



EMPLOYMENT TRIBUNALS

Claimant: Mr A Aromolaran

Respondent: Veolia ES (UK) Ltd

Heard via Cloud Video Platform (London Central) On: 23, 24, 25 July 2024

Before: Employment Judge Davidson
Ms J Holgate
Ms S Brazier

Representation

Claimant: in person

Respondent: Mr S S Maini-Thompson, Counsel

JUDGMENT

The claimant's complaints of direct race discrimination and harassment related to race fail and are hereby dismissed.

REASONS

Issues

The issues were set down in the case management order of EJ McCarthy following a preliminary hearing on 28 February 2024 as follows:

1. Direct race discrimination (Equality Act 2010 section 13)

- 1.1. The claimant's 'race' is colour (black) and ethnic origin (African);
- 1.2. Did the respondent do the following things:
 - 1.2.1. provide the claimant with less support in the onboarding process;
 - 1.2.2. provide the claimant with less support in relation to his development in his role during the probation period, failing to provide the claimant with the same development opportunities and the same level of time, support and/or assistance in relation to the management and direction of his team;
 - 1.2.3 discount the claimant's suggestions
 - 1.2.4 criticise the claimant's performance;

- 1.2.5 make the claimant work harder to show he was capable;
- 1.2.6 leave the lunch table and walk away (Peter Stokes) immediately upon the claimant sitting next to him at a lunch on a team building day in April 2023;
- 1.2.7 decide to extend the claimant's probation period in April 2023;
- 1.2.8 conclude that the claimant's performance was unsatisfactory in June 2023
- 1.2.9 dismiss the claimant in June 2023;

1.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant says they were treated worse than Matthew Purser.

1.4 If so, was it because of race?

1.5 Did the respondent's treatment amount to a detriment?

2. Harassment related to race (Equality Act 2010 section 26)

2.1. Did the respondent do the following things:

- 2.1.1. provide the claimant with less support in the onboarding process;
- 2.1.2. provide the claimant with less support in relation to his development in his role during the probation period, failing to provide the claimant with the same development opportunities and the same level of time, support and/or assistance in relation to the management and direction of his team;
- 1.5.3 discount the claimant's suggestions
- 1.5.4 criticise the claimant's performance;
- 1.5.5 make the claimant work harder to show he was capable;
- 1.5.6 leave the lunch table and walk away (Peter Stokes) immediately upon the claimant sitting next to him at a lunch on a team building day in April 2023;
- 1.5.7 decide to extend the claimant's probation period in April 2023;
- 1.5.8 conclude that the claimant's performance was unsatisfactory in June 2023
- 1.5.9 dismiss the claimant in June 2023;

2.2. If so, was that unwanted conduct?

2.3. Did it relate to race?

2.4. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

2.5. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

3. Evidence

3.1. The tribunal heard from the claimant on his own account and from Peter Stokes (Digital Business Partner) and David Fitzgerald (General Manager – Municipal Southeast) on behalf of the respondent.

3.2. There was an agreed bundle of 209 pages before the tribunal.

4. Facts found by the tribunal

4.1. The respondent provides environmental solutions and waste, water and energy management services. The claimant was recruited as a Regional Digital Transformation Manager in Autumn 2022 and was appointed with effect from 1 December 2022. He had previously worked in the Oil and Gas industry and his most recent position had been as a Product Manager in a local authority.

4.2. He had line management responsibility for four Digital Transformation Managers within the South East of England, covering an area which stretched from Berkshire to Kent. He reported to Peter Stokes.

4.3. The claimant's employment was subject to a probationary period of six months. In line with the respondent's probation policy, probation review meetings were held after one month, three months and five months. The employees are informed prior to these review meetings that their employment may be confirmed or terminated, or that the probationary period could be extended.

4.4. When the claimant began working, he went through an induction process for the first few weeks, starting on 1 December 2022. This included being introduced to his team, key individuals, other teams he would be working with and to the respondent's IT systems. From the outset, the claimant was included in team meetings and external

conferences. In addition his manager held one to one meetings with him monthly, as he did with all his other direct reports.

