



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. Achour  
**Respondent:** Rainsford Contracts Limited  
**Heard at:** London South Employment Tribunal (Hybrid)  
**On:** 25<sup>th</sup> to 28<sup>th</sup> May 2024  
**Before:** Employment Judge Sudra  
Sitting with Non-Legal Members, Ms. J. Malatesta and Ms. D. Hill.

**Appearances:**

Claimant: In Person (unrepresented)  
Respondent: Mr. T. Westwell of Counsel

*(References in the form [HB/XX] are to page numbers in the Hearing bundle and [SB/XX] are to page numbers in the Supplementary bundle. References in the form [XX,para.X] are to the paragraph of the named witness' witness statement)*

## JUDGMENT

The unanimous decision of the Tribunal is that the Claimant's complaint of,

- (i) Direct race discrimination is not well founded and is dismissed.

# REASONS

1. Following an oral judgment delivered on 28<sup>th</sup> May 2024, the Claimant has requested written reasons.
2. The Claimant began Acas early conciliation on 19<sup>th</sup> March 2023 ('Day A') and was issued with an Acas early conciliation certificate on 11<sup>th</sup> April 2023 ('Day B'). On 24<sup>th</sup> April 2023 the Claimant presented his ET1 claim form number 2301854/2023. The Respondent defended the claims by way of an ET3 and Grounds of Resistance on 19<sup>th</sup> May 2023.

## The Issues

3. The Claimant's claim is for:
  - (i) Direct race discrimination.

An agreed List of Issues was contained within the Case Management Order of Employment Judge Reed [SB/90] and is re-produced below.

## Preliminary Matters

4. At the outset of the Hearing the Tribunal discussed the List of Issues with both the Claimant and Respondent; they agreed that the List of issues was agreed as appears below.
5. The Tribunal also explored timetabling with the parties and was content that evidence and submissions would be completed within the allotted Hearing days. At the conclusion of evidence and submissions, it was explained that following deliberations, it may be possible to deliver an oral judgment and deal with remedy if appropriate.

6. The Claimant, upon Tribunal enquiry, confirmed that he did not require an interpreter (English is not the Claimant's first language) as he fully understood and could speak English, but he did require people to speak steadily and not use any vernacular. The Claimant was assured that this would happen and was encouraged to speak-up if he required any clarifications or did not understand any terms used. The Claimant, nor any other party, required any further adjustments.
  
7. Mr. Westwell raised the issue of the Claimant having included without prejudice correspondence in his witness statement. The correspondence in question had been removed from the Claimant's witness statement before us. We considered the Respondent's application of 19<sup>th</sup> June 2024 to have the without prejudice material removed from the Claimant's witness statement and the Claimant's response to the application. We decided that the without prejudice correspondence should not be before a Tribunal, ordinarily, and granted the Respondent's application.

## **Procedure and Documents**

8. The Tribunal had before it:
  - (a) An agreed Hearing bundle consisting of 451 pages;
  - (b) a supplementary bundle consisting of 337 pages;
  - (c) an agreed cast list and chronology; and
  - (d) a list of key documents.
  
9. The Tribunal also had written witness statements and heard live evidence from:

### For the Claimant

- (i) The Claimant;

### For the Respondent

- (ii) Paul Dennis.

10. The Claimant and Respondent made oral closing submissions at the conclusion of the evidence.

11. The Tribunal notified the parties at the outset of the Hearing that they would only read documents that they were specifically referred to and would only read documents referred to in witness statements insofar as they were relevant.

## **The Claims and Issues**

12. The Claimant's claim is for,

- (i) Direct race discrimination.

13. The issues to be decided are,

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

1.1 The claimant describes his race, for the purposes of this claim, as 'Arab.'

1.2 It is accepted that the respondent dismissed the claimant.

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 s/he was treated worse than someone else would have been treated.

1.4 If so, was it because of race?'

## Findings of Fact

14. The following findings of fact were reached by the Tribunal, on a balance of probabilities, having considered all of the evidence given by witnesses during the Hearing, including the documents referred to by them, and taking into account the Tribunal's assessment of the witness evidence.
15. Only findings of fact relevant to the issues, and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.
16. The Respondent is a building company specialising in full-service design, building construction and interior works. The Respondent's clients span London and the Home Counties.
17. The Claimant was employed by the Respondent and began work as a project manager on 23<sup>rd</sup> January 2023. On 10<sup>th</sup> February 2023, some three weeks into his employment, the Claimant's employment was terminated by the Respondent. The Claimant was still within his probationary period.
18. On 31<sup>st</sup> October 2022, the Claimant was interviewed (remotely) by Paul Dennis (Managing Director). At some point during the interview, it emerged that the Claimant was Lebanese and had worked in Beirut. (PD w/s para 4) The Claimant performed well at this interview and sufficiently impressed Mr. Dennis so as to proceed to the next stage of the recruitment process and he was invited for a second interview.
19. On 19<sup>th</sup> December 2022, the Claimant attended for an in-person second interview with Mr. Dennis and Michael Solkhon (contracts manager). Again, the Claimant performed well at the interview and he was made an offer of

employment; the Claimant accepted the offer and duly began his employment on 23<sup>rd</sup> January 2023. At his second interview the Claimant was aware that the project he would be involved in was a conversion of two period houses ('the project'). CIRC was the main contractor on the project and the Respondent was a sub-contractor. The Claimant was told that the Respondent had the potential to receive future work from CIRC and this was the reason he was being hired.

