



EMPLOYMENT TRIBUNALS

Claimant: Mr H Georgestone
Respondent: Home Office

Heard at: London Central (by CVP)

On: 20-23/2/2024
Before: Employment Judge Mr J S Burns
Members Ms J Holgate and Ms C Brayson

Representation

Claimant: In person
Respondent: Ms C Jennings (Counsel)

JUDGMENT

The claims are dismissed

REASONS

1. The Claimant claimed direct discrimination or harassment, relying on three allegations of less favourable treatment, or unwanted conduct, on the grounds of, or related to, both his age (dob 15/4/62) and his race (Black British of African descent) as follows:
 - Placing him on probation; (this refers not to him being placed on probation from the outset of his employment on 3/5/22 but to the decisions to extend his probation in September 22). (Actual comparator Barry Johnson -white aged about 45 years).
 - Mr May failing to accept his 'Coverage Data Strategy' document. (Comparators Karen Simpson white in her 40s, Robert McDowall white in his mid 50s, Mark Colborne white in his late 50s).
 - His dismissal. (Comparators Robert McDowall, and Barry Johnson).
2. The Respondent did not advance any justification defence in relation to the direct age discrimination claim and no time points.
3. We heard evidence from the Claimant and then from his witness Tracey Phillips. His witness Peter Savage's statement was agreed. We then heard from the Respondent's witnesses James May and Niall Stokoe. The documents were in a bundle of 1503 pages and a supplementary bundle of 177 pages. We received an opening note and closing notes and oral final submissions from both parties.
4. We had to delay the hearing so the evidence started only on 21/2/24. This was to enable the Claimant to move his location so he could access an adequate internet connection for the CVP platform.

Findings of fact

5. The Claimant commenced work with the Respondent on 3 May 2022 as a Grade 6 Technical Project Manager working with the Network Assurance and Validation Team of the Respondent. This was a senior role. The Claimant was line managed by Mr James May, (Deputy Director – Coverage).
6. Mr May had sat on the interview panel of three which recruited the Claimant in July 2021. The panel had met him, interviewed him, scored him more highly than some White applicants, and offered him the role –which reported directly to Mr May and was important for the advancement of the coverage work. Mr May was aware at the time of interview of the Claimant’s protected characteristics. Mr P Garrett was another member of the interview panel.
7. The Claimant’s employment contract contained provisions for a 6-month probation period at the outset which could be extended to 15 months and that the employment could be terminated during or at the end of probation if the Claimant had not met the required standards for his grade. Similar provisions were set out in the Respondent’s policy document “Probation: Procedure and Guidance”.
8. The Claimant worked on the Emergency Services Mobile Communications Programme (ESMCP). The ESMCP is a cross-departmental programme that is led by the Respondent. Its aim is to develop and deliver new communications services will be called the Emergency Services Network (ESN).
9. As a Technical Project Manager, the Claimant’s role was to lead the Network Data and Validation Team. The job description included the following in the “essential criteria” section: *“Demonstrable experience of planning and delivering complex projects, including the development of plans.... Gathering, analysing, and managing complex information and expressing it to a range of stakeholders and audiences”*. This wording flagged up the necessity for the person who filled the role to be competent in developing plans and expressing complex information to others.
10. On 9 May 2022, Mr May tasked the Claimant with producing a Coverage Data Strategy by 31 July 2022. The development of this document would necessitate the Claimant’s engagement with stakeholder, colleagues and teams within the wider programme. It was an important document that would have to be created from scratch, would have to go through governance to Board level, and from which a number of other documents would stem. It was not the same as the delivery and content documents that the Claimants colleagues Karen Simson, Marc Colborne and Robert (Rab) MacDowall were tasked with drafting.
11. The Claimant was born and spent much of his life up to the age of 25 years in Sierra Leone. He said during the hearing that he felt that his ability to speak English and his accent when speaking English placed him at a disadvantage when conversing with some people. In fact, we found the Claimant’s spoken English to be fluent, clear and without any noticeable accent. However, we did note from his witness statements, and his various documents written by him in the evidence, that his literary skills are less strong.

