



EMPLOYMENT TRIBUNALS

Claimant: Judith Drummond

Respondent: Secretary of State for Justice

Heard at: Exeter (hybrid hearing)

On: 27 June – 01 July 2022, 27 June 2023 & 01-03 May 2024

Before: Employment Judge Paul Housego
Tribunal Member Rachael Barrett and
Tribunal Member Ian Ley

Representation

Claimant: In person

Respondents: Joanne Williams, of Counsel, instructed by Hayley Smart of
Government Legal Service

JUDGMENT

The Claims are dismissed.

REASONS

Summary

1. Ms Drummond was an Anglican Chaplain at Exeter Prison. She was dismissed for gross misconduct, specifically her part in bullying another Chaplain, together with a third Chaplain who resigned before a disciplinary hearing could be conducted in his case. The Respondent says this was a fair

dismissal. The Claimant says that it was all prejudged and unfair, and the investigation was a classic case of confirmation bias. She says that the process did not follow the correct prison procedure in variety of ways, and so made her dismissal unfair. She says that the fact that she is a gay female priest was a factor in her treatment by management, so that the process amounted to harassment related to sex, sexual orientation and religion or belief.

2. The Tribunal decided that this was a fair misconduct dismissal, that there were no procedural errors, but that if there had been any procedural errors they were not such as to make the dismissal unfair, or they were cured by the appeal.
3. The Tribunal decided that the discrimination complaint of victimisation was misconceived. There was no link between the three protected characteristics and the protected act of the grievance (the narrative of which contained no reference to any protected characteristic) and any part of the process.

Claims made and relevant law

4. The claims are of unfair dismissal and victimisation contrary to S27 of the Equality Act 2010.
5. The claim for victimisation is based on a grievance filed by Ms Drummond about another Chaplain on 14 August 2018. It is accepted by the Respondent that the grievance was a protected act.

Equality Act 2010

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

6. In respect of a claim for unfair dismissal, the Respondent has to show that the dismissal was for a potentially fair reason¹. The Respondent says this was conduct which is one of the categories that can be fair². The Claimant does not dispute that was the real reason but says that it was nevertheless unfair.

¹ S98(2) of the Employment Rights Act 1996

² Also S98(2) of the Employment Rights Act 1996

7. It has to be shown by the Respondent that the dismissal was fair³. The employer must follow a fair procedure throughout⁴, and dismissal must fall within the range of responses of a reasonable employer⁵. It is not for the Tribunal to substitute its own view of what should have happened, for it is judging whether the actions of the employer were fair, and not deciding what it would have done.
8. The burden of proof as to the reason for dismissal is on the employer, on the balance of probabilities. Ms Drummond does not dispute that this was the reason.
9. There is no burden or standard of proof for the Tribunal's assessment of whether it was fair to dismiss⁶. If the dismissal was procedurally unfair the Tribunal has to assess what would have happened if a fair procedure had been followed⁷.
10. For the discrimination victimisation claim, it is for Ms Drummond to show reason why there might be discrimination⁸, and if she does so then it is for the Respondent to show that it was not victimisation.

Issues

11. The issues are set out above. Leave to amend to include other forms of discrimination was refused at a Case Management Hearing. Other claims for discrimination were discontinued by Ms Drummond, so that the only claim under the Equality Act 2010 is that the protected act of the grievance led to detriments as victimisation contrary to S27 of the Equality Act 2010. The dismissal was for gross misconduct but was not a summary dismissal. All financial claims have been resolved.

Evidence

12. There was a bundle of documents over 1,000 pages. For the Respondent, Steve Mead (who commissioned the investigation), Steve Rodford (who investigated), Richard Luscombe (who dismissed the Claimant) and Jeannine Hendrick (who took the appeal against dismissal) gave oral evidence. The Claimant gave oral evidence.