20. On the first day in his role, the Claimant met with Mr. Dennis and Will Houghton (quantity surveyor). Part of Mr. Houghton's role was to be responsible for estimating costs, material quantities and project timelines. He also had responsibility for ensuring that the project was achieving its financial targets. It was agreed that there would be a two-week transition phase whilst the Claimant settled in and became familiar with the project and the Respondent's ways of working [322]. The Claimant's initial interactions with Mr. Houghton began congenially enough with the Claimant calling Mr. Houghton '*boss for 1 week*' and suggesting that they lunch together [332]. This was a good start. It was imperative, for obvious reasons, that the Claimant and Mr. Houghton work together collaboratively to further the Respondent's business aims.

21. In his role on the project the Claimant was responsible for, and had control over, procurement, management of various programmes, management of sub-contractors and to oversee general progress on site. The Claimant also had health and safety responsibilities and was expected to have regular progress meetings with the client, CIRC. Meetings and interaction with CIRC was important as the Respondent intended to harvest good relations with them in order to secure future work and therefore, income. The Claimant is a very well educated and skilled person and these responsibilities were well within his capabilities.

22. Whilst relations between the Claimant and Mr. Houghton began very well they soured after an argument between the two men on 26<sup>th</sup> January 2023; the Claimant's fourth working day in his employment with R. The schism between

the two resulted in the Claimant sending various emails to Messrs. Houghton, Dennis and Solkhon. On 29<sup>th</sup> January 2023, seven days after the Claimant's start of employment and a Sunday, the Claimant emailed Mr. Houghton. The Claimant was disgruntled about Mr. Houghton's interaction with a carpenter and in his email he said,

*'I will not accept at no circumstances you act as project manager, and I am your site manager as you were trying to do since my first day. I do believe you are nice person, but you are mis leaded. [sic]' [118]*

23. Whilst the Claimant's wording may have been well intended, it was nevertheless boorish and was not well received by Mr. Houghton. The Claimant's email prompted Mr. Houghton to respond and he also used ill-advised wording saying to the Claimant,

*'...your tunnel vision to take control of this project and completely disregard any input from me after being on the project for 2 days has created a rather unpleasant working environment.'* [119]

24. Both the Claimant's and Mr. Houghton's emails caused Mr. Dennis to become involved. He, on the same day, emailed Matthew Blackwell (commercial director) requesting,

*'Matt,  
Can you please have a chat again with Will, this is a really unhelpful email'* [119]

This was Mr. Dennis displaying his irritation as what he saw as unnecessary emails and in particular, acknowledgment that Mr. Houghton's email was not helpful and that he should be spoken to.

25. This was the beginning of email traffic between the Claimant, employees of the Respondent and CIRC, and email traffic which contributed to the Claimant's termination of employment. In an attempt to prevent any escalation, Mr Dennis emailed the Claimant on 29<sup>th</sup> January 2023 and said,

*'We need to stop the emails and just start talking to each other.'* [121]

26. Unfortunately, Mr Dennis' advice went unheeded. On 31<sup>st</sup> January 2023, the Claimant emailed an ee'e of CIRC, Yang Liu (CIRC's design manager) and said that he was *'totally wrong'* in respect of a building matter. This was not a well advised way in which to communicate with the Respondent's client from whom future business was coveted.
27. On the evening of 1<sup>st</sup> February 2023, the Claimant began what can only be described as micromanagement of Mr Houghton, by emailing him and asking him to copy the Claimant into ALL of his emails. This was not necessary and not reasonable. If the Claimant had been asked to do this he would not have been best pleased. 1<sup>st</sup> February 2023 was a day on which the Claimant had sent a number of inappropriate and provocative emails. The Claimant emailed Mr. Dennis complaining about Mr. Houghton and issued him with the ultimatum, *'either he is to stick to my instruction or one of us must leave'* [191]. This prompted Mr. Selkhon to arrange 'clear the air' talks scheduled for 7<sup>th</sup> February 2023.
28. Usually, such an action by senior management would be sufficient to cause a new employee to pause and reflect. Mr Selkhon's email did not have the desired effect upon the Claimant. The Claimant confirmed to Mr Selkhon that he *would* attend the talks but then added that he considered them *'useless.'* This would have caused the Respondent irritation and they considered the Claimant's comment, rightly, to be rude. At 10.06pm the Claimant emailed Mr. Dennis and said that he was *'fed-up'* and *'not a teenager'* and called Mr. Houghton a *'child.'* He had also sent an earlier email accusing Mr. Houghton of trying to *'screw'* him up at every opportunity. The Claimant rounded off the day by emailing Messer's Dennis and Selkhon stating that Mr Houghton had *'no clue'* about what he was pricing. That was yet another rude and ill-worded email. During the period 1<sup>st</sup> to 3<sup>rd</sup> February 2023, the Respondent had arranged for the Claimant to attend first-aid training, which he attended.



