



EMPLOYMENT TRIBUNALS

Claimant: Ms G. Badra

Respondent: Atlas FM Limited

London Central by CVP

Employment Judge Goodman
Ms J. Cohen
Mr D. Shaw

Hearing 9 July 2024.
Tribunal deliberation 10 July 2024

Representation:

Claimant: in person

Respondent: Alex Findley, counsel

JUDGMENT

1. The race discrimination claim fails is dismissed
2. The religion and belief discrimination claim is dismissed

REASONS

1. The claimant applied to the respondent for a job as credit control manager but did not get the job. She presented claims to the employment tribunal of less favourable treatment because of race or religion. An additional claim of age discrimination was withdrawn at an earlier case management hearing.

Evidence

2. To decide the claims we heard evidence from the claimant **Grazyna Badra**, from the respondent's Group Credit Control Manager, **Sarah Mitchell**, and from the Group Human Resource Director, **Amanda Taylor**. There was a hearing bundle of 120 pages. We read those to which we were directed.

3. After hearing evidence, each side made an oral submission, and we adjourned, reserving our decision.

Findings of Fact

4. The respondent is part of the Atlas group of companies which has around 10,000 employees.
5. In October 2022 Sarah Mitchell, credit control manager, was promoted to group credit control manager and set about recruiting her replacement. The credit control manager has to manage two teams of credit controllers, one in Waterloo, the other in Datchet. Credit control is the business of getting customers to pay their bills. This requires both technical skills to manage the accounting software, and people skills to negotiate with customers and to manage and motivate staff.
6. Respondents advertised in October 2022 for a new credit control manager. The advertised salary was up to £40,000 per annum. Ms Mitchell recruited someone she described as an older white British man, who started in December 2022. She said he was “very talkative with no leadership attributes which impacted his and fellow credit controllers’ productivity”. His employment was terminated in January 2023. The company re advertised. They recruited a man she described as British Sikh. She said that he was “corporate in nature, but rude, very strict, and with zero tolerance towards the needs of the credit control team”. His employment ended in May 2022. The respondent advertised for the third time. On 13th June 2013 the claimant applied submitting her CV.
7. The claimant is of Polish origin, white, and, like most Poles, Catholic. She has lived in the United Kingdom for many years. Her CV shows she has an MSc in physics from Lublin university and knowledge of seven software systems. She has worked as a credit control supervisor in 1989, finance coordinator 1990- 96, and supervising management accounts from 1990 to 2002. She took four years out to raise children, then worked as regional reporting accountant from 2006 to 2008, a self-employed accountant working for small businesses from 2008 to 2010, and then as senior credit control specialist in a start up from 2010 to 2016, as an agency worker accounting payment specialist from 2017 to 2018, and then in her present job as HQ regional credit controller from October 2018 and continuing.
8. At the time she applied for work with Atlas in June 2013 she was earning £31,000 per annum and received in addition a variable quarterly bonus of around £1,600. There were four quarters where it had not been paid in the four years that she had been there. She worked from home three days a week and the other 2 days in the office.
9. She was invited to a stage 1 Meet and Greet discussion with Ms Mitchell on Teams which was scheduled for 30 minutes on 14th June 2023. The

claimant was unable to join. She explained there had been difficulty. She was sent another link for a meeting on 15th June 2023.