The hearing

13. The hearing in 2022 was in person. All the Respondent's evidence save that of Steve Rodford was given (he was abroad). The hearing could not conclude in the allocated time. There was an unaccountable delay of exactly one year until it resumed, but the Claimant then attended suffering with Covid-19 and that hearing was abandoned. There was again an unaccountable delay until the hearing resumed on 01 May 2024. 01 May 2024 was a reading day. The members of the Tribunal had taken full notes of the first part of the hearing and this was a case of which the members of the Tribunal had a clear

³ S98(4) of the Employment Rights Act 1996

⁴ Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA

⁵ Iceland Frozen Foods Ltd v Jones [1982] UKEAT 62_82_2907

⁶ Section 98(4) of the Employment Rights Act 1996

⁷ Polkey v AE Dayton Services Ltd [1987] UKHL 8

⁸ Igen v Wong [2005] ICR 931, Madarassy v Nomura International plc [2007] EWCA Civ 33, Laing v Manchester City Council [2006] I.C.R. 159, and Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913

recollection notwithstanding the long delay. For the hearing in May 2024 the Respondent attended remotely (as did one of the members of the Tribunal).

The Claimant's case

14. She had lodged a grievance about the conduct of a fellow Chaplain towards her. That had resulted in the Governor commissioning an investigation into the Chaplaincy. This had unfairly found that she (along with another colleague) had bullied one her colleagues, from a different denomination. It was unfair because she had not bullied him, and because much of the information relied upon stemmed from the Chaplain she said was bullying her. Other people who would have been supportive were not contacted. She had been victimised for her grievance, and that was related to her being female, lesbian and to her status as a female Anglican priest.

The Respondent's case

15. The Chaplaincy was dysfunctional. This was not in dispute. The independent investigation showed that it was a long-standing Chaplain and the Claimant who had bullied a third Chaplain. This was so serious that a gross misconduct dismissal was warranted. The grievance did not mention or allude to any protected characteristic, and while it was a protected act there was no victimisation arising from it, first as it was not connected to any protected characteristic and secondly because the actions taken were all fair and also unconnected with any protected characteristic.

Submissions

16. The Respondent provided written submissions. The Claimant addressed the Tribunal orally. My record of proceedings contains a full note of those submissions. In her submissions Ms Drummond set out matters which were new evidence and so the Tribunal did not take account of those submissions. Much of her submission was about procedural matters: the Tribunal assessed the fairness of the procedure overall only part of which was the procedure and the timelines within it. Ms Drummond also made lengthy submissions indicating that her dismissal was connected with the protected characteristics of gender, sexual orientation and religion or belief. This was not part of her pleaded case, as the Equality Act 2010 claim was limited to asserting that she had been victimised for raising the grievance. Nevertheless, the Tribunal deals with the fact that some boxes were ticked in that grievance and the detriment arising from victimisation could be thought to be the dismissal.

Facts found

17. Ms Drummond was an Anglican Chaplain at Exeter Prison, full time. There were two other employed Chaplains. William (Bill) Hill and Leahman Pratt. The other two were both part-time and both were of the Assemblies of God denomination. There were other Chaplains from other denominations or faiths who attended as needed. All three employed Chaplains were graded Band 5. There was no-one in overall charge of the Chaplaincy. A Prison Officer is Band 3 and a Senior Prison Officer is Band 4, so the Chaplains were senior appointments.

