EMPLOYMENT TRIBUNALS

Claimant: **Mr R Daudet**
Respondent - **Computacenter (UK) Limited**

Heard at: **London South Hearing Centre in person**

On **21-25 October 2024**

Before: **Employment Judge McLaren**
Members: **Ms. H Bharadia**
Ms. Y Batchelor

Representation
Claimant: **Mr C Ijezee, Solicitor advocate**
Respondent: **Mr C Stone, KC**

JUDGMENT having been sent to the parties on 22nd November 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

Background

1. The claimant was employed by the respondent in the Technical Resource Group as a Senior Computer Analyst from February 2008 until his dismissal on 6 December 2022. the Claimant's claims are of: Unfair dismissal under s 98 ERA; Direct discrimination because of race and/or religion or belief under s 13 Equality Act; Harassment related to race and/or religion or belief under s 26 Equality Act and breach of contract.

2. The Respondent is a company operating throughout the UK and internationally providing IT equipment, solutions and services to businesses and public authorities.

3. In brief, on 17 August 2022 the claimant was introduced by his manager to a female employee in the technical resource group who'd recently started working for the respondent. The claimant contacted that individual that day and during August, September and October sent further messages. The respondent considered that these veered away from and had little to do with work. The individual complained that the claimant's conduct made her uncomfortable. The matter was investigated, and the claimant was invited to a disciplinary meeting to answer an allegation that he had harassed this employee. He was dismissed following a disciplinary process.

4. The claimant states that he did not harass this female employee. He considers that the reason he was dismissed was a consequence of the expression of a religious belief in dreams/premonitions to this female employee which do not amount to harassment. It is the claimant's case that he was directly discriminated against by being subjected to disciplinary proceedings and dismissed. He further believes that he was himself subject to harassment related to his black race and/or religious belief in dreams/premonitions by being subjected to a disciplinary procedure and dismissed. He considers that the dismissal was unfair as no reasonable employer would summarily dismiss for expressing religious or philosophical beliefs. He also believes it is automatically unfair because the reason or principal reason was because he asserted a statutory right to express his religious belief in dreams/premonitions.

5. We heard evidence from the claimant on his own behalf and read witness statements from Mr Thakur, a former work Colleague and friend and Ms Johnson a close family friend. For the respondent we heard from Ms Rowe, technical team manager who conducted the investigation, Mr Saunders who was a disciplinary manager and decision-maker in relation to the claimant's dismissal and Ms Cook who provided HR support during the disciplinary process.

6. We were provided with a bundle of 540 pages together with a supplemental bundle of 176 pages by the claimant.

7. In reaching our decision we took account of all the pages in the bundle to which we were referred, the witness evidence, the claimant opening submissions, the parties' helpful written submissions and expanded oral submissions.

Credibility

8. The claimant's representative accepted that Ms Roe and Mr Saunders were credible witnesses. We were asked to consider Ms Cook as not credible. It was submitted that she was evasive, and reference was made to part of her statement setting out her opinion about the claimant's dream. She was also criticised for not looking up the employment history of a Colleague when the dates of their employment had been raised in cross examination of another witness.

9. We do not find that, having not been asked by anyone to do so, a failure to look up additional information on a start date goes to credibility. We also understood that Ms Cook was giving her opinion in her statement, it does not mean she is a decision maker. We find her description of the way in which the HR team operates within the respondent's business to accord with this panel's industrial experience. We found that she tried hard

   to answer the questions put to her but on occasion she found the questions put to her somewhat confusing but was able to answer when they were clarified. We therefore generally found all the respondent's witnesses to be credible.

