issue. The hypothetical comparator was a white candidate who gave the same standard of lesson plan and presentation as the claimant.

89. The Tribunal has determined that such a comparator would also not have been successful at interview and therefore the claimant was not treated less favourably.

*(e) and (f) Change to the claimant's hours of work/timetable and location of work*

90. The Tribunal has determined that there was no change to the claimant's hours – the claimant was always required to work 10.5 hours on site. The Tribunal has concluded that whilst the claimant asserts she always worked the 10.5 hours, there

was a requirement that she did this on site, which was a change to how the claimant had been working and therefore consequently there was a change to the claimant's timetable.

91. The claimant identifies two colleagues as appropriate comparators, however the Tribunal accepts the evidence of Heather Thrift – that these colleagues worked all of their hours on site and therefore they are not the appropriate comparators. The Tribunal has determined that the appropriate comparator would be a white colleague in a student facing role who had unilaterally worked part of their hours from home.

92. The Tribunal has determined that Dr Beaumont would have asked such a comparator to work all hours on site and create a timetable that reflected this. Therefore, the claimant was not treated less favourably. The Tribunal has already determined that the claimant never worked at any other location and therefore there was never any change to the location of the claimant's work.

*(g) Mocking and making fun of the claimant*

93. The Tribunal has determined that neither Andrew Fox nor Dr Beaumont treated the claimant in this way and therefore has not considered whether such behaviour amounts to less favourable treatment.

*(h), (i), (j) and (l) Contractual Issues*

94. The Tribunal has determined on the balance of probabilities that there was a discussion between the claimant and Paul Chin in November 2020 about the need to update the claimant's job description. By this date the claimant had accepted the new job title but not the new job description.

95. The Tribunal has determined that it was entirely proper for the respondent to align the claimant's job description with her title in accordance with the respondent's need to organise the Academic Achievement Unit in order to deliver support to the students.

96. The Tribunal has also determined that there was no failure to acknowledge the claimant's contract as anything other than academic and there was no revocation of the academic contract. The Tribunal accepted Barbara Steele's evidence on this point. There was no removal of the claimant from Library Services during the discussions about her job description. The appropriate hypothetical comparator for the issue of a new job description is a white Maths Centre Coordinator who accepted a new job title under the Library Services umbrella.

97. The Tribunal has determined that such a comparator would have been asked to agree a new job description and therefore the claimant was not treated less favourably.

*(k) Lecturer in Education post*

98. The claimant was rejected for this role and the successful candidate was appointed because that candidate had superior subject knowledge and overall experience to that of the claimant. Therefore, the successful candidate was not the appropriate comparator for this issue. The hypothetical comparator is a white applicant with the same level of knowledge and experience as the claimant without

specific subject knowledge. Such a comparator would have also failed at the shortlisting stage and therefore the claimant has not been treated less favourably.

*(m) Use of the Disciplinary Procedure*

99. The Tribunal has determined that Barbara Steele advised the claimant that a continued refusal to work with the Library Services team would be a potential disciplinary matter. The Tribunal has determined that the respondent's requirement for the claimant to work within Library Services was a reasonable management instruction. The claimant refused from April 2021 to engage with Library Services and unilaterally imposed a deadline on the respondent to agree to her demands.

100. The Tribunal has determined that it was entirely proper for Barbara Steele to advise the claimant of the consequences of her actions. The appropriate hypothetical comparator would be a white employee who has been subject to a move, who was in dispute over their job description and who refused to work with the new department.

101. The Tribunal has determined that any such employee in those circumstances who has failed to follow such a reasonable instruction would receive similar advice and therefore the claimant has not been treated less favourably.

Conclusion on direct discrimination claim

102. The Tribunal has not found any instances in which the claimant has been treated less favourably. The claim of direct race discrimination is unsuccessful.

103. The claimant has not met the burden of proof. The burden was on the claimant to prove facts from which the Tribunal could conclude, in the absence of any explanation from the respondent, that the claimant was subject to discrimination. The claimant has not done this.

Harassment related to race claim

104. Given the Tribunal's findings that neither Andrew Fox nor Casey Beaumont mocked or made fun of the claimant, the Tribunal has determined that the claimant was not subject to unwanted conduct and the harassment claim fails.

Time Limits

105. Given the claimant has not proven her case, it is not necessary to consider this point. However, having heard evidence on this issue the Tribunal has determined that the issue of the claimant's job description began in January 2018 and remains outstanding to this day. The letter from Barbara Steele on 30 September 2021 was about the claimant's failure to engage with Library Services because the issue was still live.

106. Therefore, the Tribunal has concluded that the discussions between the claimant and the respondent about her job description would amount to a continuing act, and that element of the claim would have been in time. The cast of managers has not substantively changed. Dr Beaumont, Andrew Fox and Heather Thrift are all still involved in the claimant's management.

107. The Tribunal has determined that the rejection of the claimant's applications for multiple jobs did not amount to a continuing act. They were discrete decisions which were made by a wide range of different people, not related to one another; nor were they related to the issues between the claimant and the respondent over her job description. The Tribunal was satisfied that each successful candidate was appointed on merit and not because the respondent had a policy of not wanting to appoint the claimant.

108. The claimant has demonstrated an understanding of Employment Tribunal time limits and she has explained that she waited until the end of the alleged discrimination to issue the claim. The Tribunal concluded it would not have been just and equitable to extend time.

Employment Judge Ainscough

Date: 27 November 2023

REASONS SENT TO THE PARTIES ON  
28 November 2023

FOR THE TRIBUNAL OFFICE

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