29. On 2<sup>nd</sup> February 2024 the Claimant and Mr. Houghton exchanged text messages [246]. The Claimant was not pleasant and Mr. Houghton was understandably offended. The Claimant was brusque. He, ordered Mr. Houghton not to speak to workers, stick to his instructions, copy him into ALL emails sent by Mr. Houghton, and threatened to ask Janet Kenndy to trespass into Mr. Houghton's inbox if he did not copy the Claimant into ALL emails. The Claimant's orders and tone were hostile, rude and uncalled for. He was clearly flexing his muscles and pulling rank over Mr. Houghton.
30. On the same day, John O'Neill (CEO of CIRC) had raised concerns with Mr. Dennis about the tone of the Claimant's email and said that he was sending his staff emails way outside of working hours. Mr. Dennis emailed the Claimant and asked him to, stop sending emails to the client after 5.30pm, review emails before sending them, and to review the language he used as it came across as disrespectful [198].
31. On 3<sup>rd</sup> February 2023, the Claimant sent Mr. Houghton an email telling him that he *'really need a project manager to manage you and direct you.'* The next day Mr. Selkhon emailed the Claimant and told him that his email was unprofessional and unacceptable. The Claimant was also instructed not to send any further emails to CIRC until he and Mr. Dennis had attended the site and spoken with him. Mr. Selkhon's email was absolutely clear in what was expected of the Claimant.
32. Incredibly, the Claimant totally disregarded Mr. Selkhon's reasonable management instruction. Despite Mr. Selkhon's explicit instruction, the Claimant emailed Mr. Lui on 7<sup>th</sup> February 2023. Whilst the Claimant's email was pleasant, it was a direct breach of Mr. Selkhon's instruction that the Claimant should not email the client until after the 'clear the air talks.'
33. This was the last straw for Mr. Dennis. On 8<sup>th</sup> February 2023, he decided to terminate the Claimant's employment as he was exasperated with the Claimant's conduct and behaviours in the short period of his employment and

he perceived that the Claimant could jeopardise the Respondent's relationship with CIRC and rule them out of being awarded any future contracts with them.

34. On 10<sup>th</sup> February 2023, Mr. Dennis attended the work site with the intention of meeting with the Claimant and informing him of the decision to terminate his employment. When Mr. Dennis attended the site, the Claimant was not in situ as he was off work sick. Mr. Dennis tried to telephone the Claimant but his calls went unanswered, presumably because the Claimant was unwell and indisposed. Therefore, Mr. Dennis asked Ms. Kennedy to draft a letter to the Claimant informing him of the termination of his employment .

35. Ms. Kennedy duly drafted a letter which Mr. Dennis checked, amended, and approved to be sent to the Claimant. The dismissal letter was emailed to the Claimant on 10<sup>th</sup> February 2023, stating that he was dismissed with immediate effect and would be paid one week's payment in lieu of notice [257] and the Claimant acknowledged receipt.

36. On 12<sup>th</sup> February 2023, the Claimant raised a grievance alleging, inter alia, discrimination and racist conduct from the Respondent. The grievance was investigated and heard and the Claimant was sent an outcome letter on 10<sup>th</sup> March 2023; his grievance was substantially dismissed.

37. Also on 12<sup>th</sup> February 2023, Mr. Dennis sent an email to an external party advising,

*'Be very careful about recommending this Persian in the future.  
It's everyone's reputation that gets damaged'* [267]

This will be discussed shortly.

## **Relevant Law**

### Direct Race Discrimination

38. Section 13 of the EqA 2010 provides that (so far as material),

*'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.'*

....

39. Under section 23(1) EqA 2010, where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

40. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.

41. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

42. In many direct discrimination cases, it is appropriate for a Tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as he was.

43. Section 136 of the EqA sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which

we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.

44. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's race. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

45. Guidelines on the burden of proof were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 and we have followed those as well as the direction of the court of appeal in the well-known case of Madarassy v. Nomura International plc [2007] IRLR 246, CA. The recent decision of the Court of Appeal in Efobi v Royal Mail Group Ltd [2019] ICR 750 confirms the guidance in these cases applies under the EqA.