12. The creation and writing of the strategy document became the Claimant's main piece of work against which his success in his probation would be assessed. In the end the Claimant spent more than half his working time trying to draft it.
13. The senior role which the Claimant had taken on also required him to lead a team of other employees, several of whom had been working for the civil service for years, whereas the Claimant's work before had been mainly in the private sector. The Claimant had some difficulty in forging good relationships with these individuals, at least two of whom were also from an ethnic minority background.
14. On 14 June 2022 the Claimant met with Mr May to discuss his progress. Mr May informed the Claimant that he needed to improve his performance in certain areas. Mr May set the Claimant various goals. The matters discussed were confirmed to the Claimant via an email on 23 June 2022 and within the Respondent's internal system, METIS, on 23 June 2022. The Coverage Data Strategy document was then to be finalised for the CWG by 4 August 2022.
15. The Claimant provided a first draft on 4 August 2022. Mr May found that it fell far below the required standard and was not ready to be presented to the CWG. He provided numerous detailed written comments by way of tracked changes which he asked the Claimant to address in the next draft. In evidence the Claimant accepted that the detailed comments and guidance provided by Mr May were genuine and he did not suggest that their substance was wrong or inappropriate.
16. Mr May did not take over completely the task of drafting the Strategy document, firstly because he was very busy with other work, and secondly because the Claimant had to show that he was competent to produce such work, in order to show he was suitable for the role.
17. On 16 August 2022, during a Senior Leadership Team (SLT) meeting, the Claimant spoke inappropriately towards his colleague Ross MacIndoe, Project Manager EE and TfL, when he answered a question that the Claimant had directed at other attendees. This meeting had to be terminated prematurely by Mr May after this so he could talk to the Claimant privately and because the Claimant was manifesting signs of stress and upset.
18. On 16 August 2022 Mr May received an email from Mr Garrett from one of the Respondent's User organisations, the National Police Chiefs' Council, providing feedback on the Claimant's performance on behalf of himself and another Operational Lead, both of whom represented the views of users to the programme teams. The feedback was that Claimant had not demonstrated the competence to perform the role of Technical Project Manager. As stated above, Mr Garrett had been one of the interview panel who had offered the Claimant his role in 2021.

19. On 17 August 2023 the Claimant sent Mr May another draft which did not address a number of Mr May's comments in relation to a previous draft.
20. Mr May arranged a formal probation hearing on 31 August 2022 in which the concerns were discussed. The Claimant complained about his relations with colleagues but did not suggest he had experienced any racism. He agreed that his "outburst" on 16/8/22 had been inappropriate and he apologised to Mr May and some of the team members. A note of the meeting was kept which suggests that Mr May dealt with the issues thoroughly and kindly. The next day the Claimant sent Mr May an email thanking him for his time at the meeting and stating that he was optimistic that the situation would improve.
21. On 5 September 2022, Mr May wrote to the Claimant confirming his decision to issue the Claimant with a written warning valid from the date of the letter until 5 December 2022 and confirming that the Claimant's probation period would be extended from 3 November 2022 to at least the end of the warning period. The Claimant was offered an appeal but chose not to.
22. After 5 September 2022, Mr May met with the Claimant in weekly one-to-one meetings to ensure that he was adequately supported and to give him further direction in relation to the Strategy document and the Claimant's other work. He arranged for the Claimant to attend a guidance meeting with a data architect; and offered to arrange weekly meetings with individuals from the managed service provider, ID E2E, to ensure that they were providing him with the information he required. The Claimant did not ask for additional support during these meetings and confirmed that his interactions with individuals in his team had improved since Mr May had spoken to them. Mr May joined a team meeting, where he reiterated the Claimant's role as team leader.
23. On 22 September 2022, Mr May sent the Claimant a letter confirming that his probation period had been extended to 3 February 2023 and extending the deadline for the final Strategy document to 30 September 2022. The Claimant missed this deadline and provided the document on 7 October 2022 and yet further drafts on 7 November 2022 and 16 December 2022, which also fell below expected standard. A further draft was provided by 9 January 2023 and another on 25th January 2023. Mr May provided feedback on these and eventually the final version was considered suitable for sending forward for review.
24. On 20 January 2023, Mr May received an email from Rob McBlain from Managed Service, Identity E2E, informing him that the Claimant had shouted while speaking to him on the phone. This complaint was not subsequently relied on for dismissal.
25. Mr May arranged a further Probation Hearing on 31 January 2023, following which he wrote to the Claimant dismissing him due to poor performance, with his conduct, (for example at the SLT meeting on 16/8/22) as a secondary or supporting reason. The last day of employment was 6 February 2023.

