EMPLOYMENT TRIBUNALS

Mr Martial Mayiba v Clarion Housing Group Ltd

Heard at: Watford
On: 20,21,22,23 (deliberation) 24 May 2024
Before: Employment Judge Alliott
Members: Mrs S Boot
Mr D Bean
Appearances
For the Claimant: In person
For the Respondent: Mr Stephen Peacock (solicitor)

JUDGMENT having been sent to the parties on 5 July 2024 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant was employed by the respondent, a housing association, on 22 October 2014 as a Customer Support Officer and then as a Customer Accounts Specialist from 14 March 2022. The claimant remains employed by the respondent.

2. By a claim form presented on 29 July 2022, following a period of early conciliation from 9 June to 20 July 2022, the claimant brings a complaint of direct race discrimination. The respondent defends the claims.

The issues

3. The issues were set out in a case summary following a preliminary hearing heard in front of Employment Judge Macey on 19 July 2023. They are as follows:-

> **"1 Time limits**
>
> 1.1 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
>
> 1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
> 1.1.2 If not, was there conduct extending over a period?

1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1 Why were the complaints not made to the Tribunal in time?

1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. **Direct race discrimination (Equality Act 2010 section 13)**

2.1 The claimant describes his race as being black African.

2.2 Did the respondent do the following things:

2.2.1 From August 2021 to December 2021 conspire to set up the claimant to fail in his position as customer support officer by sending through to the claimant personally an excessive number of calls?

2.2.2 In or around December 2021 investigate the claimant for avoiding calls from callers to the customer support team?

2.2.3 Involve Vanessa Bartlett and Hayley Uhegbu in the investigation against the claimant when these individuals had previously been involved in a grievance raised by the claimant in November 2019 (Vanessa Bartlett had chaired the grievance in November 2019 and Hayley Uhegbu was the customer team manager at that time)?

2.2.4 Did an unknown person at the respondent on or around February 2022 attempt to convince Sarah Wittekind to reconsider hiring the claimant into the customer accounts specialist team? The claimant relies on an email from Sarah Wittekind (customer accounts manager in the home furnishing team of the customer accounts specialist team) to an unknown person on or around February 2022.

2.2.5 Did not follow the correct procedure in respect of the disciplinary procedure in March 2022 due to the note-taker (Annabel Lockhart) becoming involved in chairing the disciplinary hearing on 16 March 2022 instead of taking notes?

2.2.6 Failed to audio record the disciplinary hearing on 16 March 2022 after the claimant had requested that it be audio recorded?

2.2.7 Did not examine or investigate evidence presented by the claimant during the disciplinary meeting which comprised two recordings of the claimant's work computer screen by the claimant's mobile phone which were relevant to the allegations against the claimant?

2.2.8 Produce an incomplete set of notes of the disciplinary hearing held on 16 March 2022?

2.2.9 Held a disciplinary hearing on 16 March 2022 where the outcome was predetermined as possible sanctions had already been discussed by the respondent's management prior to March 2022? The claimant relies on the email sent by Sarah Wittekind to an unknown person on or around

February 2022 which referred to a potential disciplinary sanction of dismissal in reference to the claimant.

2.2.10 In or around March/ April 2022 issue a first written warning against the claimant for silent calls which was too severe and/ or inconsistent.

2.2.11 Did not pay to the claimant the yearly bonus allocated to the customer support team at the end of the financial year (end of March 2022).

2.2.12 Did not pay the claimant the cost of living pay rise from 1 April 2022 onwards which should have been paid in any event regardless of any disciplinary sanction.

2.2.13 Failed to consider in the claimant's appeal the claimant's allegation that the notes of the disciplinary hearing were inaccurate?

2.2.14 In the notes produced by Keith Chapman as a post scriptum to the appeal hearing on 31 May 2022 state that the claimant and his union representative, Maggie Hughes, had displayed "*aggressive, confrontational and at times verging on disrespectful*" attitudes during the hearing?

