



EMPLOYMENT TRIBUNALS

Claimant: Mr F Saeed

Respondent: DHL Services Limited

HELD AT: Manchester (by CVP)

ON: 28, 29 & 30 August
2024 and chambers
discussion 25 October
2024

BEFORE: Employment Judge Johnson

MEMBERS: Ms A Booth
Mr B McCaughey

REPRESENTATION:

Claimant: unrepresented

Respondent: Ms L Kaye (counsel)

JUDGMENT

The judgment of the Tribunal is that:

- (1) The complaint of unfair dismissal for health and safety reasons contrary to section 100 of the Employment Rights Act 1996 is not well founded which means it is unsuccessful.
- (2) The complaint of detriments for health and safety reasons contrary to sections 44 and 48 Employment Rights Act 1996 is not well founded which means it is unsuccessful.
- (3) The complaint of direct discrimination on grounds of age contrary to section 13 Equality Act 2010 is not well founded which means it is unsuccessful.

- (4) The complaint of direct discrimination on grounds of race contrary to section 13 Equality Act 2010 is not well founded which means it is unsuccessful.
- (5) The complaint of direct discrimination on grounds of religion contrary to section 13 Equality Act 2010 is not well founded which means it is unsuccessful.
- (6) The complaint of harassment on grounds of age contrary to section 26 Equality Act 2010 is not well founded which means it is unsuccessful.
- (7) The complaint of harassment on grounds of race contrary to section 26 Equality Act 2010 is not well founded which means it is unsuccessful.
- (8) The complaint of harassment on grounds of religion contrary to section 26 Equality Act 2010 is not well founded which means it is unsuccessful.
- (9) The complaint of unlawful deduction from wages contrary to section 13 Employment Rights Act 1996 is not well founded which means it is unsuccessful.

REASONS

Introduction

1. These proceedings relate to the claimant's brief period of employment with the respondent company from July to October 2022 when he was dismissed during his probationary period. The respondent believed it was entitled to take this action because of the claimant's performance, poor attendance, and behaviour in the workplace. The claimant believed that the dismissal was unfair and he suffered detriments because of raising health and safety concerns, as well as suffering discrimination and harassment relating to his age, race, or religion. He also believes that he was denied a bonus.
2. The claimant presented a claim form on 9 January 2023 following a period of early conciliation from 27 October to 22 November 2022. Initially in addition to the above complaints, the claimant also brought complaints of holiday pay and breach of contract. These were later withdrawn at the preliminary hearing case management before Judge Batten on 25 July 2023.
3. The respondent presented a response on 16 February 2023 and Judge Batten permitted its amendment on 17 October 2023 once the claimant's allegations had been properly identified.
4. The case was initially listed to take place in person in Manchester, but Judge Allen converted it to a CVP hearing on 16 August 2023 upon application of the respondent and noting that the claimant had confirmed that he could attend hearings remotely.

Issues

5. The framework of the list of issues had been prepared by Judge Batten at the preliminary hearing case management on 25 July 2023.
6. Miss Kaye had helpfully prepared a final list of issues which was shared with the claimant and which he agreed before the Tribunal began hearing evidence on the afternoon of day 1. It was drafted in a lengthier format that might be typically expected where a claimant complains of discrimination in relation to several protected characteristics and she had thoughtfully set out each form of discrimination/protected characteristic allegation separately to assist the claimant.
7. The Tribunal has summarised the issues below, but in a more concise format with single sections being used for direct discrimination/harassment and identifying those allegations which only involve one of the three protected characteristics used in this claim.
8. The section relating to remedy was also removed and spelling mistakes corrected as appropriate.
9. The complaint of unfair dismissal for health and safety reasons contrary to section 100 of the Employment Rights Act 1996
 - a) Was the claimant an employee at a place where there was no health and safety representative or committee, (s.100(1)(c)(i) ERA 1996)?
 - b) If not, was the claimant an employee at a place where there was such a representative or committee but it was not reasonably practicable for the claimant to raise matters by those means, (s100(1)(c)(ii) ERA1996)?
 - c) If so, has the claimant brought to his employer's attention by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety, (s. 100(1)(c) ERA 1996). The claimant relies on:
 - i) On 19 September 2022, the claimant complained to Joanna Jarecka and stated *'The pump trucks are broken, some of the pump trucks have malfunction of hydraulic machines and others have broken wheels which puts and extra pressure on workers while lifting and handling the goods and might result in injuries including the back injury to workers. The door of the cages (for carrying goods) are broken and malfunctioning. The locks of doors were missing. The sudden opening of the doors have resulted in minor injuries to the workers including me and could have resulted in severe injuries.'*
 - ii) On 21 September 2022, the claimant complained to Joanna Jerecka and Rob Wilkins and stated *'The poor cleaning equipment e.g. absence of cleaning mop, mop buckets which caused people to slip, trip and falls. There was no cleaning equipment at the tool stations.'*

- iii) On 27 September 2022, the claimant complained to Liam Burke and stated *'The pump trucks are broken, some of the pump trucks have malfunction of hydraulic machines and others have broken wheels which puts extra pressure on workers while lifting and handling the goods and might result in injuries including back injury to workers. The doors of the cages (for carrying goods) are broken and malfunctioning. The locks of the doors were missing. The sudden opening of the doors have resulted in m minor injuries to the workers including me and could have resulted in severe injuries.'* The poor cleaning equipment e.g. absence of cleaning mop, mop buckets which caused people to slip, trip and falls. There was no cleaning equipment at tool stations in the entire warehouse.'
- iv) On 3 October 2022, the claimant complained to Jonathan Buller and stated *'The pump trucks are broken, some of the pump trucks have malfunction of hydraulic machines and others have broken wheels which puts extra pressure on workers while lifting and handling the goods and might result in injuries including back injury to workers. The doors of the cages (for carrying goods) are broken and malfunctioning. The locks of the doors were missing. The sudden opening of the doors have resulted in m minor injuries to the workers including me and could have resulted in severe injuries.'* The poor cleaning equipment e.g. absence of cleaning mop, mop buckets which caused people to slip, trip and falls. There was no cleaning equipment at tool stations in the entire warehouse.'

- d) Was the reason or principal reason for the dismissal that the claimant had complained about the health and safety matters set out at paragraph 1.3?
- e) If so, the claimant will be regarded as unfairly dismissed.