10. In contrast, we found that the claimant's answers to cross examination questions were, on occasion, contradictory. For example, he agreed that the hearing manager was an appropriately impartial person to do the disciplinary hearing but on the second day of giving his evidence stated that was not the case. He gave evidence that the notes of the investigation and disciplinary hearings were incorrect. In evidence he gave more details of what he recalled he said than were in his witness statement. When he was asked why additional details had been given for the first time now, he explained they were not in his witness statement because he knew that he would be cross-examined on these points. We find it unlikely that some two years later he would have additional recall of matters that were not in his statement or that he would have excluded pertinent evidence relying on cross examination to give him the opportunity to give this evidence.

11. The claimant introduced matters that he had never raised before. For example, it was said that the respondent had mis-read the word "haunting" as "hunting" and taken action on that basis. He also said that the enclosures he sent with the email of 3 November were not the ones he intended to send, and he had by mistake sent a draft of the email of 3 November and it was a mistake to send it. That was not something he had said at any point, including his witness statement. Taking all these matters into account we find that the claimant was not a credible witness. Where there is a conflict of evidence, we would generally prefer the evidence of the respondent's witnesses

<u>Issues</u>

12. The issues had been agreed between the parties at the outset of the hearing we confirmed that they were as follows.

A. Unfair Dismissal

1. What was the reason or principal reason for dismissal? The Respondent asserts that the reason relates to the Claimant's conduct.

2. Was the dismissal a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996("ERA")?

3. Was the dismissal procedurally fair?

4. Did the Respondent have a genuine belief that the Claimant had committed gross misconduct and reasonable grounds for that belief.

5. Did the Respondent carry out a sufficient and reasonable investigation?

6. Was the decision to dismiss for this reason within the range of reasonable responses of a reasonable employer?

7. If the dismissal was procedurally unfair, what was the chance of the Claimant being fairly dismissed if a fair procedure had been followed?

8. Did the Claimant contribute to the dismissal and, if so, what reduction should be made to any basic and/or compensatory award?

9. Should there be any reduction to compensation for the Claimant's failure to appeal the decision to summarily dismiss him further to the ACAS Code on Disciplinary Procedures?

B. Wrongful Dismissal

10. Did the Respondent dismiss the Claimant without notice?
11. Was the Respondent entitled to dismiss the Claimant without notice for misconduct?

12. How much notice is the Claimant entitled to receive from the Respondent?

C. Direct discrimination because of race and/or religion or belief

13. The Claimant asserts that:

a. his race is black,
b. his religion is Christianity; and
c. he strongly believes in precognitive/premonitory/prophetic dreams and premonitions and, accordingly, that certain dreams and premonitions predict or foretell the future, and he is gifted with the psychic ability to foresee future events in his dreams and premonitions, the majority of which come to pass; and he believes that his dreams and premonitions always come true (Belief).

14. Does the Claimant hold the Belief?

15. Is the Belief capable of protection under the Equality Act 2020, specifically, does the Belief:

a. qualify as a religious or philosophical belief under section 10(2) of the Equality Act 2010? and
b. satisfy the criteria set out in Grainger plc and others v Nicholson [2010] IRLR 4?

16. The Respondent accepts that it subjected the Claimant to the following treatment:

a. a disciplinary procedure; and
b. summary dismissal.

17. Has the Respondent treated the Claimant less favourably than it treated or would have treated others in not materially different circumstances ("comparators")? The Claimant relies on a white male comparator of comparable level and circumstances with the Claimant.

18. If so, was such less favourable treatment because of the Claimant's race and/or religion or Belief?

D. Harassment related to race and/or religion or belief.

19. The Respondent accepts that it subjected the Claimant to the following treatment:

a. a disciplinary procedure; and
b. summary dismissal.

20. Was this conduct unwanted?

21. Did the conduct relate to race and/or religion or Belief?
22. Did the conduct have the purpose or (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the of effect of violating the Claimant's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Finding of facts

The Claimant's Belief

13. It was accepted by the respondent that various religions include a belief in dreams and premonitions as a manifestation of God's voice. It was also accepted that there are some people who believe that dreams can predict the future.