2.2.15 Produce an incomplete set of notes for the appeal hearing on 31 May 2022?

2.2.16 Did not investigate the claimant's allegations of profiling and stereotyping that the claimant raised with the HR department of the respondent on or around 18 June 2022?

2.3 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 he was treated worse than someone else would have been treated.

2.4 If so, was it because of race?

3. **Remedy for discrimination**

…"

The law

4. S.13 of the Equality Act 2010 provides as follows:-

"13 Direct discrimination

(1) 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."

5. S.23 of the equality Act provides as follows:-

"23 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13… there must be no material difference between the circumstances relating to

each case."

6. S.136 of the Equality Act provides as follows:-

> "136 Burden of proof
>
> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (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."

The evidence

7. We had witness statements and heard oral evidence from the following:

   7.1 The claimant.
   7.2 Ms Katie Reeve, Customer Support Team Leader at the time.
   7.3 Ms Paula Atkins, Customer Support Team Leader.
   7.4 Ms Sarah Wittekind, Customer Accounts manager.
   7.5 Mr Jared Myers, Regional Customer Account Manager.
   7.6 Ms Hayley Uhegbu, Customer Support Operations manager.
   7.7 Mr Keith Chapman, HR Advisor.
   7.8 Ms Jade Norman, HR Advisory Manager.

8. In addition, we had a witness statement from Ms Ann Sheckley, Head of Customer Services.

9. We had a hearing bundle of 327 pages along with a chronology of events.

10. Mr Peacock provided us with written closing submissions.

The facts

11. The claimant was employed by the respondent, a housing association, on 22 October 2014 as a Customer Support Officer.

12. As might be expected, the respondent has disciplinary rules and procedures. The relevant parts provide as follows:-

> "Notes of the meeting will be taken and you'll be provided with a copy of these notes. The notes will not be a verbatim account of the meeting but will cover the main points of discussion.
>
> We do not allow recordings to be made of any of our meetings. Any recordings made covertly will not be admissible as evidence in the process."

And

> "If you receive a disciplinary penalty of any level you won't be eligible to receive payment of any bonus or pay review that is awarded in the following 12 months."

13. On 15 November 2019 the claimant raised a grievance. This concerned:

    13.1 Being unable to get an application for a leadership programme signed before the deadline. This did not concern Hayley Uhegbu.

    13.2 Hayley Uhegbu only authorising two weeks leave at Christmas in circumstances where the claimant had requested 17 days.

    13.3 Seeking clarification about applying for vacancies in the company.

    13.4 Complaining that he only received a 2% pay rise in May 2019 from his then team leader, Ms Lisa Dickson. The grievance references the matter beginning to be resolved once Hayley Uhegbu became involved.

14. There was a grievance hearing on 25 February 2020 chaired by Ms Vanessa Bartlett. The outcome was communicated in a letter dated 10 March 2020. By this time events had rather supervened. The claimant had been granted the Christmas leave he wanted; his May 2019 salary review had been adjusted to a 2.5% pay rise and a further review was conducted in October 2019 by Hayley Uhegbu. We were not told what percentage rise the claimant got but he was satisfied.

15. Hayley Uhegbu told us that she was unaware that a formal grievance had been made involving, at least in part, herself. Clearly Vanessa Bartlett discussed the leave issue with Hayley Uhegbu.

16. It is clear to us that the claimant attributes his subsequent treatment to this grievance and the reaction of Vanessa Bartlett and Hayley Uhegbu to it. When asked about his use of the word 'Vendetta' he responded that they were both managers and that they did not respond well when he challenged them. When it was put to him that the grievance was nothing to do with his race his answer was that "Some people do not take it lightly when an "inferior" [his word] challenged them." He claimed they had a grudge against him.

17. The significance of the grievance, as perceived by the claimant, is confirmed by his response in an undated email following his appeal. He wrote:-

> "I believe the disciplinary procedure was used to penalise me because of a previous grievance I had raised."