10. The complaint of detriments for health and safety reasons contrary to sections 44 and 48 Employment Rights Act 1996

- a) Was the claimant an employee at a place where there was no health and safety representative or committee, (s.100(1)(c)(i) ERA 1996)?
- b) If not, was the claimant an employee at a place where there was such a representative or committee but it was not reasonably practicable for the claimant to raise matters by those means, (s100(1)(c)(ii) ERA1996)?
- c) If so, has the claimant brought to his employer's attention by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety, (s. 100(1)(c) ERA 1996). The claimant relies on the allegations made in the complaint of unfair dismissal for health and safety reasons above, (paragraphs 6(c)(i) to (iv))
- d) If so, did the respondent do the following things:
- i) Chris Cummings told the claimant *'I can sack you at any time'*.

- ii) Joanna Jarecka told the claimant *'Your picking rate is not good as well as age related harassment'*.
 - iii) Rob Wilkins told the claimant *'You can leave your job at any time'*.
 - iv) Jonathan Buller said to the claimant *'I have dismissed you from the job because of your misconduct and behaviour and your colleagues and managers.'*
 - v) Liam Burke told the claimant *'I do not agree with your reports regarding health and safety issues and your concerns and report of broken cages and broken pump in DHL Services Limited warehouse at Bury Point.'*
 - vi) Offered easy jobs to their favourite workers and not the claimant.
 - vii) Gave comfort breaks to their favourite workers and not the claimant.
- e) By doing any of the matters as set out at paragraph 7d), did the respondent subject the claimant to detriment?
- f) If so, was it done on the ground set out at paragraph 7c)?

11. The complaint of direct discrimination contrary to section 13 Equality Act 2010

- a) The claimant's age group is 46 and above and he compares himself with people in the age group 20s and 30s.
- b) Did the respondent do the following things:
- i) Joanna Jarecka said to the claimant *'your picking rate is not good because of your age; you are too old to do the job, meanwhile; other people ages 25-30 picking rate is very high.'* [age discrimination only]
 - ii) Chris Cummings said to the claimant *'I can sack you from the job whenever I like'*.
 - iii) Rob Wilkins said to the claimant *'you can leave the job if you are not happy.'*
 - iv) Jonathan Buller said to the claimant *'I have dismissed you from the job because of your misconduct and behaviour with your colleagues and managers.'*
 - v) Liam Burke told the claimant *'I do not agree with your reports regarding health and safety issues and your concerns and reports of broken cages and broken pump trucks in DHL Services Limited warehouse at Bury Port.'*
 - vi) Reject the claimant's application for a First Line Manager vacancy on 5 September 2022? [race discrimination only]

- c) Was that less favourable treatment?
- d) If so, was it less favourable when compared with a hypothetical comparator in not materially different circumstances?
- e) Was the reason or principal reason for the treatment the claimant's age or race or religion?
- f) In the case of age, was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:
 - i) To ensure that employees were performing well and hitting their KPI/targets.
 - ii) To maintain customer relationships/avoid losing customer contracts due to poor performance/delays caused.
- g) The Tribunal will decide in particular:
 - i. Was the treatment an appropriate and reasonably necessary way to achieve those aims.
 - ii. Could something less discriminatory have been done instead.
 - iii. How should the needs of the claimant and the respondent be balanced?

12. The complaint of harassment on grounds of age contrary to section 26 Equality Act 2010

- a) Did the respondent do the following things: (the claimant relies upon the allegations identified as treatment in relation to the complaint of direct discrimination above)
- b) If so, was it unwanted conduct?
- c) If so, did it relate to the claimant's age or race or religion?
- d) If so, did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading or offensive environment for the claimant?
- e) If not, did it have that effect? The Tribunal will take account of the claimant's perception, the other circumstances of the case and whether it is reasonable for that conduct to have that effect.

13. The complaint of unlawful deduction from wages contrary to section 13 Employment Rights Act 1996

- a) What sums were properly payable under the claimant's contract of employment for the period from 23 September 2022 up to his dismissal on 3 October 2022?
- b) What sums were paid to the claimant? Is there a difference?
- c) If so, was any deduction required or authorised by statute?
- d) If not, was any deduction required or authorised by a written term of the contract?
- e) If so, did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- f) If not, did the claimant agree in writing to the deduction before it was made?

Evidence used

14. The claimant called the following witnesses in addition to giving his own evidence:

- a) Muhsan Ahmed UI Nisa (former work colleague with the respondent).
- b) Yasir Shah (former work colleague with the respondent)

15. Several issues arose from the claimant's witnesses being able to give their evidence. The claimant had not warned them that they needed to be available for the hearing and they tried to fit the giving of their evidence into their normal working day.

16. Mr UI Nisa was working nights and was only able to join by phone on day 1 and it was not clear that he could access the documents while giving evidence.

17. Mr Shah attempted to join on day 1 and the Tribunal tried to interpose his evidence during the claimant's cross examination. However, we agreed with him taking break during work and calling from his van, using his phone for both the CVP call and also to access documents. This simply did not work and in the end Judge Johnson decided that Mr Shah would be released from his affirmation. He then ordered that the claimant should make attempts to have the witnesses join from a fixed address either at their homes, work premises or with the claimant so that they could access the documents and sustain a CVP call on day 2. He briefly joined the hearing but did not remain in the hearing long enough to have him called to give evidence and the claimant confirmed he would secure his attendance during Mr Shah's break at 10:20am on day 3 and that he would have a separate device present so that he could access his documents. This was successful and his evidence was

completed within the 30 minutes that he had available during his morning break.

18. A further issue which only became apparent as the hearing progressed was that the claimant did not speak English as his first language and this was also the case for Mr Ul Nisa and Mr Shah. On balance, it was agreed that they had sufficiently good English to be asked questions regarding their experiences while working for the respondents in relation to their witness statements and with limited reference to documents within the bundle. No interpreter was required and one had not been requested by the claimant. It was proportionate and in accordance with the overriding objective and the relevant chapter of the Equal Treatment Bench Book to continue with the hearing with appropriate flexibility and allowances being made for the claimant as an unrepresented party.
19. The respondent called the following witnesses to give evidence:
 - a) Joanna Jarecka (first line manager)
 - b) Christopher Cummings (shift manager)
 - c) Liam Burke (operations manager)
 - d) Mitchell Lawlor (operations management systems and witness of the probation meeting which resulted in the claimant's dismissal)
 - e) Annabel Couser (HR)
 - f) Robert Wilkins (first line manager)
20. There were two bundles which were a primary bundle of 205 pages including the proceedings, policies and procedures and other key documents. There was also a supplemental bundle of 22 pages and which was produced by the respondent and agreed by the claimant.
21. The claimant did seek to rely upon additional documents which he produced during the morning of day 1 while the Tribunal was reading the papers. Ms Kaye accepted that one of the documents related to matters under consideration concerning the claimant applying for a line management role and should be added to the bundle, subject to the respondent reserving their position as to an application for costs should any prejudice ultimately arise from the late disclosure. The Tribunal agreed with Ms Kaye that the second set of documents was not relevant as it related to emails or messages from an online group, some of whom were anonymous and which did not identify the employer they were complaining about within those messages. We declined to allow their inclusion into the evidence before the Tribunal as they had no evidential value and should have been disclosed as part of the normal disclosure ordered by Judge Batten at the PHCM on 5 July 2024.
22. Ms Kaye also produced a cast list, a chronology and a list of key documents which were evidence as such but were useful for the Tribunal's consideration of this case. The claimant confirmed he did not dispute their contents.