14. The claimant's Belief on which he relies in these proceedings was described as

> " a strong belief in precognitive/premonitory/prophetic dreams and premonitions and, accordingly, that certain dreams and premonitions predict or foretell the future and he is gifted with the psychic ability to foresee future events in his dreams and premonitions, the majority of which come to pass; and he believes his dreams and premonitions always come true."

15. His witness statement set out details of how he formed this Belief based on matters that occurred during his childhood. He recounted a number of

examples of dreams example telling a woman not to jump over a canal who ignored his advice and broke her leg, attending an interview with a white man and a black man and understanding that was the job he'd seen in his dreams, seeing that he was to leave one account and move to another in his work life, advising a woman that her son was in danger and he avoided that by leaving the scene before an event occurred.

16. The witness statement he provided from Ms Johnson, a close family friend, told how she began to take his premonitions in dreams seriously because of premonitions he shared with her in March 2023 and June 2023. We also read a statement from Mr Thakur which confirmed that he believed that the claimant had some sort of gift to make predictions, and he gave some examples of this. The other parts of the witness statement were not relevant to the issues as they expressed opinions about the claimant's treatment at work when they were not direct witnesses to this.

17. The claimant told us that he noted his dreams and would review these against his day-to-day life. Even if, at this point in time, not all his dreams of yet come true, he believes that they may do so after his death. In answer to cross examination questions, he confirmed that he believed that his dreams *always* came true, even if he was not necessarily going to be aware of this.

18. The claimant explained that essentially, he had two types of dreams. Warning dreams in which he foresaw that something bad was going to happen and more social dreams. He believed that he was obliged to pass on warning dreams to the individuals concerned, as if he failed to do so would be personal consequences for him. He would suffer.

19. In relation to social dreams, he did not believe that he had to pass these on. He confirmed that he would only do so where he had a close relationship with the individual concerned or that he would only discuss these with close family and friends.

20. We accept the claimant's evidence that he feels compelled to pass on warning dreams but does *not* have to pass on any other type of dream. Where he does so we find that is a positive choice he has made. It is his standard practice only to tell close friends and family of dreams and we therefore find that informing someone who was neither would be a deliberate choice and outside his customary behaviour. It is not a requirement of his Belief that he shares his dreams beyond a small circle. It is not therefore an essential part of his Belief that he does so.

21. The claimant also confirmed that, while he does review his life events against his dream diary, they do not influence his life at work. They have a small impact on his personal/ social life as he discusses them with a small circle of people. We find that his Belief has a very limited impact on the way in which he governs his life.

The respondent's policies

22. The claimant was taken to a number of the respondent's policies. He confirmed that he was aware of some parts of the Equality and Respect at Work Policy. He understood that the definition of harassment in that policy confirmed that it could relate to a one-off incident. He also understood and agreed that "sex" was a protected characteristic he also understood that he knew the respondent would take any complaint of harassment seriously.

23. He was taken to the disciplinary policy and acknowledged that he was sent this during the disciplinary process. He confirmed that he understood that investigation would normally be done by a line manager, although he disputed what occurred in his case. He also understood that after investigation there were three possible outcomes which included matters moving into a disciplinary hearing.

24. In answer to questions, the claimant accepted that the policy did not require the respondent to give any advance notice of an investigation hearing, but he believed that to be unfair. It was put on his behalf that as the respondent's equality policy required all staff to be treated fairly, and as it was manifestly unfair not to be given notice of an investigation meeting, this amounted to a breach of the policy. We do not agree. It is not a requirement of the ACAS code or the respondent's disciplinary code that notice is given. Investigation meetings are often by their nature best handled when the individual has little notice. It is perfectly possible that after an investigation meeting nothing further happens. Where further action is taken, the individual employee is then given appropriate notice and information about a procedure. The claimant confirmed that he was given 48 hours' notice of the disciplinary hearing itself, which is what the policy requires.