18. We find that the claimant has made unjustified and unwarranted assumptions about the effect of the grievance on Vanessa Bartlett and Hayley Uhegbu. We find that the nature of the grievance is unlikely to have upset or annoyed Hayley Uhegbu as, at its highest, it was only a complaint about being granted two weeks leave rather than 17 days. It appears from the grievance outcome letter that Hayley Uhegbu had sorted out the matter and the claimant got his requested leave over Christmas. The pay issue was not against Hayley Uhegbu who was credited with beginning to sort it out. The rest of the grievance concerned requests for clarification about company policy.

19. The claimant did not appeal the grievance, which is understandable as he had had his requested leave and a pay rise. As such, he cannot be said to be challenging the outcome from Vanessa Bartlett. The investigation into the claimant's conduct that led to the disciplinary process began in November 2021. That is two years after his grievance and, had there been a grudge or vendetta against the claimant, we find that it would probably have manifested itself earlier.

20. Prior to March 2022 the claimant worked as a Customer Support Officer in the Customer Support Team. His team leader was Ms Katie Reeve (Pucknell). There were six teams at the respondent's Croydon premises with 7-10 employees in each team. Consequently there were approximately 50 employees in the Customer Support Team. The claimant's role included answering calls. Hayley Uhegbu was the Customer Support Operations Manager.

21. The respondent had a contact centre. Vanessa Bartlett was the Contact Centre Manager. External calls would initially come into the contact centre. The call centre advisors would deal with some calls but, as necessary, would transfer the caller to the customer Support Team.

22. The respondent had an automated call system called "Aspect". Calls transferred from the call centre would be allocated to a customer support officer who was displaying as available on the system. If more than one was displaying as available the call would be transferred to the team member who had been displaying as available the longest. The call centre could also transfer a call to a specific member of the Customer Support Team if the call was personal to that team member. The daily target for customer support officers was to deal with about 25-27 calls per day.

23. We find that management could not manipulate the system to send an excessive number of calls to the claimant. It is correct that the claimant is recorded as accepting an above average number of calls. However, that is probably explained by the short duration of many of his calls which resulted in him being available more often. Accordingly, we find that the claimant was not set up to fail by sending him an excessive number of calls and issue 2.2.1 is not proved.

24. Whilst we had no direct evidence as to how the investigation into the claimant began, the position appears to have been as follows: In or around November 2021 call centre advisors were reporting possible incidents of silent/call avoidance. This involved calls being transferred to the customer support team and a team member, or members, clicking to take the call but saying nothing, thereby causing the caller, whether a contact centre advisor or external caller, to ring off.

25. Vanessa Bartlett, Contact Center Manager, requested an audit from the Performance Optimisation Manager in the Quality Monitoring Team.

26. We find that Vanessa Bartlett's request for an audit was for sound business reasons and that, at that stage, she would have had no knowledge as to who may have been involved in the Customer Support Team.

27. It would appear that Mr Kevin Baker in the Quality Monitoring Team

conducted the audit. The call record of all 50 or so members of the Customer Support Team were looked at. Calls of short duration (5 or 10 seconds) were taken off the system for September-November 2021 and it was identified that a high volume of the short calls had been taken by the claimant.

28. It is notable that we were not provided with evidence of how the claimant's short calls compared numerically with all the other team members.

29. However, Hayley Uhegbu told us that, once the matter had been referred to her, she caused all the team leaders to make enquiries of their teams as she told us that, if one person was involved, she would expect others to be doing it as well. However, no one else appears to have had significant errors sufficient to raise concerns.

30. As it is, the audit was conducted by the Quality Monitoring Team, and it was there that the anomaly concerning the claimant was identified and his calls investigated. There is absolutely no evidence that Hayley Uhegbu or Vanessa Bartlett was involved, and we find that they were probably not.