Findings of fact

23. The parties should note that the Tribunal's findings of fact do not seek to deal with every point where the parties disagree, they simply record what is relevant to the issues which the Tribunal is being asked to consider. If the discussion of an incident or point is not mentioned within these findings, it does not mean that it has not been considered by the Tribunal, simply that it is not relevant to the issues and the findings that we are required to make.
24. In terms of the findings that we make, the Tribunal has reached its decision on what it considers to be on balance of probabilities the most likely way/reason in which an incident arose.

The respondent

25. The respondent (DHL) is a large global logistics company and is understood to have many facilities within the UK dealing with parcels, freight and supply chains.
26. It is a large employer and has access to significant HR and legal support and has established policies and procedures dealing employee relations and health and safety matters.
27. Policies and procedures which were referred during this hearing were as follows:
- a) Absence Policy
 - b) Company Search Policy
 - c) Substance Abuse Policy

The claimant and his contract of employment

28. The claimant (Mr Saeed) began working for DHL in the position as a warehouse operative with a start date of 26 July 2022. A contract of employment was provided to Mr Saeed on 1 August 2022 and he signed and agreed his terms and conditions of employment on the same day, (pp77-87). His workplace was described as DHL Supply Chain, Bury Point, Bury Road, Manchester.
29. The contract of employment inevitably covered a wide range of matters but the Tribunal has noted those issues which are relevant to this case. His normal 'average' hours of work were recorded as being 40 hours with a working pattern of 'any 5 from 7', which is understood to be 5 days in every 7 days, (p78). Shift work hours were described as worked on a shift pattern with the pattern being notified in advance by Ms Saeed's line manager. An employee was required to work all of the hours allocated on the rota given, but that shifts could be changed with a minimum of 1 weeks' notice '*in accordance with operational requirements*', (pp78-9).
30. Mr Saeed's salary was a basic figure of £22,713.00 per annum gross, paid on a monthly basis. In addition to the basic salary, Mr Saeed's role attracted a

shift premium for hours worked outside the normal 06:00am to 18:00pm day shifts based upon when the 'unsocial' hours were worked, (p79). Overtime was also payable should an employee work beyond 45 hours in a working week. Mr Saeed was entitled to 33 days paid holiday leave during each holiday year which ran from 1 April to 31 March, (p80). Leave must be agreed with a line manager before it could take place. There was an agreed contractual entitlement for DHL to deduct annual leave entitlement from any monies owed to an employee when his employment ended with them, where the employee had taken more than his accrued annual leave entitlement at the date of termination of employment. Sick pay was only payable as SSP for the first year of employment and contractual sick pay began to be payable as continuous employment increased beyond this period (p81).

31. It should be noted that this case involved an employee working a probationary period of 13 weeks which could be extended upon the discretion of DHL as employer. Once an employee successfully completed their probation period, the relevant notice period became 1 month from either side, (p79 and p82).
32. The Tribunal understood that at the he began working for DHL he was also working at Manchester Airport and although the Tribunal did not hear evidence as to precise hours of work relating to this role, Mr Saeed confirmed that he was still working shifts with the Airport during his probationary period into August 2022.
33. DHL had an Absence Policy which explained how absences were managed and how employees should report absences when they take place. Mr Saeed signed his agreement that he had read and understood the policy on 26 July 2022, (p74).
34. Absence reporting was clearly described within the policy and employees were required to report any absence to their line manager by telephone at least 2 hours before their shift was due to begin. Contact should then continue on a daily basis, (p72). Unacceptable absence trends and absence reviews were also included within the policy.
35. Mr Saeed also signed his agreement to the DHL Company Search Policy and the Substance Abuse Policy on 26 July 2022, (pp75 and 76).

The claimant's induction

36. Mr Saeed received in house training when he began working for DHL and this involved 3 days of induction. This included training in safe systems of work, site safety rules and the Health and Safety policy which he signed as completed on 26 July 2022, (p99). The available safe systems of work documents within the bundle and accepted by the Mr Saeed revealed he had been trained in General Yard Operation (p91), and the handling of roll cages, (p93). The roll cages were moveable and were used to hold and transport items for picking and like many pieces of heavily used work equipment at DHL's workplace, they could become damaged. Mr Saeed acknowledged that should they and also the pallet ('pump') trucks become damaged, they must be tagged and isolated in a designated area in the workplace and he

was recorded as understanding this process in training sign off, (p93). This was known as being 'red tagged'.

Health and safety issues in the workplace

37. Mr Saeed confirmed that damaged roll cages should not then be used until they were but did argue that some operatives would retrieve the unrepaired cages and put them back into circulation with the other cages. However, each operative including Mr Saeed had a duty to carry out a check of each piece of equipment was not damaged and if it was, they were required to red tag it and place it in the isolated area. This was supported by both Ms Jarecka and Mr Wilkins who also confirmed that if no undamaged cages or trucks were available at the time, operatives would be allocated other duties.
38. Mr Saeed argued throughout the hearing that superficially DHL had good health and safety practices documented but in reality, these practices were not followed. The Tribunal did not accept that this was the case as the manager's witness evidence concerning this matter was credible and consistent. Indeed, this was supported by later management intervention by management concerning Mr Shah who gave evidence in support of the claimant's case and who was rebuked for using a damaged cage in the workplace on 1 March 2023. This was a supplemental document which the Tribunal accepted was relevant and could be included as part of the documentary evidence.
39. There was also a big yellow notice board by exit of the warehouse which held a bundle of blank 'SLAM ALERT!' report documents which could be torn off and completed by staff to report any hazards, unsafe acts, unsafe conditions, near miss or safety concerns, (p143). Mr Saeed confirmed that he knew of the SLAM documents being available, but that they could not be readily accessed on the shop floor.
40. Again, the Tribunal did not accept that this was credible and finds that the consistent evidence of managers was on balance correct and that Mr Saeed was trained to use these documents and could readily access them from the yellow notice board. They had been identified during his induction and he was told that SLAM forms should be provided to a line manager or the Health and Safety representative Colin Shannon, (p143).
41. Mr Saeed said that most of his reports were made to his line managers who said they would report them for repair on his behalf. The Tribunal concluded that Mr Saeed showed a pattern of behaviour during his probation where he would only refer to safety matters when he was being challenged about his picking rate by managers and while this might explain occasional reductions in performance, but not throughout a whole day. On balance we felt that these concerns were a deflection tactic to avoid addressing underlying performance issues.