26. The Claimant appealed his dismissal on 7 February 2023 to Niall Stokoe, Director Delivery and Deployment. In his appeal he complained of being bullied by Mr May; that Mr May did not want to him in the team despite him completing the Coverage Data Strategy document; that he was intentionally excluded from certain work meetings; and that Mr May had failed to take into account his complaints that he was being undermined by colleagues when making the decision to terminate his employment. In a supplementary appeal letter also dated 7/2/23 he stated that he thought that the “act of dismissal was racial”.
27. Mr Stokoe reviewed the relevant documents such as the probation meeting notes, and the various drafts of the Strategy document that the Claimant had produced between August and December 2022. Mr Stokoe agreed that they were inadequate. The Claimant attended an appeal meeting with Mr Stokoe on 1 March 2023. A detailed note was taken showing a reasonably thorough process, although Mr Stokoe failed to ask the Claimant why he thought his dismissal was racial, which he should have done, and the Claimant did not volunteer any information about this.
28. We do not find that Mr Stokoe’s reasons for not asking the Claimant about racism or for dismissing the appeal against dismissal was itself related to or because of the Claimant’s race or age. The reasons were that Mr Stokoe did not realise that he should ask, and he had concluded that the dismissal was objectively justified by the Claimant’s inadequate performance. Mr Stokoe wrote to the Claimant on 8 March 2022 dismissing his appeal.
29. The Claimant cited Barry Johnson as a comparator in relation to the extension of probation, but the latter was not on probation and his performance was satisfactory.
30. The Claimant claimed that Mr May allowed other colleagues namely Karen Simson (white in her 40s), Robert McDowall (white in his mid 50s), Mark Colborne (white in his late 50s) to submit documents to CWG without running them past Mr May. We do not find that this is the case and accept Mr May’s evidence (supported by various emails and correspondence produced as supplementary disclosure during the hearing at the Tribunal’s request) that he reviewed documents that were created by these individuals for the CWG. In any event the documents which these comparators were producing were not so important as the strategy document, and the strategy document was new, so it would have required more scrutiny in any event.
31. The Claimant relied on Robert McDowall and Barry Johnson as comparators in relation to the dismissal, but their performance was satisfactory and they were not failed probationers.
32. The Claimant in his witness statement made a number of miscellaneous allegations against Mr May, many of which he failed to put to Mr May in cross-examination. For example, he alleged

that Mr May had stood by allowing colleagues to speak rudely or aggressively, in contrast with how Mr May responded to the Claimant, for example at the SLT meeting. However, despite us pressing the Claimant, he was unable to provide any specific details of any such claimed scene when Mr May had been present. We do not find this proved.

33. The Claimant also complained that Mr May had made various comments to him which he found offensive namely that he should “bow his head down” or “keep his head down” or that he was “disappointing” and that “(his) birds had flown their nest”. These were not complained about at the time to Mr May or HR and Mr May could not recall saying them. We find that he might have told the Claimant to “*keep his head down and get on with his work*”, and he might well have said that the Claimant’s “*birds had flown the nest*” as part of friendly small-talk with the Claimant about their respective families. If these comments were made we find they were innocuous and had no relation to either the Claimant’s age or race.