31. Kevin Baker of the Quality Monitoring Team listened to a large number of the claimant's calls. On 6 December 2021 he produced a list of potential call avoidance covering 25 days between 29 September and 30 November 2021. 374 calls were designated DNS (Did Not Speak) or, in a few instances, "Speaks indistinctly". The frequency of DNS ranged from 37 to 1 in a day with an average of 15 per day. In addition, it was identified that on some occasions the claimant's screen was showing a non-work-related website such as Air France or EuroMillions at a time when a call was accepted and, after it had ended, during the seven minute "wrap time" after, which was time allocated to deal with admin following a call.

32. The list of potential calls missed was sent by the Quality Monitoring Team to Vanessa Bartlett on 9 December 2021. She forwarded it to Hayley Uhegbu on 10 December 2021. Hayley Uhegbu instructed Ms Paula Atkins to conduct an investigation into the matter. Paula Atkins had recently joined the Customer Support Team as a team leader, and she did not know the claimant at all.

33. Accordingly, we find that in December 2021 the respondent did investigate the claimant for avoiding calls from callers to the Customer Support Team. Accordingly, issue 2.2.2 is proved.

34. On 13 December, Paula Atkins requested five or six examples of the calls so she could listen to them.

35. On 17 December, Paula Atkins had an informal investigation meeting with the claimant. The claimant raised technical issues. The notes of the meeting were sent to the claimant on 20 December 2021.

36. It is clear to us, and it was acknowledged by the respondent and Jared Myers, that the system was not flawless. Problems could and did occur and there could be a problem when answering and being unable to hear the caller. He told us it happened now and then. He referred to it as intermittent and not widespread. The one-to-one meeting notes refer

regularly to various technical issues.

37. On 10 February 2021, Paula Atkins held an investigatory meeting with the claimant. Some calls were listened to and on one the claimant could be heard saying "Hello". The issue concerning silent calls, internet use and wrap time were discussed.

38. Paula Atkins produced an investigation report dated 16 February 2022. This recommended formal disciplinary action be taken against the claimant. Paula Atkins told us, and we accept, that Vanessa Bartlett and Hayley Uhegbu were not involved in her investigation other than sending the call log and instructing her to investigate. Paula Atkins did keep Hayley Uhegbu informed as to the stage her investigation was at at various times. We find that Vanessa Bartlett and Hayley Uhegbu did not influence Paula Atkins' decision to recommend disciplinary action. Accordingly, we find that Vanessa Bartlett and Hayley Uhegbu were not involved materially in the investigation and accordingly, issue 2.2.3 is not proved.

39. At some point in early 2022, the claimant applied for, and was interviewed for, an internal role as a Customer Support Specialist in the Home Ownership Team. The claimant had not informed anyone in the Customer Support Team that he had done so (albeit that his line manager, Katie Reeve, was off sick from about November 2021 until February 2022).

40. On 18 February 2022, the claimant received an offer of the job. It is clear that Hayley Uhegbu became aware of this from Katie Reeve who by now had returned to work. Hayley Uhegbu sent an email to Sarah Wittekind in Customer Accounts asking if anyone in her team had offered the claimant a position. Sarah Wittekind responded that they had and asked if there was a problem. Hayley Uhegbu replied that the claimant had been given a start date without prior consultation with his line manager, asserted that the interview had been in company time and provided information that the claimant was currently part of a performance review. Hayley Uhegbu accepted that her assumption that the interview had been in company time was incorrect when it was put to her that it had happened at 8am. Sarah Wittekind sought HR advice as to whether she could withdraw the job offer and Ms Carrie Woodgate at HR advised her not to.

41. The reference in the list of issues to an unknown person must be to Hayley Uhegbu. We find that the information supplied by Hayley Uhegbu about the performance review caused Sarah Wittekind to withdraw the job offer notwithstanding that the disciplinary process had not been concluded.