10. We have some scrappy notes made by Ms Mitchell on her copy of the claimant's CV. We accept that these were notes were made during or immediately after the Teams interview. On the first page is the general comment "to chatty and struggled to end it". On the final page is a list of bullets, such as the claimants remuneration I'm working conditions, why she had applied dash seeking a new challenge dash that location was acceptable, she had good English The IT programmes she had used, How she carried out work in her current job.
11. Ms Mitchell says that she did not make a decision that day, as she preferred to sleep on it, but next morning she wrote up her notes with a list of 14 points. Among these are that she had good relevant experience, had coached other credit controllers but not actually managed them, so it was a promotion but she had managed staff in previous roles, that she mentioned Atlas's values only when Ms Mitchell raised them (suggesting she had not done much research on th company), a reservation that the role may be too restricted for her as she was used to a variety of finance tasks, not just a credit control - she had been a finance director and accountant in past roles. (On this, Ms Mitchell accepted in evidence that she had been mistaken. She had read on the CV that the claimant had been commercial director and mistakenly thought she was a finance director). Next, she commented: "very chatty" had talked about her family and present role, then her degree qualification; recording her knowledge of Excel as "basic to intermediate". There follow a series of reservations: that she had little energy for credit control, more a management role, and would need to lead and develop the team. She was not dynamic, was results driven, then "not sure if good fit with team overall", then that she enjoyed problem solving and was good on detail, with the final reservation "bring something new and exciting to the team?".
12. The claimant has challenged these notes as having been made-up after the event to justify a discriminatory decision, pointing to differences in the quality of the handwriting. In the tribunal view that is accounted for by untidy writing during and just after an interview, and tidier handwriting when sitting down to make a list and reflect the following day. The hands were otherwise very similar.
13. Neither set of notes mentions a question which both the claimant and Ms Mitchell remember being asked and answered. Ms Mitchell explained that day was was a mature team in Waterloo, under less experienced team off 3 in Datchet, who were Muslim and required to take pride breaks, and sometimes go to mosque during working hours. Was that a problem? The claimant replied that it was not. She was used to working with Muslims and there was a prayer room at her current workplace. Further, her husband was Egyptian. She added that her daughters had attended Catholic

schools, and there was discussion of their ages. Ms Mitchell thought this exchange occupied no more than two minutes before they moved on, and the claimant did not disagree.

14. Ms Mitchell decided on 16 June when she made her handwritten list not to ask the claimant to further interview, but because she was busy, not least because she was still covering the credit control manager role, and it would mean logging onto the recruitment portal, she did not send her a letter to say so until the morning of 23rd June, when she was due to conduct two more stage 1 Meet and Greet interviews later that day. One of these interviewees was to be the eventually successful candidate.
15. Ms Mitchell's account of her reasons mentions how concerned she was about the claimant being "chatty" given the past experience of an unsuccessful appointment to the role. She expected the interview to last less than 30 minutes but had "struggled" to bring it to an end. She asked the question about Muslims taking prayer breaks because of the unfortunate experience with the other unsuccessful appointment to the role. Principally, she said, she decided against continuing with the claimant's application because the claimant had not discussed how Atlas did things or how the claimant would approach the work. The claimant only spoke of her current job and her family. She conveyed no energy; they wanted "more spark and interest".
16. The successful candidate is an Asian Hindu woman. The ethnicity or religion of the other unsuccessful candidate, a man, is not known. Nor do we know the dates of the second stage interviews or when the offer of employment was made. The claimant had already been rejected before their stage 1 interviews. How did they differ from the claimant?
17. We do not have their CVs and we do not have any handwritten notes of their interviews. We do have typed pro forma tables of the interviewer notes matched against different qualities. The tribunal examined these carefully with two issues in mind. One was to see why the successful candidate had eventually got the job, the other to consider whether, as the claimant alleged, these had been written in retrospect and in the knowledge that the claimant was about to bring a claim of, or had claimed, discrimination.
18. The table showing the claimant's performance against the various qualities listed is clearly related in most respects to Ms Mitchell's handwritten notes, but amplified in full sentences. An important exception is in her record of the answer to: "How well did they answer teamwork job related questions?" Here Ms Mitchell has written: "I shared the team split across the two sites with the candidate and explained the different dynamics in each team, I shared that there has been problems with one of the teams and I went on to ask what experience the candidate had had with managing diverse teams and explained that diversity and inclusivity is exceptionally important

to Atlas. We have a hugely diverse organisation and within the team at Datchet we have staff who are devout to their religious beliefs and that as per our purpose and values it's important that this is supported. I gave the example of supporting prayer time and I referenced this on the basis that the previous manager was not supportive of cultural/ religious difference and this was not acceptable to Atlas hence the relationship did not continue. Candidate confirmed that she has no issues at all and would of course support diversity. Candidate seemed to have good understanding of the importance of teamwork, although did not convey either verbally or in her body language that she would be able to energise and motivate the team. Explains that getting the right leadership for this team is critical due to their past experience with their manager”.