The law

34. Section 4 Equality Act 2010 (EA) provides that race and age are protected characteristics.

Direct Discrimination

35. Section 13 EA provides that a person discriminates against another if because of a protected characteristic, he treats another less favourably than he treats or would treat others, unless, in the case of age, he shows the treatment to be a proportionate means of achieving a legitimate aim”.
36. The requirement is on the Claimant to show less favourable treatment by comparison with an actual or hypothetical comparator whose relevant circumstances must be the same or not materially different.

Harassment

37. Section 26 provides that a person harasses another where he engages in unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating the others dignity or creating an intimidating hostile degrading humiliating or offensive environment for him. In deciding whether conduct has this effect the following must be taken into account : the perception of the other, the other circumstances of the case and whether it is reasonable for conduct to have that effect.

Onus of proof

38. Section 136 provides that if there are facts from which a court could decide, in the absence of any other explanation that a person has contravened a provision under the EA, the court must hold that the contravention occurred, unless the person shows that he did not contravene the provision.

Conclusions

39. The Claimant did not develop his age discrimination/harassment claims at all and there is nothing before us to support these.

40. The contention that Mr May did not want the Claimant working for him because of his protected characteristics flies in the face of the fact that Mr May interviewed and, knowing his protected characteristics, selected him to work with him, and did so in preference to White interviewees.
41. We do not uphold the Claimant's complaint that Mr May considered him to be '*a black man who was not intelligent and incompetent for the post*' and was setting him up to fail. On the contrary we find that Mr May wanted the Claimant to succeed as evidenced by his provision of detailed helpful feedback on the Strategy document; support in regular one-to-one meetings; attending some of the Claimant's team meetings to support him, arranging him to meet a data architect and extending his probation.
42. Mr May's management of the Claimant and the probation period was reasonable, in accordance with the Claimant's contract and the Respondent's Probation Procedure and guidance statement.
43. Mr May extended the Claimant's probation on 8 September and 22 September 2022, for clear reasons which were explained in detail to the Claimant at the time, namely to cover the duration of the written warning; to allow him a fair opportunity to improve his performance; and because his performance and conduct were inadequate for a Grade 6 employee.
44. The reason for Mr May's scrutiny of the Claimant's draft strategy document and his repeated requests that it be redrafted, was because it was not then ready to be sent for review by the CWG.
45. Mr May dismissed the Claimant and the dismissal was upheld on appeal because Mr May and Mr Stokoe found his performance had been inadequate. It had taken the Claimant 8 months and a considerable amount of input from Mr May to produce the Strategy document. In addition to this he was unable to lead his team and there were some problems with his conduct.
46. It was not just Mr May who found the Claimant's work and performance inadequate, as demonstrated for example by the email from Mr Garrett and another from Mr McBlain, and by Mr Stokoe's appeal findings.
47. The actual comparators identified by the Claimant are not true comparators and we find that a hypothetical comparator of younger age and different race to the Claimant but who was otherwise in the same circumstances would have been treated the same.
48. Unfortunately, the Claimant had been recruited into a role which was beyond some of his abilities, namely his literary and people management/leadership abilities. The Claimant has been unable or unwilling to face that fact, so he has looked around for some other explanation.

49. However the Claimant has not adduced facts which in the absence of an explanation could lead us reasonably to uphold his claims, so the burden of proof has not passed to the Respondent. In any event we are satisfied with the Respondent's non-discriminatory explanation and find that the matters he complains about were not because of or related to his race or age .

50. The claims are dismissed.

Employment Judge J S Burns
23/02/2024

For Secretary of the Tribunals

6 March 2024
Date sent to parties