42. We have considered why Hayley Uhegbu may have supplied the information. She told us that the claimant, as a matter of courtesy, should have told her of his job application. We find that the claimant clearly picked up that Hayley Uhegbu did not think he had acted appropriately as, in his post appeal email, he states:-

> "For this reason, I believe the process was done in a way to punish me, especially when it had come to light that I had got a new job in another department."

43. We express no view as to the rights and wrongs of disclosing information about the disciplinary process which could be confidential, but we find that it

was done as a reaction to the claimant applying and accepting a job offer without informing anyone in his team. As the disclosure caused Sarah Wittekind to want to withdraw the job offer, so we find issue 2.2.4 proved.

44. The claimant was invited to a disciplinary hearing to be held on 8 March 2022 by Annabel Lockhart. The letter of invitation stated:-

> "The hearing will be chaired by Jared Myers – Reginal Customer Accounts manager and I will also be in attendance as notetaker and HR representative."

45. The disciplinary hearing actually took place on 16 March 2022.

46. Annabel Lockhart clearly contributed to the hearing as she appears in the notes on six occasions. Jared Myers denies that she took over as chair but accepts that she assisted at times with clarifying information and process. We find that her participation was not a failure to follow correct procedure. Consequently, we find that issue 2.2.5 is not proved.

47. Whilst there is no record in the notes that the claimant requested the hearing to be audio recorded, the claimant told us he did ask for this, and no one was taking notes. Jared Myers could not recall. We are prepared to accept that the claimant did request an audio recording and that that was declined. We find that it was declined due to company policy. An allegation of a failure must import an obligation to do that which it is alleged was not done. As such, we find there was no failure to audio record the hearing and we find issue 2.2.6 is not proved.

48. During the hearing the claimant invited Jared Myers to view two recordings on his mobile. These were short video clips of the claimant's work computer screen. We viewed one. It was short, made in March 2022 and showed the claimant answering a call and saying "Good afternoon, Martial Speaking" twice. Jared Myers accepted that he did not look at, or consider, the claimant's footage as it was not relevant, being from a different date and not of the calls being investigated. We find that in principle the clips could be relevant to show the claimant speaking and not hearing a reply from the caller and so illustrative of a flaw in the system. As such, we find allegation 2.2.7 proved.

49. That said, we are curious as to how the claimant came to make the two recordings given that he would not know in advance that the caller could not be heard yet he had his mobile out ready.

50. Notes of the disciplinary hearing were produced. They are not a verbatim record and, as such, are incomplete. We accept that the notes do not record everything that took place in the two-hour hearing.

51. Jared Myers concluded that the claimant had avoided calls and misused internet access during work time but did not find misuse of wrap time. In essence, he told us that the sheer volume of calls recorded as "Did not speak" led him to discount technical errors across the board. Jared Myers administered a first written warning live for 12 months.

52. The claimant was sent an outcome letter on 22 March 2022. This states:-

> "I have considered all the evidence before me and have taken your explanations into account. I can confirm that I have established to its reasonable satisfaction that you have avoided calls and misused the internet during worktime. Avoiding calls has a huge impact and frustration on not only on your colleagues as they are having to pick up additional work but also the wider business. It is also important to note that this was a key element of your role. The repercussions of your actions of avoiding calls also has a big impact on our tenants and Contact Centre who are trying to resolve queries. In addition the misuse of the internet is taking away your focus to conduct your job on a daily basis and breaching Clarion's IT Acceptable Use Policy.
>
> While I listened to your representations, I was not able to find any mitigating factors for a lesser sanction. Therefore I have decided to issue you with a first written warning which will remain live for a period of 12 months. Any recurrence of call avoidance, misuse of the internet or other misconduct may result in further disciplinary action being taken against you.
>
> Please note you won't be eligible to receive payment of any bonus, for the bonus year 2021/2022, which is paid in July 2022 or pay review that is awarded while the warning is live."