19. The tribunal considered, without reaching any firm conclusion, whether this was written on 23rd June, despite no reference to the Datchet team in the handwritten notes, or whether an earlier version of the document was “improved” when the claimant raised the issue later. We accept that Ms Mitchell could have had it clearly in mind as a problem that the new manager would have to resolve, and would not need to have made a specific handwritten note of the claimant’s answer if it was uncontroversial. Equally, she *might* have added this in when the claimant mentioned it in correspondence. Nothing in the note suggests the claimant's answer to the question was inadequate or caused concern that she would perpetuate the problem, other than a general concern that if the team was demotivated, she might lack the qualities required to restore trust. Other references to the other candidates’ using accounting terms and the claimant not (the only comment in the handwritten notes being her “good English”) could suggest the three forms were completed together when Ms Mitchell had all three in mind, but that of course could have been in the next day or so.
20. As to what was said of the other candidates, we can summarise the write ups by saying that they appear to have been asked similar questions to the claimant, that the runner-up, whatever his ethnicity, was identified as an exceptional performer in both using and programming IT, which could have been of broader use than just credit control, but not such a “people person”, whereas the successful candidate was proactive in asking about Atlas, was lively and pleasant and “nurturing” in nature, good with people. On the prayer breaks for Muslims issue, she had thanked the interviewer for sharing that with her.
21. Ms Mitchell wrote to the claimant on the morning of 23rd June (before the next two candidates were interviewed) saying they were unable to progress her application to the next stage and other candidates were more suitable for the *Area Manager* role. The claimant replied: “please kindly provide a valid reason for this decision and let me know why I fell short of your expectations. Looking at the advert and following our discussion, in my view I met all and exceeded many of the requirements for the credit control manager role”. She ask for detailed feedback in 10 working days.

22. Sarah Mitchell send a bland reply on the evening of 26th June: “it was lovely to speak with you on Teams and whilst you did have excellent credentials and we got on very well, there have been a number of other applicants who are more suited to the role in terms of experience and also alignment to our purpose and values, who have now moved on to the next interview stage”.
23. The claimant came back on 4th July: “would you kindly explain how I did not meet your expectations? I would like to know what better experience the other applicants had and how did they align to purpose and values but I didn’t”. She wanted a detailed explanation by the 18th July.
24. Ms Mitchell (after consulting with Ms Taylor as it was novel to be asked for feedback) then gave her detailed reasons in an e-mail of 7th July. She had not left the meeting with the same conclusion as the claimant about meeting and exceeding the requirements of the role. She met core competencies, but did not exceed them. Then she said: “Due to the last two appointments in this role not having worked out, we are seeking more than just the competencies in our next appointment”. She went on: “a large part of this role is about energising the team and looking at how we do things and bringing new ideas and creativity to the table. This is not something that came out from you in our meeting. You were very chatty which is nice and may have been partly due to nerves, but I had a concern about how this would impact the team and their productivity which is critical in this role. You appeared keen to talk about many things as opposed to focusing on the job role that we are meeting to discuss”. The other candidates that had progressed had focused their applications and discussions around Atlas’s purposes and values and how they envisaged them coming to life. They were looking for a good leader. She concluded: “this decision is not negative on your part Grace but perhaps just more positive for those that have progressed at this stage”. If none of the current applicants were successful once fully interviewed, they would continue to recruit, “as this really is a critical appointment for Atlas“. In other words, the claimant should not think she was held in reserve.
25. The claimant replied that the response was “untrue”. She was not nervous, even though: “you kept sending me invalid and out of date links”. Ms Mitchell had not asked her many questions. She went on that: “the only information I gained from you was that there are two senior credit controllers, and two teams of 3 - “1 in Westminster and they are more matured”, but “there is another team in Slough that are three young Muslims, who pray at work and one of them goes to mosque to pray”. You have asked me whether I would have had a problem with it. I was truly shocked by such a racist and inappropriate question at interview, as of course I do not have a problem with people praying and I am not a racist. What requirements are needed to satisfy you in this matter”. She went on: “your interviewer skills were extremely poor”. She had been sent an e-mail