- 4.5. His first 1:1 was held at the same time as his one month probation review on 11 January 2023. The outcome of that review was that the claimant passed his one month review with an overall rating of Good. The main area of focus was for him to familiarise himself with ECHO processes and system and to learn the operational side of the business.
- 4.6. Peter Stokes held a further 1:1 meeting with the claimant on 3 February 2023, discussing the induction process and his development since joining the business.
- 4.7. In March 2023, Peter Stokes and the claimant travelled to a team meeting in Sheffield together, staying in the same hotel and eating together while out of town.
- 4.8. The next probation review meeting was scheduled for 7 March 2023 (3 month review). Prior to the meeting (as he did with every probation review meeting he conducted) Peter Stokes sought the views of other senior managers who had worked with the claimant. He usually carries out this process verbally but, on this occasion, he was pressed for time and sent various emails to get the feedback in time for the meeting. He summarised these in his review meeting with the claimant. The positives were his management style, his friendliness and professionalism and interaction with the team. The growth areas were to understand the systems better and the goal identified was to see a project completed independently over the next couple of months.
- 4.9. On 17 March 2023, there was another 1:1 when Peter Stokes and the claimant discussed areas for development continuing on from the 3 month review meeting. Peter Stokes identified two specific projects of conducting an ECHO change request process and creating and building a QR code to report safety issues.
- 4.10. The next 1:1 took place on 13 April 2023. At that time the claimant had not made any significant progress on his two projects.
- 4.11. On 26 April 2023, there was a full national team meeting at Wembley stadium with a social event at Wembley Boxpark. The claimant complains that Peter Stokes moved away when he sat next to him. Peter Stokes does not recall the specific incident but he said he was trying to spend time with all the members of the team who attended.

- 4.12. The five month probation review meeting took place on 27 April 2023. This was a formal meeting with a note taker and the claimant was accompanied by a representative, Sarah Horton. The first part of the meeting took seven minutes and the claimant was asked for examples of specific successful complete projects. He cited the success in his management of his team and commented that his projects were ongoing but he had not made much progress due to his management obligations. He confirmed that he was happy he had been given time to go through his points. The meeting was adjourned for 45 minutes while Peter Stokes considered next steps.
- 4.13. The meeting reconvened and Peter Stokes informed the claimant that his probationary period was being extended by two months and that his performance needed to improve. He was told that there would be 1:1s every two weeks. The claimant was told that he should make time to do tasks other than people management. This was followed up by a letter dated 27 April 2023.
- 4.14. After the meeting, the claimant sent an email to HR complaining about the outcome of the probation review meeting. He did not make an allegation that it was discriminatory.
- 4.15. The next 1:1 meeting took place on 12 May 2023, 26 May 2023 and 13 June 2023.
- 4.16. The claimant was invited to attend a formal probation review meeting to be held on 29 June 2023. The purpose of the meeting was to review his performance following the extension of his probationary period. The claimant chose not to be accompanied at this meeting. Peter Stokes commented on the claimant's strengths in coordinating and team management and positive attitude. However, he raised the concern that the claimant's own projects had not progressed sufficiently and that there was no evidence of a successfully delivered project. The claimant pointed out delays from other stakeholders to explain the failure to deliver a project. They had a discussion about other aspects of the claimant's performance and the comments of other managers feeding back to Peter Stokes. The claimant was given an opportunity to comment and confirmed that he was satisfied at the way the meeting had been conducted. The claimant did not raise the issue of race at any time.
- 4.17. After a 26 minute adjournment, Peter Stokes informed the claimant that he had not been successful in passing his probationary period. Although he had built good relationships with his team and

stakeholders, he had not been able to demonstrate the necessary technical abilities and he had not delivered either of the projects assigned to him.