53. The claimant was sent the hearing notes with the outcome letter and was given an opportunity to provide any suggested amendments to the notes in an email dated 30 March 2022. The claimant did so in his post appeal email and set out a number of issues he felt should be included. We find that the respondent did produce an incomplete set of notes and, accordingly issue 2.2.8 is proved.

54. On 22 February 2022, Sarah Wittekind sent an email to HR referring to having offered the claimant the new post and stating:-

> "We have subsequently been made aware that following investigation by his current manager, there is a disciplinary process pending, with a strong case for dismissal. (Please treat this as confidential for now)"

55. Sarah Wittekind told us that she had spoken to Katie Reeve, and it is clear to us that the reference to "Strong case for dismissal" probably came from her. As such, we find that management within the Customer Support Team had probably discussed possible outcomes of the disciplinary process. Given that the claimant was not dismissed so we have taken the allegation of pre-determined in issue 2.2.9 as a reference to Jared Myers pre-determining his decision that the claimant had committed the misconduct alleged. We find that Jared Myers did not speak to Sarah Wittekind or anyone else in the claimant's management team and so would not have been influenced by anyone else as to his findings. We find he exercised his own judgment, and that the outcome was not pre-determined. In particular, Jared Myers accepted the claimant's explanation concerning wrap time. Consequently, we find allegation 2.2.9 not proved.

56. We have considered the sanction imposed. In our judgment, a first written warning, even when coupled with the financial penalty of missing out on a bonus and pay rise, cannot be said to be outside the range of reasonable responses of a reasonable employer and was not too severe. We have had no evidence of inconsistency. Accordingly, issue 2.2.10 is not proved.

57. The claimant was not paid the Customer Support Team bonus at the end of

the financial year (end of March 2022). Accordingly, we find issue 2.2.11 is proved. We find the reason was in accordance with the disciplinary policy.

58. The claimant was not paid the cost of living pay rise from 1 April 2022. We find it should not have been paid in any event regardless of any disciplinary action. This is because there is no distinction between a cost of living pay rise and a performance pay rise in the disciplinary policy. Accordingly, issue 2.2.12 is not proved.

59. The claimant's appeal was heard by Ann Sheckley on 31 May 2022 with Keith Chapman as notetaker. The issue of the dismissal notes being incomplete is referenced in the appeal hearing notes and Ann Sheckley is recorded as saying she would follow it up. In the appeal outcome letter she states:-

> "Whilst you claim, sections of the meeting were not recorded correctly, I am satisfied you were given the opportunity to review the notes and suggest amendments in an email from Jade Norman dated 30th March 2022."

60. Consequently, we find that Ann Sheckley did consider the claimant's allegations that the notes were inaccurate. Accordingly, issue 2.2.13 is not proved.

61. At the end of the appeal hearing notes Keith Chapman recorded the following:

> "PS During the meeting there were numerous occasions where AS was either asking a question , answering a question or clarifying a point and MH [Miss Maggie Hughes, Trade Union Representative] was interrupting AS forcefully to make a point, ask a question or to speak with MM directly.
>
> MM also repeatedly interrupted AS during the appeal hearing. These have not recorded these in a chronological order because KC was trying to keep up with the rapid pace of what MM and MH were saying.
>
> The attitude projected by MM and MH from the beginning was meeting was aggressive, confrontational and at times verging on disrespectful of the hearing manager and the process. There had been no adjournments during this lengthy meeting and together with the interruptions and the labouring of points/arguments that were referred to repeatedly by MM and MH; it was a very challenging meeting to be involved with."

62. Accordingly, issue 2.2.14 is proved.

63. Again, appeal hearing notes were not verbatim and as such, incomplete. The claimant was given an opportunity on two occasions by Jade Norman, HR Advisor, to add to the notes. The claimant did so in an email but not in the requested format. Accordingly, issue 2.2.15 is proved.