Working time and performance within the warehouse

42. Mr Saeed's working pattern involved 5 shifts working on with 3 shifts off work. As line managers had a slightly different working pattern, he would not always have the same First Line Manager, (FLM) or Shift Operation Manager. However, both Ms Jarecka and Mr Wilkins as FLMs had good experience of managing as did the Shift Operations Managers such as Mr Cummings.
43. Although the workforce was diverse, the Tribunal was not provided with data which confirmed how this applied to management levels. Ms Jarecka gave some evidence that 55% of the workforce were non white and that there were non white FLMs within the workplace. All the managers who gave evidence were white but the Tribunal accepts that DHL was more broadly, a diverse workforce.
44. DHL had a contract with the supermarket chain Morrisons and the performance indicators within that contract required warehouse operator to perform at a 100 item pick-up rate. This meant that each operator was typically and on average expected to pick 100 items, each hour. They used a handheld scanner which was connected to the Wi-Fi system within the warehouse. Management would be able to monitor the performance of each operator in real time and the Tribunal accepted that FLMs would be anxious each shift. Mr Saeed accepted that targets were a necessary part of the job.
45. Ms Jarecka explained that the scanner would locate and inform operatives where items could be found so that they could add them to their pallet. There were three areas within the warehouse, chilled, frozen, and ambient and the scanner would give the employee the most efficient order in which to pick them.
46. Mr Saeed said that while operatives were told that they must return their scanners to the charging point, this did not always happen. Mr Cummings gave evidence on behalf of DHL concerning this matter during the hearing. He said that a fully charged scanner should be available at the beginning of each shift and there were enough available for each shift operative and the FLMs were responsible for getting them repaired or replaced. He accepted that sometimes an operative failed to install the scanner to the charger or forgot to place it in charge at all. He said that the additional time required to obtain a sufficiently charged scanner might delay the start time for an operative, but this would not affect the overall performance for the day. Moreover, an operative would have to be very unlucky to consistently collect a scanner which was not charged.
47. Mr Saeed argued that staff were threatened with dismissal by managers using terms like '*you can leave*' and '*the door was always open*'. This was denied by the management witnesses who gave evidence to the Tribunal and in the absence of any other evidence supporting this allegation made by Mr Saeed, we cannot accept that these threats were made.
48. Mr Wilkins credibly recalled a conversation where Mr Saeed told him that he could leave DHL and could '*go and get a job wherever he wanted*' but denied

that he said anything in response to this. Similarly, Ms Jarecka gave evidence where Mr Saeed sought argue that his age meant he could not meet the targets set and she told him that she did not think age was a factor and that colleagues in their 50s and 60s were meeting their picking targets. Overall, the management witnesses were credible and reliable in relation to these allegations and the Tribunal do not accept what is alleged.

49. Mr Saeed accepted that some employees might be issued with additional breaks because of health issues where they required breaks. Ms Jarecka argued that as a FLM she made clear to staff that they did not need to ask for breaks relating to having a drink or using the toilet. Nonetheless, Mr Saeed believed that DHL managers had their favourites although he was not clear in his evidence as to who, what and how that favouritism manifested.

Allegations made against the First Line Managers (FLMs)

50. At the beginning of each shift the FLMs would hold a morning briefing with those operatives working that shift which explained what the targets were for the shift and what jobs should be the primary focus. The Tribunal also accepted on balance that the morning briefing also included informing those present of any health and safety issues that arose during the previous shift. All operatives were required to attend this briefing which was paid and would last for approximately 15 minutes. Picking duties and the targets associated with them would only begin once this meeting had concluded.
51. Mr Saeed argued that he was allocated pallets which required where the most difficult to complete such as those which required large and heavy items to be found and stacked. He was one of a number of pickers and Mr Cummings explained that there was no allocation by managers or evidence of favouritism in relation to who got which pallet. It was simply a question of *'first come first served'*. This was supported by other managers and we do not accept there is persuasive evidence that operatives would be given easier or more difficult picking jobs for particular pallets. Ms Jarecka agreed that sometimes an operative might get a 'bad pallet' involving big and bulky items. She said that this would be taken into consideration in terms of performance, but that it was unlikely, *'that someone would get a bad pallet every hour'*.
52. The Tribunal considered documentary evidence which demonstrated that once Mr Saeed had completed the initial 4 week reduced picking target as part of his induction, he consistently struggled to meet the normal contractual target. The available records which recorded warehouse operative's picking rates showed that Mr Saeed's failure was significantly lower than expected during August to September 2022, (p136 and p144).
53. Mr Saeed accepted that it was reasonable for management to challenge performance, but he felt it was done too harshly by them. He tried to say he was given the more difficult pallets to process compared with other colleagues and this meant that he was unable to meet the targets that were set.
54. However, the Tribunal found that this arguments were contradicted by more convincing witness evidence from the First Line Managers (FLMs) Joanna

Jarecka and Robert Wilkins who had both worked as warehouse operatives before becoming line managers.

55. Mr Wilkins initially had a good working relationship with Mr Saeed and he accepted this in his evidence during the hearing describing him as 'a good guy'. Mr Wilkins observed problems with Mr Saeed standing around and chatting and in accordance with his management role he would remind him that he should get back to work. The Tribunal noted that DHL's particular contract at this site was with Morrisons who required DHL to meet strict performance targets which if not met, could result in a fine which we understood to mean a contractual penalty payment. Understandably, FLMs were acutely aware of the need to keep the warehouse operatives on track so that the targets were met.