- 4.18. This decision was confirmed in writing on 29 June 2023. He was paid in lieu of notice.
- 4.19. The claimant's comparator, Matthew Purser, is accepted by the respondent as a valid comparator, being in the same position as the claimant and also managed by Peter Stokes. He started a few months before the claimant but went through the same probationary period programme. His induction was broadly the same although, inevitably, there were minor differences in who he met.
- 4.20. When seeking feedback from stakeholders prior to his three month probation review, Peter Stokes received glowing reports, commenting on his initiative, taking responsibility, systems knowledge and familiarity with processes, being a quick learner and delivering promptly. It was commented that he 'fitted in well'. He received an overall rating of Exceeding Expectations and passed his probation.

5. Law

5.1. The relevant law is as follows:

Direct discrimination

- 5.2. Section 13 of the Equality Act 2010 provides that a person must not be treated less favourably than another because of a protected characteristic.
- 5.3. The person can compare themselves with an actual person who was treated more favourably or a hypothetical comparator, who would have been treated more favourably. There must be no material differences between the circumstances of the claimant and the comparator other than the protected characteristic.
- 5.4. The less favourable treatment must be because of the protected characteristic. Treating two people differently does not, of itself, mean that one has been less favourably treated than another. There must be 'something more' from which the tribunal could conclude that the difference in treatment was because of the claimant's protected characteristic (*Maderassy v Nomura International plc* [2007] IRLR 246). If there are facts from which the tribunal could conclude that discrimination

occurred, the burden of proof shifts to the respondents to provide an adequate non-discriminatory explanation.

5.5. Guidance on the burden of proof was given by the Court of Appeal in *Igen v Wong* [2005] ICR 931. In *Igen* the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out to the tribunal's satisfaction (i.e. on the balance of probabilities) is the second stage engaged, whereby the burden then 'shifts' to the respondent to prove — again on the balance of probabilities — that the treatment in question was 'in no sense whatsoever' on the protected ground.

5.6. Unreasonable or unfair treatment is not sufficient to transfer the burden of proof to the respondent. There must be other indications of discrimination relating to the treatment in question according to the EAT in *Commissioner of Police of the Metropolis v Osinaike* [2010] UKEAT 0373.

Harassment

5.7. Section 26 of the Equality Act 2010 provides that a person harasses another if they engage in unwanted conduct **related to a relevant protected characteristic** which has the purpose or effect of either violating the other person's dignity or creating an intimidating, hostile, degrading, humiliating environment for them.

5.8. In determining whether the conduct has that effect, the tribunal must consider the perception of the claimant, the other circumstances of the case and whether it is reasonable for the conduct to have that effect. There is therefore a subjective element and an objective element

6. Determination of the issues

6.1. In his final submissions, the claimant raised a number of points which are not within the List of Issues and we do not propose to deal with them. We will focus on the matters in the List of Issues.

Direct race discrimination

6.2. We find that the claimant received broadly the same onboarding process as Matthew Purser. Both were provided with the opportunity to meet stakeholders, to learn about systems and were given time with Peter Stokes to guide them through the induction process. We see no evidence of any difference in treatment between the two. The claimant observed that Matthew Purser met with someone (Sarah) he

had not met with, but the respondent's explanation was that Matthew Purser had arranged this himself.