64. In an email dated 22 June 2022, sent to Jade Norman, the claimant stated:-

> "I object to the derogatory and profiling terminology of Keith Chapman post-scriptum. This is an opinion that casts aspersion on my personality and profiles me. As a moderator or notetaker, there were enough opportunities during the meeting that lasted just over two hours to address any issue including what he has

> called "very aggressive, confrontational and at times verging on disrespectful of the hearing manager and the process".
>
> As a matter of fact none of the paragraph mentions any comment from the Hearing Manager regarding aggression, confrontation or disrespect, though the discussion with my Trade Union Representative was challenging at time. Was I not challenging a decision? I got to ask to be allowed to finish what I am saying on many occasions as I was being interrupted by the Hearing Manager. This somehow is missing from the transcript."

65. Whilst the complaint references profiling, no reference is made to stereotyping.

66. On 13 July Jade Norman responded:-

> "Keith's role as notetaker is to capture the main points of discussion of which I can see has happened. Within his remit, he is also able to document his observations of the behaviour of meeting attendees. As above, you are welcome to add your comments to these notes and they will be saved on file alongside Clarion's record of the meeting."

67. Jade Norman gave evidence that the claimant asked for the comments to be removed from his record and that was why her response was as set out above. She states she was not asked to investigate.

68. We accept that the references to aggressive, confrontational and disrespectful conduct could, in certain circumstances, represent derogatory racial stereotyping and profiling. However, at no time until the presentation of his ET claim did the claimant suggest to the respondent that any of his treatment was anything to do with his race at all. As such, we consider that the extent of Jade Norman's response was proportionate, and we find she did not fail to investigate. Had the complaint referenced race, we would have expected greater investigation. Accordingly, issue 2.2.16 is not proved.

Conclusions

69. For those issues we have found proved, we have taken a hypothetical comparator, namely a non-black African in not materially different circumstances.

70. By refence to the issues:

Issue 2.2.1:

71. Treatment not proved.

Issue 2.2.2:

72. We find that a comparator who had been identified as having a high volume of short calls would have been investigated and, consequently, this was not less favourable treatment.

Issue 2.2.3:

73. Not proved.

Issue 2.2.4:

74. We find that a comparator who had not informed Hayley Uhegbu that he had applied for and accepted an internal job would have been treated in exactly the same way and, consequently, this was not less favourable treatment.

Issue 2.2.5:

75. Not proved.

Issue 2.2.6:

76. Not proved.

Issue 2.2.7:

77. We find that a comparator who presented similar recordings would have had them disregarded by Jared Myers and, consequently, this was not less favourable treatment.

Issue 2.2.8:

78. We find that a comparator would have had an incomplete set of notes and , consequently, this was not less favorable treatment.

Issue 2.2.9:

79. Not proved.

Issue 2.2.10:

80. Not proved.

Issue 2.2.11:

81. We find that a comparator would not have been paid the yearly bonus due to company policy and, consequently, this was not less favourable treatment.

Issue 2.2.12:

82. Not proved.

Issue 2.2.13:

83. Not proved.

Issue 2.2.14:

84. We find that a comparator who was perceived to have acted in the same way as the claimant would have been recorded in the same way by Keith Chapman and, consequently, this was not less favourable treatment.

85. It is clear to us that the way the claimant was described greatly upset him and this is understandable, not least as, within the notes, there is no direct

reference to such conduct and the term used could be racially offensive.

86. However, we are satisfied that the treatment was not on the grounds of the claimant's race. The description was applied to a white female as well and we find it is far-fetched to suggest this was to camouflage a derogatory remark based on race against the claimant.

Issue 2.2.15:

87. We find that a comparator would have had an incomplete set of notes and, consequently, this was not less favourable treatment.

Issue 2.2.16:

88. Not proved.

89. For the above reasons the claimant's claims of race discrimination are dismissed.

_____

Employment Judge Alliott

Date: 10 October 2024

Judgment sent to the parties on

15/10/2024

For the Tribunal office

Recording and Transcription
Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/