56. Mr Saeed was involved in an altercation which took place on 21 September 2022. Ms Janecka had noticed a significant drop in performance with 59 items being picked between 8am and 9am and 34 between 9am and 10am. She produced a contemporaneous statement and recorded that Mr Saeed would not let her speak and became agitated. She felt that she could not speak with him until he calmed down and had to leave so she could speak with Mr Wilkins. Shortly afterwards Mr Saeed spoke with Mr Wilkins and said he didn't like the way Ms Janecka approached him about the pick rates. Curiously when giving his evidence and asked whether he agreed with Ms Janecka's view that he was treating her criticism as abuse, Mr Saeed replied:

'Yes, she is saying that because she is a woman...she was very rude to me'.

Ms Janecka's sex had previously not been raised as an issue and this did suggest to the Tribunal that Mr Saeed may have struggled with a female employee being a position of authority over him as a manager. Although he did later state:

'I respect woman, I respect man',

Despite this comment, our view was that Ms Saeed was attempting 'to dig himself out of the hole' created by his earlier comments. Mr Saeed accepted that if he did raise his voice, it would be unacceptable. He also accepted when questioned by Ms Kaye that with hindsight, the way he engaged with Ms Janecka on 21 September 2022 was unacceptable and this was supported by Mr Wilkins' evidence. On balance, this incident was reasonably handled by management and it was Mr Saeed who responded unreasonably to fair management criticism.

57. Mr Saeed also argued that at this time, he mentioned to Ms Janecka that there was a lack of cleaning equipment. This was denied by both Ms Janecka and Mr Wilkins and again the Tribunal finds that this was another example of Mr Saeed deflecting criticism away from himself. It did not happen as alleged.

58. Mr Shah gave evidence in support of Mr Saeed and argued that he had witnessed him being the subject of abuse from FLMs and giving him targets which were more severe than those given to white employees. The Tribunal

did not accept that either Mr Shah or Mr Ul Nisa whom Mr Saeed had called to support his case gave credible evidence. Both their statements made broadbrush allegations of race discrimination by management towards Asian and brown skinned employees but did not provide evidence of specific occasions when this took place. Additionally, both their statements contained a great deal of similarity and oddly referred to 'Caucasian' people which is not a term used in the UK. Moreover, both also referred to the Civil Rights Act 1964 which is not part of UK legislation. These witnesses did not assist Mr Saeed case and their evidence lacked any credibility.

The ending of the claimant's probation and his dismissal

59. Following 8 weeks of employment, Mr Saeed accepted that he had passed the trigger for an acceptable number of absences under the DHL Absence Policy, having been absent on 28 July 2022, 29 July 2022, 1 August 2022 and 8 August 2022. Of these absences, Mr Saeed said that the two August absences related to agreed time off so that he could work shifts at his other job at Manchester Airport. However, the absence record showed that these were recorded as sick leave days and there is no evidence that he was allowed leave on those days to work elsewhere, (p116).

60. On 27 September 2022, he was invited to a Probation Hearing which would take place on 3 October 2022 and which would discuss his:

- a) Attitude towards work.
- b) Failing to follow company processes.
- c) Absence while on probation.

The Probationary Hearing Manager was Jonathan Buller who at the time was the Warehouse Senior Operations Manager, but who had since left DHL. However, Mitchell Lawlor was also present as a witness to the hearing and was able to give evidence during this hearing. His role was as an observer and he worked in the site office as an Operational Management Systems, (pp107-8).

61. The review was triggered by a further absence which took place on 26 September 2022 and where Mr Saeed gave a reason for his absence as being 'No car available – lives too far away to get here'. The return to work interview form signed by Mr Saeed confirmed that the absence was for one day with a return to work on 27 September 2022, (p109-110). Importantly, he did not let his manager know about the absence. Mr Saeed argued that he called the general line as he was not able to speak with relevant person. Mr Saeed accepted that he was in breach of absence reporting process.

62. The actual Probation Hearing was as Mr Lawlor put it, '*relatively brief and lasted 15 minutes.*' It consisted of Mr Buller completing the Probationary Performance Review form which asked him to consider general performance, attendance safe operation and conduct towards colleagues. There were 13 questions in total and of these:

- a) 11 criteria were given a rating of 5, which meant that Mr Saeed *Does Not Meet – Does not fulfil the performance requirements.*
 - b) One was given a score of 4 (*partially meets – has minor deficiencies (coachable)*) in relation to the criterion, *'Maintains a positive attitude to work'*.
 - c) He was given a score of 3 for his *'Adherence to standard operating procedures'* which means that he fully met that criterion and was a consistently good performer.
63. Unfortunately, overall Mr Saeed performed poorly at this review, and Mr Lawlor noted Mr Buller had particular concern regarding absence, poor picking rates despite FLMs trying to support him and being disrespectful to colleagues. Although Mr Saeed asserted that he had raised an issue regarding broken pump trucks, cages being broken and a lack of cleaning equipment, this was disputed by Mr Lawlor who had given credible evidence to the Tribunal, supported by his willingness to concede that the meeting was particularly well handled.
64. Mr Buller briefly left the meeting and returned to give Mr Saeed a letter by which had been prepared and signed by Mr Buller dated 3 October 2022. It was his decision to end the probation period with immediate effect and to terminate the contract of employment. A right of appeal was offered within the letter but Mr Saeed did not exercise this right and no appeal was requested, (p112-3).
65. Mr Saeed has argued that he had applied for an FLM role with DHL on 1 September 2021. Ms Coulser of HR confirmed that had such an application been made but it would have been handled centrally at Milton Keynes and one sift would have taken place with the recruiting team and a second sift with the recruiting manager if there were many applications. Her enquiries revealed that Central Recruitment had received an application from Mr Saeed for the Warehouse Operative role and from a Mr Faisal Saeed (but with a different email address), for the Resource Planner role which was rejected.
66. There was insufficient evidence to confirm that Mr Saeed applied for an FLM role and that if he did, he was rejected. Significantly, the recruitment process meant that it was unlikely that local managers would have been involved in the recruitment process.

Law

Unfair dismissal and detriments under the Employment Rights Act 1996

Section 100 Employment Rights Act 1996 (automatic unfair dismissal)

67. Section 100(1) Employment Rights Act 1996 (ERA), provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason for the dismissal is that (insofar as it is relevant to this case) –

- (a) Having been designated by the employer to carry out activities connected with preventing or reducing health and safety risks at work,
- (b) Being a representative on matters of health and safety/member of health and safety committee.
 - (ba) ...
- (c) Being an employee at a place where –
 - (i) There was no such representative or safety committee, or
 - (ii) There was such a representative/committee, but it was not reasonably practicable to raise the matter by those means,He brought to his employer's attention, by reasonable means, circumstances connected with work which they reasonably believed were harmful or potentially harmful to health or safety.