18. Ms Drummond joined the Prison on 04 May 2015. Bill Hill had been there many years. Leahmann Pratt was in post when Ms Drummond joined.
19. There were conflicts between the three of them, Bill Hill and Ms Drummond on one side and Leahman Pratt on the other. There had been relationship difficulties between Bill Hill and Leahman Pratt before Ms Drummond joined, but she sided with Bill Hill and this made it worse.
20. From 2016 Ms Drummond complained that Leahman Pratt was behaving inappropriately towards her. Informal attempts at mediation with all three were not successful.
21. By 2019 matters had gone from bad to worse, and a formal mediation process was started. A date was fixed for that mediation process to start. Ms Drummond said that she was not told of that date. Whether or not she was told of the date she knew the process had started. On 14 August 2018 Ms Drummond lodged a formal complaint against Leahman Pratt. This stopped the mediation, as process required the grievance to be concluded once started.
22. The grievance stemmed from an incident in the office on 16 May 2018. Ms Drummond was not able to explain why it took so long to lodge the grievance about it. She had told Leahmann Pratt that the (then) Governor, Joe Belso, had asked that they clear their desks to enable them to be moved and a new carpet laid. She said that he had become angry, refused to do so and called her “a stupid (something muttered inaudibly)”. The grievance says this was part of a pattern of behaviour, usually connected with criticisms of his performance. She said it was intimidating and demeaning. There is no reference to any protected characteristic in the text of the grievance. In the tick box section B of the grievance form Ms Drummond ticked bullying and ticked harassment, but not discrimination. In the tick box section C of the grievance form she ticked gender, religion or belief and “any other irrelevant factor” but not sexual orientation.
23. It is accepted that the grievance was a protected act.
24. The outcome of the grievance was that Steve Mead, the Governor who dealt with it, ordered an independent investigation into the Chaplaincy department. This was one of the outcomes Ms Drummond had asked for. It follows that the commissioning of the independent investigation cannot have been victimisation because this was one of the things Ms Drummond asked for in that grievance.
25. Steve Rodford was given this task. He has conducted a very large number of investigations nationally and internationally. He is from Essex. He had never been to Exeter Prison. He was assisted by Tim Bryant, also a Chaplain, from Norwich, who also had no connection with or to Exeter Prison. There is nothing in Ms Drummond’s point that Tim Bryant’s route to ordination had been unusual, being direct to a Cathedral and not involving a parish. Tim Bryant was involved as he was also an Anglican Chaplain.
26. Mr Rodford interviewed a large number of people. He was able to meet the faith leaders on his first visit in February 2019. He introduced himself to Ms Drummond but did not interview her until four weeks later. There is nothing in

Ms Drummond's complaint that she should not have been seen on that first visit. That meeting was just a courtesy meeting. Nor is there anything in her point that she was interviewed late in the process: the date was arranged by her and her union representative with Mr Rodford.

27. Mr Rodford started with people suggested by Steve Mead and having done so asked to see others. There is nothing in Ms Drummond's assertion that this was a rolling confirmation bias. He repeatedly asked Ms Drummond to provide emails she said she had sent setting out who she wanted to be interviewed and she did not respond with names or provide the emails, or details of them so that they could be located.
28. One of those interviewed by Mr Rodford was Aran Richardson, who is akin to a bishop in the Assemblies of God, and who was line manager of both Bill Hill and Leahman Pratt. His view was that Bill Hill was bullying Leahman Pratt. As they both reported to him there was no reason for Mr Rodford to do other than consider this an objective assessment.
29. All seven people interviewed by Mr Rodford were clear that Mr Hill, assisted by Ms Drummond, were at fault, and that Mr Pratt was the one being bullied, not Ms Drummond.
30. The report took longer to produce than the procedure required. Ms Drummond says that is a breach of natural justice. It is not ideal, but those preparing the report came from far away and there were a lot of people to interview, some of whom were external. The date of Ms Drummond's interview was with her agreement. There is nothing in the delay to render the process unfair.
31. Mr Rodford was influenced by actions of Bill Hill and Ms Drummond towards Leahman Pratt. They thought there was an issue with his accreditation with the Assembly of God, and that accreditation was required to be a Prison Chaplain. They raised it. They were told there was no issue. Ms Drummond then got in touch with Nigel Williams, an Assembly of God minister, whose contact details she had, and from him obtained the telephone number of Ian Williams of the Assembly of God. Ian Williams then visited them in the prison, at their request. Ms Drummond said that this was a pastoral visit for Bill Hill which she attended. Leahman Pratt was not there. They raised the issue of Leahman Pratt's standing with the Assembly of God. Ms Drummond's assertion that this was a pastoral visit is disingenuous – there would be no reason for her to be at a pastoral visit from a senior priest of another denomination particularly when another Chaplain from that denomination was in ignorance of that visit. It was arranged to see whether there was any reason to remove Mr Pratt from his post.
32. Ms Drummond also contacted her Bishop, in Plymouth, about the same subject at about the same time.
33. The correct procedure for such a concern would be to raise it internally, not to go to her own (Anglican) Bishop or outside the Prison Service to a senior cleric in another denomination.
34. Mr Rodford concluded that Mr Hill and Ms Drummond had bullied Mr Pratt and recommended disciplinary action as a result of his investigation. The report finds as a fact that there was such bullying. An investigator usually