46. The Court of Appeal in Madarassy, stated:

*'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal 'could conclude' that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.'* (56)

47. It may be appropriate on occasion, for the Tribunal to take into account the Respondents' explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy.) It may also be appropriate for the Tribunal to go straight to the second stage, where for example the Respondent assert that it has a non-

discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).

48. We are required to adopt a flexible approach to the burden of proof provisions. As noted in the cases of *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, they will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they may have little to offer where we in a position to make positive findings on the evidence one way or the other. H
49. Allegations of discrimination should be looked at as a whole and not purely on the basis of a fragmented approach (*Qureshi v London Borough of Newham* [1991] IRLR 264, EAT. This requires us to “see both the wood and the trees” (*Fraser v University Leicester* UK EAT/1055/13 at paragraph 79).

## **Conclusions and Analysis**

50. The Claimant originates from Lebanon and is Arab. He is an intelligent and highly educated individual with considerable skill and experience in his profession. The Claimant has worked on multi million pound building projects in the Middle East with considerable success. It is uncontroversial that working practises and behaviours vary all over the world and what is acceptable and usual in one part of the world would be unacceptable and out of the ordinary in other parts of the world.
51. The culture the Claimant was used to working in was not the same as the working culture in the UK. It does not mean that one working culture is better or worse than another but the fact remains that working cultures do differ from continent to continent and country to country. The universal expectation is that an employee must adhere and observe the customs and practises of his or her

immediate environment, regardless of what he or she may be used to. This was the root of the issues between the parties which unfortunately, resulted in the termination of the Claimant's employment.

52. Whilst we found that the Claimant's evidence was honest, it was, in aspects, contradictory. Upon hearing the oral evidence and from the documentary evidence, the Claimant's stance that he had not been unprofessional and inappropriate in emails to colleagues and the client was devoid of substance. He clearly had been unprofessional, inappropriate, and rude. The Claimant was also unprepared to accept that the key to a successful working relationship on the project was to work collaboratively. It is apparent that the Claimant viewed Mr. Houghton as a junior both in terms of age and qualifications.

53. We found the Respondent's witness evidence to be measured and cogent. Where there was a dispute, we preferred the evidence of the Respondent.

#### Direct Race Discrimination

54. It is indisputable that the Claimant had behaved in an unprofessional, inappropriate, and rude manner. He may not have intended to and we accept that he began his employment with gusto and enthusiasm. However, that does not detract from his actions which the Respondent, quite rightly, took exception to.

55. For somebody in the infancy of employment, the Claimant's actions were quite bold. He pulled rank on Mr. Houghton, sent emails which were offensive, issued ultimatums, or at least *an* ultimatum, and flagrantly disregarded an explicit management instruction i.e. not to send unprofessional or inappropriate emails and not to email the client either out of hours or at all.

56. Mr. Dennis was responsible for interviewing the Claimant and, knowing of his racial origin, chose to employ him over an English applicant. Mr. Dennis would not have done so if he was in some way had a negative view of the Claimant's

race. It is clear that Mr. Dennis was equally unimpressed with some of the actions of Mr. Houghton and took steps to address his concerns. The Claimant was, as Mr. Westwell stated, the 'face' of the Respondent in respect of CIRC and he was expected to finesse relations with CIRC and sufficiently impress them with the aim of securing future projects with them. The Claimant was not successful in doing so.

57. There is no evidence that the decision to dismiss the Claimant was in any part due to his race. The reasons for Mr. Dennis dismissing the Claimant was because of his conduct and actions. People do not, or in almost all cases do not, lapse into and out of racist behaviour. Having hired the Claimant, it is simply illogical that he would dismiss the Claimant a **few weeks** later because, all of a sudden he took exception to the Claimant's race. We are of the correct opinion that Mr. Dennis would have treated any employee, irrespective of race or any other protected characteristic, in the same way.

58. Due to the findings we have made, the burden of proof has not shifted to the Respondent. If it had, the Respondent has satisfied us that its treatment of the Claimant was not principally, or even in part, due to the Claimant's race.

59. In respect of the email sent by Mr. Dennis stating, *'Be very careful about recommending this Persian in the future. It's everyone's reputation that gets damaged,'* Mr. Dennis' evidence was that it was a typographical error due to an autocorrect function. The Claimant, in closing submissions, said that he was not insulted by this email so it has not been necessary for us to make a finding on this point.

60. For these reasons the unanimous decision of the Tribunal is that the Claimant's claim fails and is dismissed. The deposit of £100.00p will be remitted to the Respondent.

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**Employment Judge Sudra**

Date: 16<sup>th</sup> July 2024