- 6.3. We were not told that Matthew Purser had received any more support than the claimant during the probationary period other than the fact he met with Sarah, but this was not support provided to Matthew but something he arranged on his own initiative. We find that the claimant received a reasonable amount of management support and assistance from Peter Stokes. In addition to the support given during induction, comprising introductions and signposting to guidance in systems, they had monthly 1:1s (increasing to fortnightly) as well as frequent informal communications, for example preparing for the regional meeting at the claimant was giving a presentation. We are unable to compare directly with Matthew Purser but we find that the claimant was given an appropriate amount of support and assistance. We bear in mind that the claimant was recruited at a senior level and could not be expected to have his 'hand held' in performing his duties.
- 6.4. The claimant has criticised Peter Stokes for going through a 'tick box' exercise in his 1:1 meetings and probation review meetings. From the evidence before us, we do not agree with this assessment.
- 6.5. Early on in his employment, Peter Stokes commented that the job appeared not to be what the claimant was expecting it to be and the claimant agreed. It is clear from the evidence before us that the claimant had strengths, particularly in management and team building, and he concentrated on the tasks he was good at rather than those he found challenging, such as those involving technical input.
- 6.6. The claimant relies on his letter to HR sent after the five month review meeting as a 'suggestion' of his that was discounted. We were not told of any suggestions he made and we are therefore unable to conclude that the respondent ignored his suggestions.
- 6.7. The claimant has not identified the specific criticisms of his performance that he relies on. From the evidence before us, we find that there were learning and development points which arose in his review meetings, as would be expected in any review meeting with a manager. The claimant alleges that there was no constructive feedback or support. From the evidence before us, we reject this characterisation. In any event, we find that an employer is entitled to criticise performance when that is deserved. We have not been told about any similar performance issues in relation to Matthew Purser which were not raised with him or criticised.

- 6.8. The claimant relies on the geographical size of his area of responsibility and the previous poor performance of his team which needed to be improved as evidence that he had to work harder than Matthew Purser (or any other colleague). We have no evidence of any comparable workloads and we have no evidence that the claimant complained about this or brought it to the attention of the respondent, even when discussing his workload.
- 6.9. We accept the claimant's evidence that he felt shunned by Peter Stokes at the Wembley stadium team building event. We also accept the evidence of Peter Stokes that he does not recall the incident but that he had a large number of people to interact with, with a fluid seating arrangement, and could not focus on the claimant. We also take note of the fact that the five month review meeting was due to take place the following day, which may have been weighing on the mind of both the claimant and Peter Stokes.
- 6.10. The claimant's probation was extended in April 2023. Matthew Purser passed his probation.
- 6.11. The claimant's performance was held to be unsatisfactory and he was dismissed in June 2023 for not passing his probation period. Matthew Purser was not dismissed.
- 6.12. We find that the claimant was treated less favourably than Matthew Purser in that he had his probation extended and he was ultimately dismissed.
- 6.13. We do not find that the reason for the difference treatment is the claimant's race.
- 6.14. The claimant has failed to show facts from which we could determine that race was the reason for his treatment. He relies simply on his 'feeling' that this was the reason and the fact that he was the only member of senior management who was black. We have no data before us regarding the ethnic make-up of the management team and this aspect did not form part of the witness or other evidence before us.
- 6.15. Part of the claimant's case is that his 'face did not fit'. In his submission, he relies on comments regarding Matthew Purser in which it is fed back to Peter Stokes that he had 'fitted in well'. We find that similar comments relating to the claimant also feedback that the claimant has made a good impression, works well with colleagues, is an excellent team member and is pleasant and friendly. We find no evidence that the respondent concluded that the claimant did not fit in.

On the contrary, the strongest aspect of his performance was how he fitted in. The issues which led to his dismissal were his technical abilities and his failure to deliver a completed project.

- 6.16. Even if the claimant had been able to shift the burden of proof, we are satisfied with the respondent's explanation for the reasons he received the treatment we have identified above.
- 6.17. The claimant's direct race discrimination claim fails and is dismissed.

Harassment

- 6.18. We find that the conduct we have identified as having taken place in our discussion regarding the direct discrimination claim may have been unwanted. However, we find that it did not relate to race.
- 6.19. We note that the claimant stated that he did not feel that the respondent had a 'safe space' to complain. This is not part of his pleaded case and we heard no evidence to support this from him or the respondent.
- 6.20. There are a number of matters raised for the first time in the claimant's witness statement which were not put to the respondent's witnesses. Even if these matters are accepted as described by the claimant, he has not shown that race was a factor in any of these interactions.
- 6.21. The claimant's harassment claim therefore fails and is dismissed.

Employment Judge Davidson
Reasons dated 15 August 2024

JUDGMENT SENT TO THE PARTIES ON

19 August 2024

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FOR EMPLOYMENT TRIBUNALS