assembles evidence but leaves conclusions to the person taking the disciplinary hearing. In this case we find that the Prison procedure asks the investigator to make findings of fact, leaving the decision maker to decide whether those facts amount to misconduct, and if so what to do about it. We also find that given the evidence found by Mr Rodford, Mr Luscombe would inevitably have come to the same conclusion. This does not render the process unfair.

35. Mr Pratt volunteered to move to Portland and did so. Mr Hill resigned. Mr Mead decided to suspend Ms Drummond and did so.
36. The Prison had an inspection which revealed that many changes were needed (the only department to get a good report was, somewhat ironically, the Chaplaincy department). There were a series of Governors – Mr Elbourne, Mr Mead, Mr Atkinson and then Mr Luscombe, who took the disciplinary hearing.
37. The hearing was long delayed. Ms Drummond's mental health had suffered as a result of being suspended, and the Tribunal does not doubt the great impact this had on her mental health. However, that the hearing was long delayed is not indicative of unfairness, or any connection with a protected characteristic, because the reason for the delay was Ms Drummond's health.
38. Ms Drummond asked, the day before the hearing, if she could bring 11 witnesses to the hearing. Mr Luscombe refused. This was not unfair. Ms Drummond had repeatedly been asked what evidence she wanted to bring to that hearing but had not responded. This was far too late. In addition, none of the people could really have helped, for it appears that they were more character witnesses than witnesses of fact. That is borne out by Ms Drummond's case, which is that Mr Pratt would only harass her when the two of them were on their own. She also provided 18 pages of additional evidence on the morning of the hearing which Mr Luscombe also decided was too late. No reason was advanced as to why this was supplied so late. There is no reason why Mr Luscombe could not have read it. The document was a "Defence document". Ms Drummond was represented by a union official who was able to put all the points he wanted to raise. Ms Hendrick did consider what it said when she dealt with the appeal.
39. There is no reason to doubt the fairness of Mr Luscombe's approach to the hearing. In the hearing Ms Drummond told him that she now realised, with hindsight, that the matters involving Mr Pratt about which she complained were petty matters. She said that she wished to apologise to him for some of the things she had said. She said that it was unfortunate that she had been "caught in the middle" of a relationship problem involving Mr Hill and Mr Pratt.
40. With such a summing up from Ms Drummond it was inevitable that Mr Luscombe would find that Mr Pratt was not bullying or harassing Ms Drummond but that she was harassing Mr Pratt.
41. Ms Drummond appealed, and Ms Hendrick took the appeal. Ms Drummond does not say that she was an unsuitable person to take the appeal. She was a suitable person. Her role was not to undertake a rehearing but to review the decision. She did so competently, and Ms Drummond does not point to any

alleged unfairness in the appeal. Ms Hendrick dismissed that appeal, giving cogent reasons for doing so.