Section 44 Employment Rights Act 1996 (detriments arising from health and safety matters)

68. Section 44(1) ERA provides that an employee has a right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that (insofar as it is relevant to this case) –

- (a) Having been designated by the employer to carry out activities connected with preventing or reducing health and safety risks at work,
- (b) Being a representative on matters of health and safety/member of health and safety committee.
 - (ba) ...
- (c) Being an employee at a place where –
 - (i) There was no such representative or safety committee, or
 - (ii) There was such a representative/committee, but it was not reasonably practicable to raise the matter by those means,He brought to his employer's attention, by reasonable means, circumstances connected with work which they reasonably believed were harmful or potentially harmful to health or safety.

69. Section 48 provides that an employee may present a complaint to the Tribunal where they believe they have been subjected to a detriment under section 44.

Discrimination and harassment complaints under the Equality Act 2010

Section 13 Equality Act 2010 (EQA) (direct discrimination)

70. Section 13(1) provides that 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.

71. In relation to the protected characteristic of age only, section 13(2) provides that A does not discriminate against B if they can show the treatment in question to be a proportionate means of achieving a legitimate aim.

72. Section 23 provides that when comparing B with another, there must be no material difference between the comparator's circumstances.

Section 26 EQA (harassment)

73. Section 26(1) provides that a person (A) harasses another (B), if they engage in unwanted conduct related to a relevant protected characteristic, and that conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

Section 136 EQA (burden of proof)

74. In complaints relating to a contravention of the EQA, section 136(2) provides that if there are facts from which the Tribunal could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Tribunal must hold that the contravention occurred.

75. This is qualified however, by section 136(3), which provides that section 136(2) does not apply if A can show that they did not contravene the provision in question.

Discussion

The complaint of unfair dismissal for health and safety reasons contrary to section 100 of the Employment Rights Act 1996

76. Firstly, the Tribunal needed to consider whether the claimant was an employee at a place where there was no health and safety representative or committee, in accordance with section 100(1)(c)(i) ERA 1996. DHL is a large company and its Bury warehouse had many employees. The Tribunal did hear evidence during the respondent's case that there were health and safety representatives although no evidence was given about a health and safety committee being in existence at the relevant time. However, it is accepted that there would have been health and safety representatives whom Mr Saeed could have raised concerns with working for DHL.

77. Allowing for the positive finding regarding health and safety representative, the Tribunal would have had to consider whether Mr Saeed was an employee at a place where there was such a representative or committee but it was not reasonably practicable for him to raise health and safety concerns with his representatives by those means, in accordance with section 100(1)(c)(ii) ERA 1996. The Tribunal heard convincing evidence during the hearing that Mr Saeed was well trained in matters of health and safety and also how to report these matters to management as described in the findings of fact above. We do not accept that this was a workplace where immediate risks could not be raised and had he wanted to do so, Mr Saeed would have had an opportunity to raise those matters with safety representatives or with managers. The FLM line managers were also readily available and were responsive to health and safety concerns considering these matters as part of the team meetings at the beginning of each shift. Indeed, there was clear evidence of Mr Saeed being able to raise matters of health and safety with his FLMs as described in the finding of fact above, even if these on balance appeared to be a means of deflecting criticism of his performance.

78. Accordingly, even if Mr Saeed was able to demonstrate that he could not reasonably and practicably raise health and safety concerns with safety representatives and instead had to bring them to the attention of DHL as his employer, it is still necessary to consider whether he brought those matters alleged below to FLM or other manager's attention by reasonable means. These must be circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety, in accordance with section 100(1)(c) ERA 1996.

79. Mr Saeed relies upon the following allegations:

- a) On 19 September 2022, the claimant complained to Joann Jarecka and stated *'The pump trucks are broken, some of the pump trucks have malfunction of hydraulic machines and others have broken wheels which puts and extra pressure on workers while lifting and handling the goods and might result in injuries including the back injury to workers. The door of the cages (for carrying goods) are broken and malfunctioning. The locks of doors were missing. The sudden opening of the doors have resulted in minor injuries to the workers including me and could have resulted in severe injuries.'*

In relation to this allegation, the Tribunal noted in its findings above that a concern of this nature was made to Ms Jarecka on this date. However, it was made in response to him being challenged by her about his picking rate. We were unable to accept that it represented a genuine belief of health concerns. There were clear systems of work in place for dealing with defective cages and trucks and all employees were trained in how to deal with them using the red tag and isolation system. Had he genuine concerns, there would have been evidence that Mr Saeed had previously used the SLAM forms which he was aware of and which were readily available. There was no evidence that he had previously completed such a form and that management had not been aware or had ignored such requests. On balance of probabilities, it is not accepted that this complaint was made with a genuine belief consistent with the provisions of section 100(1)(c) ERA 1996.

- b) On 21 September 2022, the claimant complained to Joanna Jarecka and Rob Wilkins and stated *'The poor cleaning equipment e.g. absence of cleaning mop, mop buckets which caused people to slip, trip and falls. There was no cleaning equipment at the tool stations.'*

Mr Wilkins denied that these comments were made on this particular date and in any event the equipment which Mr Saeed referred to was readily available. On balance and having considered the evidence, the Tribunal did not accept this complaint was actually made as alleged.

- c) On 27 September 2022, the claimant complained to Liam Burke and stated *'The pump trucks are broken, some of the pump trucks have malfunction of hydraulic machines and others have broken wheels which puts extra pressure on workers while lifting and handling the goods and might result in injuries including back injury to workers. The doors of the cages (for carrying goods) are broken and malfunctioning. The locks of the doors were missing. The sudden opening of the doors have resulted in m minor injuries to the workers*

including me and could have resulted in severe injuries.’ The poor cleaning equipment e.g. absence of cleaning mop, mop buckets which caused people to slip, trip and falls. There was no cleaning equipment at tool stations in the entire warehouse.’

Mr Burke did speak with Mr Saeed on this date about the altercation with Ms Jarecka which took place on 19 September 2022 and in evidence he said that the alleged comments above were simply not made. The Tribunal having considered the available evidence and the relative credibility of the witnesses, concluded on balance that this complaint was not made as alleged.