about an *Area Manager* post when she applied for *Credit Control Manager*. She commented that when Ms Mitchell said she did not have the energy or enthusiasm, was she assuming this was because she was an older person? There was no evidence for these untrue and offensive statements “that now have an impact on me and took away my confidence to making any more applications”. Could she have a reply within 5 working days.

26. Sarah Mitchell wrote to the claimant again on 31st July, saying she did not intend to enter into discussion as to why other candidates were put through the next stage and she was not. The claimant had interpreted things in a way which were not said or meant. She had provided feedback as requested. She said: “I am very protective of my team and want to ensure that whoever comes on board values our differences and doesn't take exception to time taken out for prayer etc which I have experienced in the past and which is why I discussed this with you and all other candidates”. She apologised for the automated applicant tracking system sending her the e-mail for an area manager post. If the claimant had further queries she should direct them to the group HR director, Amanda Taylor.

27. The claimant then wrote to Amanda Taylor on 3rd August: “I would be grateful for your view/ resolution on below issue. It is clear to me that my elimination was based on unjustified accusations and assumptions. Furthermore, needles (sic) to add that religious believes (sic) were not mentioned in the job specs, and that candidates needed to meet specific religious views to become a successful applicant”. She asked for a reply in five working days.

28. Amanda Taylor replied that she was not sure what resolution she was seeking, but was happy to share what she hoped was a neutral view. On the comment about age, energising the team referred to how she motivated people, and was nothing to do with age. As for the discussion of “diversity in her team and the need for acceptance of all beliefs”, it was very odd to assume that that meant they were trying to recruit based on specific religious beliefs. Sarah Mitchell had been sharing that she was protective of her team, as she had “seen managers in her career that have not supported diversity and inclusivity which is at the core of what Atlas values are all about”. They would not enter into further dialogue. When recruiting they had to rely both on objective and subjective opinions formed during the process. Perhaps that was best described as “a person's gut feeling”. The claimant was not being accused; she had asked for honest feedback and had been given it.

29. The claimant approached ACAS for early conciliation on the 14th September 2023, was issued with a certificate on 23rd October 2023, and presented a claim to the employment tribunal on 19th November 2023.

30. The claimant explains in her witness statement that because of this she

has lost confidence in applying for other jobs. On the claim form she said the untrue applications were “hugely damaging to my confidence and well being”. There was no further detail about injury to feelings. There is a schedule of loss asking for the difference between £30,000 (in contrast to the £31,000 Ms Mitchell understood her to have said in her current salary) and the £40,000 she expected Atlas to pay, plus a 4% pension contribution. Ms Mitchell’s evidence was that the successful candidate had started on £38,000, increased on completing probation to £40,000 with a 3% pension contribution.

Relevant Law

31. Section 39(1)(c) of the Equality Act 2010 prohibits discrimination by A against applicants for employment by “not offering B employment”.
32. Section 13 of the Equality Act 2010 prohibits direct discrimination, which is defined as where: “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”.
33. Both race and religion and belief are protected characteristics. Race is defined in section 9 of the act as follows:
 - (1) Race includes—
 - (a) colour;
 - (b) nationality;
 - (c) ethnic or national origins.
 - (2) In relation to the protected characteristic of race—
 - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;
 - (b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.
 - (3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.
 - (4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.
34. Because people rarely admit to discriminating, may not intend to discriminate, and may not even be conscious that they are discriminating, the Equality Act provides a special burden of proof. Section 136 provides:
 - “(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 subsection (2) does not apply if A shows that A did not contravene the provision.”