Conclusions

Unfair dismissal

42. The role of the Tribunal is not to decide what they would have done in the circumstances, but to decide whether the procedure was fair, whether the Respondent had a genuine belief on reasonable grounds after proper investigation of misconduct, and if so whether dismissal was within the reasonable band of responses of the employer.
43. The investigation which was commissioned was into the conduct of all three Chaplains. Any one or more (or all) of them could have faced disciplinary action. While the simple allegation of bullying appears straightforward, this was the interaction of three people all of whom accused one of the others, and involved external people as well, so was in fact quite complex.
44. Tribunal found the procedure to be fair. The delays were not such as to make the process unfair, and the delay after the report was because of Ms Drummond's health. If there were any procedural errors they were not such as to make the dismissal unfair, made no difference to the outcome or were cured by the appeal.
45. The investigation report was thorough and detailed. There is nothing in Ms Drummond's assertion that this was an exercise in confirmation bias, for she was offered the opportunity to provide names of people she wanted interviewed, but she did not do so. Towards its end the report contains a matrix setting out things that are for and against the concerns, for each of the three.
46. Accordingly, the Respondent had a genuine belief that Ms Drummond was guilty of the misconduct alleged and formed this belief on reasonable grounds after proper investigation.
47. The decision to dismiss Ms Drummond had harsh consequences. In the context of someone whose role is to provide faith guidance and pastoral support to vulnerable prisoners, and in the context of a prison which needed improvement (even if not in the delivery of Chaplaincy services) it is not possible to say that dismissal for bullying and harassing a colleague over an extended period is outside the band of reasonable responses of the employer, and so the claim of unfair dismissal fails and is dismissed.
48. There was no connection with any protected characteristic, and this is dealt with in the next section.

Victimisation

49. The narrative of the grievance does not refer to anything that might be related to a protected characteristic. The Claimant ticked some boxes indicating that she was concerned that there was a subtext to the bullying of which she complained relating to protected characteristics.

50. Ms Drummond had asked for the investigation. The investigation was not victimisation for that reason.
51. The Respondent concluded that Ms Drummond was not being bullied by Mr Pratt (and that partly on the basis of what she said in the disciplinary hearing).
52. The Respondent concluded that Ms Drummond was (probably with Mr Hill) bullying Mr Pratt.
53. These were reasonable conclusions to reach. It follows that they were not victimising Ms Drummond for raising a grievance about bullying on the basis of a protected characteristic but coming to reasonable conclusions based on evidence.
54. More fundamentally, this is all Ms Drummond's perception which is not based on any hard fact or allegation. In the grievance Ms Drummond says that Mr Pratt called her "a stupid ..." The epithet or insult was said under his breath, she says, so she had no idea what it was. That cannot be enough to engage a protected characteristic.
55. Ms Drummond refers to "gendered language" in the use of the word "he" referring to a new Chaplain rather than the gender-neutral use of the plural word "they" to refer to an individual. This does not support a claim that Ms Drummond was victimised for raising her grievance. It is not a fact that could lead a Tribunal to consider that her dismissal was in some way connected with her gender, sexual orientation or religion.
56. Ms Drummond made an allegation that her breasts were referred to – in fact this was not by Mr Pratt, but by Ms Drummond's manager who told Mr Rodford of an occasion described by Mr Pratt only as Ms Drummond invading his personal space. This is not anything which could lead to a finding of victimisation arising from a grievance in which it was not mentioned.
57. Ms Drummond feels acutely that the Assembly of God regards homosexuality as a sin (this was her evidence – the Tribunal makes no finding of fact that it is so) and because of her own sexual orientation she is disadvantaged working with Chaplains from that denomination. It appears that she thinks that this may account for Mr Pratt, reported to be a caring and competent Chaplain, being hostile to her by reason of those characteristics (including the fact that the Church of England accepts gay priests). She did not put this as her case, however. Even assuming that this is so, it is not reason to find that the Respondent was wrong to find that she was bullying Mr Pratt, or that it victimised her by reason of her sexuality, or gender. It could hardly be by reason of her religion as that religion was required for her job.
58. Ms Drummond is not happy with the Church of England's approach to same sex orientation. That again is nothing to do with this case.
59. Ms Drummond thinks that female priests are disadvantaged. If so that has no bearing on this claim, either for victimisation or unfair dismissal. There is no reason to think that anyone involved in the process had any reason to victimise Ms Drummond for being either female or gay. The witnesses for the Respondent who took the oath on the Bible were not asked for their views about same sex relationships, gay or female priests. There is no reason to

think that they do not espouse concepts of equality diversity and inclusion. It was people within the Respondent who made the decisions, not clerics.

60. None of this is strictly relevant to the decision, but Ms Drummond has lived with this a long time, and the Tribunal wished to try to explain why her claims fail.

Employment Judge Housego

Date 03 May 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

21st May 2024

FOR EMPLOYMENT TRIBUNALS