- d) On 3 October 2022, the claimant complained to Jonathan Buller and stated *‘The pump trucks are broken, some of the pump trucks have malfunction of hydraulic machines and others have broken wheels which puts extra pressure on workers while lifting and handling the goods and might result in injuries including back injury to workers. The doors of the cages (for carrying goods) are broken and malfunctioning. The locks of the doors were missing. The sudden opening of the doors have resulted in minor injuries to the workers including me and could have resulted in severe injuries.’ The poor cleaning equipment e.g. absence of cleaning mop, mop buckets which caused people to slip, trip and falls. There was no cleaning equipment at tool stations in the entire warehouse.’*

This was alleged to have happened at the Probation Review Hearing with Mr Buller. Mr Lawlor whose evidence was credible convincingly denied that this allegation and on balance, the Tribunal does not accept that this allegation was made as alleged.

80. Consequently, the Tribunal must consider whether the reason or principal reason for the dismissal was that Mr Saeed had complained about the health and safety matters which he alleged above. The Tribunal was not persuaded that the allegations actually happened as alleged, other than that made to Ms Jarecka. But on this occasion, we did not accept that it was genuinely made under section 100(1)(c) ERA. However, even if it had been made for genuine reasons in accordance with these provisions, we find that the dismissal happened for the reasons described by Mr Lawlor. This was Mr Buller’s decision at the Probation Review Meeting that there was a failure by Mr Saeed in relation to the probation criteria and that the decision was in no way connected with complaints which had been made concerning health and safety issues in the workplace.

81. Mr Saeed was therefore fairly dismissed by DHL and in any event did not have sufficient service to bring an ordinary unfair dismissal complaint under section 108 ERA 1996.

The complaint of detriments for health and safety reasons contrary to sections 44 and 48 Employment Rights Act 1996

82. There is no need to repeat the Tribunal’s findings in relation to there being a health and safety representative in accordance with section 100(1)(c)(i) ERA 1996) or the question of reasonable practicability under section 100(1)(c)(ii)

ERA as the same findings apply as were made above in relation to the complaint of automatic unfair dismissal under section 100.

83. Similarly, the Tribunal need not repeat its findings concerning whether Mr Saeed brought to his employer's attention by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety, in accordance with section 100(1)(c) ERA 1996. Only the complaint made to Ms Jarecka was found to have been made and then not for genuine reasons. However, for the avoidance of doubt, the Tribunal has considered the alleged detriments which Mr Saeed says were made against him because of the concerns which he raised.

84. In relation to each of the detriments alleged, the Tribunal finds as follows:

a) Chris Cummings told the claimant *'I can sack you at any time'*.

The Tribunal did not hear any convincing evidence that these comments were made and having heard the witness evidence during the hearing, finds on balance that Mr Cummings was correct and the alleged comments were made as alleged.

b) Joanna Jarecka told the claimant *'Your picking rate is not good as well as age related harassment'*.

It is fair to say that Ms Jarecka challenged Mr Saeed about his picking rate as considered in the findings above. She had a right to do so because there was clear evidence of underperformance on his part and a significant gap between his picking target and what he was achieving. Any reference to age was prompted by Mr Saeed arguing that employees in their 20s found it easier than he did to meet the targets set. In reply and again quite reasonably, Ms Jarecka noted that older employees could perform at the required level. This did not amount to a detriment and even if it did, it was not related to any health and safety concerns. As we have already discussed, Mr Saeed had a pattern of raising concerns when challenged about performance. As such, this allegation was not triggered by concerns being raised.

c) Rob Wilkins told the claimant *'You can leave your job at any time'*.

Mr Wilkins was a credible and reliable witness and denied that he made this statement to Mr Saeed. On balance, we accept that what actually happened was that Mr Saeed had said to Mr Wilkins he could get another job anywhere if he decided to leave DHL. It was therefore an expression of confidence on the part of Mr Saeed, rather than an instance of detrimental treatment by Mr Wilkins towards him.

d) Jonathan Buller said to the claimant *'I have dismissed you from the job because of your misconduct and behaviour and your colleagues and managers.'*

This was part of the reasoning behind the decision made by Mr Buller to dismiss Mr Saeed. It was, however, a detriment arising from poor performance during the probationary period and was in no way connected to matters of health and safety. We did not accept that any health and safety concerns as previously alleged were repeated to Mr Buller at the Probation Review either.

- e) Liam Burke told the claimant *'I do not agree with your reports regarding health and safety issues and your concerns and report of broken cages and broken pump in DHL Services Limited warehouse at Bury Point.'*

The Tribunal was not convinced that these comments were made by Mr Burke and we accepted his evidence denying that he said them.

- f) Offered easy jobs to their favourite workers and not the claimant.

Apart from a bare allegation made by Mr Saeed and allegations made by his witnesses in statements which lacked credibility, there was simply no evidence that this was happening in the DHL workplace.

- g) Gave comfort breaks to their favourite workers and not the claimant.

This allegation was specifically denied by Ms Jarecka and Mr Wilkins whose evidence was consistent and reliable throughout the hearing. They accepted that employees with relevant disabilities could have additional breaks if their condition necessitate them. But even allowing for this, there were no restrictions on any employee being able to use the toilet or to get a drink of water.

85. For the reasons given above, the Tribunal cannot accept that most of the allegations happened as alleged or amounted to detriments. Even in the case of the comments made at the Probation Review, there was insufficient evidence to persuade us that the comments made by Mr Buller were related to health and safety concerns. For these reasons this complaint cannot succeed.

The complaint of direct discrimination contrary to section 13 Equality Act 2010

86. In relation to age discrimination, Mr Saeed asserted that his age group at the material time was 46 and that he compares himself with people in the age group 20s and 30s. This was not disputed by the respondent DHL, but the Tribunal also noted that warehouse operatives were also employed who were in the age group 50s and 60s. This is a relevant consideration when considering allegations of direct age discrimination.

87. Mr Saeed relied upon several allegations of less favourable treatment as follows:

- a) Joanna Jarecka said to the claimant *'your picking rate is not good because of your age; you are too old to do the job, meanwhile; other people ages 25-30 picking rate is very high.'* [age discrimination only]

This allegation has already been discussed in relation to the complaints brought under the ERA. Any discussion regarding age was raised by Mr Saeed and Ms Jarecka simply explained that she could not see age as an issue as employees in their 50s and 60s managed to meet targets.

- b) Chris Cummings said to the claimant *'I can sack you from the job whenever I like'*.

The Tribunal has already explained that it does not accept that this happened.

- c) Rob Wilkins said to the claimant *'you can leave the job if you are not happy.'*

The Tribunal has already explained that it does not accept that this happened.

- d) Jonathan Buller said to the claimant *'I have dismissed you from the job because of your misconduct and behaviour with your colleagues and managers.'*

The Tribunal has already explained that this was part of the reason for the dismissal but that there was no evidence that the protected characteristics played a part in this decision based upon the available documentation and witness evidence.