35. How this is to operate is discussed in **Igen v Wong (2005) ICR 931**. The burden of proof is on the claimant. Evidence of discrimination is unusual, and the tribunal can draw inferences from facts. If inferences tending to show discrimination can be drawn, it is for the respondent to prove that he did not discriminate, including that the treatment is “in no sense whatsoever” because of the protected characteristic. Tribunals are to bear in mind that many of the facts require to prove any explanation are in the hands of the respondent. **Anya v University of Oxford (2001) ICR 847** directs tribunals to find primary facts from which they can draw inferences and then look at: “the totality of those facts (including the respondent’s explanations) in order to see whether it is legitimate to infer that the actual decision complained of in the originating applications were” because of a protected characteristic. There must be facts to support the conclusion that there was discrimination, not “a mere intuitive hunch”. **Laing v Manchester City Council (2006) ICR 1519**, explains how once the employee has shown less favourable treatment and all material facts, the tribunal can then move to consider the respondent’s explanation.
36. There is no need to prove positively the protected characteristic was the reason for treatment, as tribunals can draw inferences in the absence of explanation – **Network Rail Infrastructure Ltd v Griffiths-Henry (2006) IRLR 88** - but Tribunals are reminded in **Madarrassy v Nomura International Ltd 2007 ICR 867**, that the bare facts of the difference in protected characteristic and less favourable treatment is not “without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent” committed an act of unlawful discrimination”. There must be “something more”.
37. In **Efobji v Royal Mail Ltd 2017 IRLR 956**, tribunals are reminded that the respondent’s explanation must be “adequate”, but that may not be the same thing as “reasonable and sensible”.

Discussion and Conclusion

38. The claimant argues that the respondent intended to recruit a candidate was an Asian background so as to better manage the team in Datchet. She concluded that her CV had been selected for interview because her surname, Badra, suggested an Asian or Muslim background, and she had been rejected when at interview she was found to be white European and a Catholic.
39. Without knowing the surnames of other candidates who reached interview we do not know whether this is the case. We do however know that the second unsuccessful appointment (the Sikh man) will have had an Asian name. That makes it unlikely that being Asian was a criterion for appointment. Being Muslim might have been, given the issue with taking breaks for prayer.
40. We know that successful candidate was British Asian, but not a Muslim.

41. We know the claimant had explained that prayer breaks were not a problem, adding that her husband was Egyptian. Most (not all) Egyptians are Muslim. Some of her perceived “chattiness”, which Ms Mitchell seems to have resented because it prolonged the interview on matters unrelated to Atlas or its values, and because she feared a repeat of the “chattiness” had led the first unsuccessful appointment not to focus on motivating the team, may have stemmed from the claimant’s anxiety to show that managing Muslims would not cause difficulty, nor religious practice. It might have been unfair to the claimant to assume that because she was chatting interview she would fail to motivate staff and instead waste their time, as the earlier credit control manager had, but it was not a discriminatory reason.
42. The claimant sought to demonstrate that the respondent had initially made their notes up to suppress the prayer breaks issue, then restored the information when the claimant raised it in correspondence. We are not satisfied that the lack of a handwritten note on this point is sinister. Both sides agree the question was asked and answered, and there is no dispute that it was only a brief exchange. When the claimant raised it in correspondence, she got a frank answer about the previous manager to show why they had asked it.
43. The claimant was angry that she had been labelled a finance director (and so unlikely to want a job limited to credit control), and being labelled as having “basic” knowledge of Excel, but to our mind both are explicable mistakes. In any case the claimant does not lay claim to more than intermediate knowledge of Excel, which the respondent had recorded.
44. We could not conclude that we could draw inferences from these facts which required explanation from the respondent. The interview question about working time in the Datchet team is not something from which we can infer that they sought to appoint a Muslim. At most, they wanted to screen out someone who was not prepared to be flexible with breaks from working time, or might even be Islamophobic. The protected characteristics of the successful candidate rule out that inference too. Recruiting a South Asian (“Asian”) could not have been a solution to the problem, because a Sikh (“Asian”) had caused conflict. Appointing another Asian could not then have been a requirement, unless they were Muslim. There are many Muslims in both India and Pakistan (usually referred to in Britain together with other religious groups from the Indian subcontinent as “Asian”; these “Asians” sometimes refer to themselves as “South Asian”), but there are also many Muslims in sub-Saharan Africa, both east and west, who would in Britain be characterised as “black”, and in north Africa and the Middle East, who might be generally categorised as “Arab”, or perceived from skin colour to be “Asian”, and some in Europe, who might be “white”. Being a Muslim does not correlate with an ethnic minority, and their protection required separate Regulations to be enacted to protect religion prior to Equality Act. (Other religious groups, whose beliefs correlated more closely with one of the definitions of race, such as Sikhs and Jews, had been able to obtain protection from discrimination under the Race Relations Act).