25. The claimant also understood that the disciplinary policy allows the respondent to go straight to summary dismissal in circumstances of gross misconduct and that where that occurs dismissal is without notice pay. He accepted that harassment is seen as gross misconduct although he felt that dismissal for that reason would only be appropriate if it fitted the narrative. But he accepted if there was harassment then dismissal was the appropriate penalty.

26. The claimant also understood that there was an appeal policy, and he confirmed that he did not appeal or tell the company this need more time in order to do this.

The communication between the claimant and his Colleague.

27. In his evidence the claimant said in early 2021 he started having dreams about a certain person whose name he did not know. The way that he understood these dreams was that this person would help with things that he was struggling with such as poem and song writing. He would cross paths with her, and she would be the passport to the things he was

hoping to achieve. At that time, he ignored these dreams. However, around September 2021 he dreamt about the same person again. It was then he thought to share it with his late sister and had a conversation about this. Then on the night of the 20th/21st of October 2021 he had a vivid dream about a lady that he would cross paths with, and she said her name was Vanessa. He sent a voicemail to his late sister and typed the name Vanessa for her.

28. On 11 August 2022 the claimant went to the Foreign and Commonwealth Development Office which is one of the respondent's accounts that the claimant has covered since 2016 in order to collect a pass. On his way home before he left the building, he saw his line manager sitting at the reception. His line manager, Helen Roe, introduced him to Vanessa De Souza ("the Colleague") along with another manager. The claimant was told that the Colleague would be taking over the Foreign and Commonwealth Development Office account. The claimant asked his line manager if she was ditching him and although she said no, the claimant was not convinced that he would not be moving line management.

29. When the claimant returned home, he looked up his Colleague's name on the Microsoft team application and found her. He then sent a Microsoft team's message to her saying it was a pleasure to meet her that day and she replied that it was lovely to meet him. No issue was taken by the respondent about this exchange.

30. On 17 August 2022 the claimant then said that he had another dream in which he saw his Colleague. She called him by his Christian name and said that she was Vanessa, the one you have been dreaming about. In his dream she asked the claimant to invite her to dinner and stated that she did not like to eat outside because she was mixed race. He responded that he was also mixed race. In his dream she jumped on his neck and said let's stay in the house and cook.

31. When the claimant woke up, he started reviewing his dreams for the previous year and then recalled a conversation he had with his late sister. He hunted through various old phones and found that he had typed the name Vanessa back in 2021. From the claimant's perspective he concluded that the Colleague was the person he would cross paths with and would help him to achieve all he was hoping to achieve in his poems and song writing.

32. The claimant therefore sent a further team's message to his Colleague on 17 August asking how she was settling in. She responded that she was settling in good thanks. She stated that things were picking up now. The claimant responded that he was glad to hear this, but she should be aware it takes time to learn all processes and procedures but "believe that sharper mind like you, you'd get those wrapped up in a few weeks". The claimant confirmed that he had only met the Colleague for five minutes at this point and had been limited contact via one introduction team's message. He confirmed that he was paying her a compliment.