- e) Liam Burke told the claimant *'I do not agree with your reports regarding health and safety issues and your concerns and reports of broken cages and broken pump trucks in DHL Services Limited warehouse at Bury Port.'*

The Tribunal has already explained that it does not accept that this happened as alleged.

- f) Reject the claimant's application for a First Line Manager vacancy on 5 September 2022? [race discrimination only]

There was no evidence that such an application was made.

88. Only the dismissal or the explanation for the dismissal decision by Mr Buller were accepted to have happened as alleged. However, even though this could be considered as less favourable treatment, it was for reasons wholly unconnected with Mr Saeed's protected characteristics. Mr Saeed would have been clearly identifiable as an Asian and as a man of Pakistani birth, it was likely that colleagues would have believed him to be Muslim. They would probably have estimated his age to be over 40. But for finding of direct discrimination to succeed, the Tribunal need to see something more than this to shift the burden of proof to the employer under section 136 EQA. There was no evidence which suggested underlying beliefs or actions of a discriminatory nature and these complaints cannot succeed.

The complaint of harassment on grounds of age contrary to section 26 Equality Act 2010

89. Mr Saeed repeats the allegations of treatment in the direct discrimination complaint above and there is no need to repeat them here. Instead, the Tribunal will consider its findings in relation to the alleged treatment and apply them to the question of whether the test of harassment on grounds of one or more of the three asserted protected characteristics are made out.
90. Most of the allegations were concluded by the Tribunal to have not happened as alleged. There was, however, the conversation with Ms Jarecka which related to age and Buller's decision to dismiss in relation to all three protected characteristics.
91. Ms Jarecka's conversation regarding the extent to which age related to the ability of an operative to meet targets could not reasonably be considered unwanted conduct even if it did relate to age. Mr Saeed prompted the question of age himself and she disagreed. Even it could be considered unwanted conduct (which we do not accept), however, unhappy Mr Saeed was with the answer given, it could not reasonably be considered as having the effect of creating an intimidating, hostile, degrading environment. Ms Jarecka gave a reasoned answer which justified her belief that the claimant's age was not a factor, in that older colleagues in their 50s and 60s could meet the targets which he had been set.
92. Mr Buller's conversation regarding dismissal because of Mr Saeed's misconduct and behaviour could not be considered unwanted conduct given that it arose as part of a formal probationary process. This is the case even though Mr Lawlor was critical of Mr Buller at the hearing. His comments were reasonable in all the circumstances. However, even if they were (which we do not accept), they could not reasonably be considered as creating an intimidating, hostile or degrading environment. They were said within the context of a formal meeting and not as a casual remark on the floor of the warehouse. Mr Saeed no doubt disliked being told of Mr Buller's decision, but it was nonetheless a decision he was entitled to make within the context of the hearing.
93. Consequently, for these reasons, we are unable to accept that harassment took place as alleged.

The complaint of unlawful deduction from wages contrary to section 13 Employment Rights Act 1996

94. Finally, the Tribunal were asked to consider that the sums properly payable under Mr Saeed's contract of employment for the period from 23 September 2022 up to his dismissal on 3 October 2022 were paid. The Tribunal heard evidence from Ms Coulser of HR concerning the pay received for this period and she referred to the relevant pay documentation within the bundle demonstrating that Mr Saeed was correctly paid.

95. The Tribunal concluded that he was paid for the hours that he had worked up to and including the date of termination. He was also paid one week's notice which is consistent with Mr Saeed's rights under section 86 of the Employment Rights Act 1996, given that he had not completed his probation period and had worked less than two years. The contract of employment would have provided for one month's notice had the probation period been successful but clearly this was not the case for Mr Saeed.
96. There was no convincing evidence that Mr Saeed was entitled to any bonus payments which is not surprising given the relatively brief period of completed service and that he did not become a permanent member of staff.

Conclusion

97. The Tribunal acknowledges that discrimination on grounds of age, race and religion still exists in society and that this can be found amongst people in the workplace. Some of these people may be in positions of authority and power where these unattractive and irrational beliefs can lead to decisions being made regarding employees which are wrong or disproportionate to the matters which they are dealing with. It is often the case that these behaviours are not displayed expressly but are revealed by patterns of behaviour which leave a Tribunal with no option but to conclude an employee's protected characteristic is the sole or principal reason for the decision being made.
98. In this case however, the Tribunal has been unable to find any convincing evidence that Mr Saeed was the victim of less favourable treatment in relation to his age, race or religion. Indeed, regarding the last of these three protected characteristics very little was heard if anything in connection Mr Saeed's religion. The Tribunal were left to conclude that the background to this case simply involved an employee who was unable to meet the requirements of the role during his probation period and due to a combination of consistent and continuing performance, poor conduct towards colleagues and a failure to follow the DHL absence procedure. This meant that management were left with no option but to dismiss him and the Tribunal considered that any employee regardless of their protected characteristics behaved in this way, would have been reasonable in deciding to dismiss for failure of the probation period.
99. Accordingly, the decision of the Tribunal in this case must be as follows:
- a) The complaint of unfair dismissal for health and safety reasons contrary to section 100 of the Employment Rights Act 1996 is not well founded which means it is unsuccessful.
 - b) The complaint of detriments for health and safety reasons contrary to sections 44 and 48 Employment Rights Act 1996 is not well founded which means it is unsuccessful.
 - c) The complaint of direct discrimination on grounds of age contrary to section 13 Equality Act 2010 is not well founded which means it is unsuccessful.

- d) The complaint of direct discrimination on grounds of race contrary to section 13 Equality Act 2010 is not well founded which means it is unsuccessful.
- e) The complaint of direct discrimination on grounds of religion contrary to section 13 Equality Act 2010 is not well founded which means it is unsuccessful.
- f) The complaint of harassment on grounds of age contrary to section 26 Equality Act 2010 is not well founded which means it is unsuccessful.
- g) The complaint of harassment on grounds of race contrary to section 26 Equality Act 2010 is not well founded which means it is unsuccessful.
- h) The complaint of harassment on grounds of religion contrary to section 26 Equality Act 2010 is not well founded which means it is unsuccessful.
- i) The complaint of unlawful deduction from wages contrary to section 13 Employment Rights Act 1996 is not well founded which means it is unsuccessful.

Employment Judge Johnson

Date: 28 October 2024

JUDGMENT SENT TO THE PARTIES ON
Date: 4 November 2024

FOR THE TRIBUNAL OFFICE

Notes

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