45. One of the facts obstructing an inference that the respondents sought to appoint a Muslim, and rejected the claimant when they realised she was not, is that the successful candidate was Hindu. As a panel we consider it well known both from the political history of Indian independence from British rule, in particular the brutal events of 1947, the long running conflict in Jammu Kashmir, and recent reporting on the rule of Narendra Modi in India, that far from “Asians” making common cause, there is strife between the communities in India, which sometimes spills over into hostility between the communities in Britain. It seems to us that such a large employer, based in London, with its large “Asian” working population from different religious groups, would not be unaware of the risk of appointing a Hindu to manage a team of Muslims who had already been in conflict with their manager over taking breaks for prayer during working hours. Making that appointment tends to reinforce the respondent's assertion that they wanted to appoint a talented manager to motivate a disaffected team, not that they thought the solution was to appoint a Muslim.
46. If we had been able to infer from the facts proved that the respondent might have wanted to appoint an Asian, or a Muslim, such that race or religion played a part in their decision making, we would have accepted the respondent's explanation of their actions. They had had poor experience in two previous appointments to the post, one because he was unable to motivate and manage the team adequately because of “chattiness”, the other because he ran into conflict with Muslim members of the team about prayer breaks. (Ms Mitchell mentioned that there had been a time when he was sending her text after text throughout the day complaining about team members taking a break). Understandably they would have wanted to check that they would not meet the same problem. That past experience made them particularly cautious, wanting to get the right candidate on this occasion. The evidence on this is plausible and consistent. Other discrepancies relied on by the claimant to demonstrate that the reasons given for rejecting her were false (that she had been a finance director and would not want to be restricted to credit control, or that her Excel was only basic) have been given a non-discriminatory explanation.

Relevance of other ET claims

47. Amanda Taylor had become suspicious in the course of her correspondence with the claimant prior to the institution of proceedings that she might be building a claim – the reference to “resolution”, the repeated deadlines for replying. After proceedings started, they made a search and have included in the bundle two judgments in 2019 on claims by the claimant against different employers, dismissing claims on withdrawal. In turn, the claimant had included in the bundle some judgments made against Atlas. She has also suggested that respondent was deliberately trying to get her claim struck out when they mentioned on a case management agenda that one Atlas company rather than another was the proper respondent. One of the earlier claims is of age discrimination, the other, the claimant said, a dispute about whether her hourly rates had been increased.

48. There have been serial claimants in employment tribunals whose claims have been dismissed because their applications responding to apparently discriminatory advertisements were for jobs they never intended to take up, and claims were being pursued only with a view to getting a settlement. That does not mean that the claimant brought this claim in bad faith. Like most of us, she found criticism hard to take, however blandly phrased at the start, before she dug deeper. There were some features of the process that made her conclude that she had been rejected because of race or religion or both. She also thought that age might be the reason, until she learned that the successful candidate was only five years younger than her. Her insistence on replies with deadlines suggests that she had employment tribunal proceedings in mind, and did not want to run out of time, but that does not mean her concerns were manufactured with a view to trying to get a settlement of a spurious claim. On this point we conclude that she was mistaken, but genuine, when she brought the discrimination claims.

Employment Judge Goodman
10 July 2024

JUDGMENT AND REASONS SENT to the PARTIES ON

12 July 2024

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FOR THE TRIBUNAL OFFICE