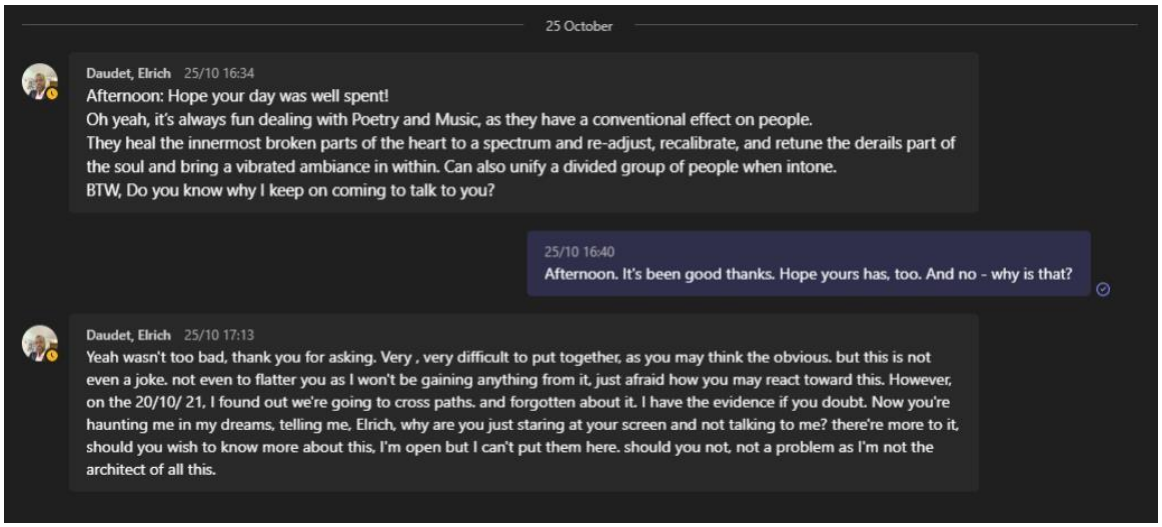
33. This team's message exchange ended on 18 August when the claimant said that he thought it was his duty to give her a warm and friendly welcome, she had a lot to take in she was not to get frustrated or tell her friends the people in the company were not friendly. The Colleague did not respond to this.

34. On his account the claimant therefore decided to wait one year from the date of his dream before he told his Colleague about it. Accordingly on 21 October he sent a further team's message saying, "how is lady – Da Souza getting on after two months". The claimant accepted that there had been no contact between them since 18 August. He considered there was nothing wrong with addressing an individual as a lady. If she objected, she could have said so.

35. The Colleague replied some five hours later apologising for not getting back to him sooner. She apologised for getting back to him so late. On 24
October the claimant exchanged WhatsApp messages with the Colleague which included hoping that she had had a tremendous and vibrant weekend. She responded that she did have a good weekend and hopes the claimant did too. The claimant then says that his weekend was not too bad as he is mesmerised by poetry and his weekend would usually wrapped by it or music production, his side hobbies. This got the response "sounds like a lovely weekend".

36. On 25 October the claimant picked up on this comment and gave more details about what music meant to him ending with the question do you know why I keep on coming to talk to you. The Colleague replied no why's that.

37. The claimant then sent her this message.



38. While the claimant tells the Colleague that in October 2021, they were going to cross paths he does not explain how he found this out. While he says she has been haunting him in his dreams, he does not explain that he believes in premonitions or that he is gifted with psychic ability, and he has prophetic dreams which always come true. We find that there is nothing in this message that expresses his Belief.

39. The claimant was asked to explain his reference to you may think the obvious. He accepted that it could be interpreted as him coming on to his Colleague and that was the obvious interpretation. He was not, however, doing that. He was also asked why he said that he was afraid how she may react towards this. He considered that the recipient might feel uncomfortable about it, that it might upset her, but he was trying to engage and negotiate. He was asked to explain what he meant when he referred to her haunting him in his dreams. He said that he didn't mean it other than he was seeing her frequently, this was not said in a bad way.

40. He was asked to explain what he meant, that he could not put the details in this team's message, and he said that he felt the message had been chopped off that was more to this message than was seen on the screen. He had not raised this point at any time during the disciplinary process and all the preparation for litigation. This was not referred to in the claimant's witness statement. We do not accept the claimant's evidence on this point. On the balance of probabilities, it seems unlikely that he would remember this point during cross examination some years after the events when he had not recalled it at the time or at any time prior to day one of this hearing. We therefore find that the message as shown above was the complete message sent on that date.

41. It was put to the claimant that a reasonable interpretation of that comment was that the matters it was not appropriate to put in the message and it was reasonable for the recipient to understand this phrase in that way. The claimant accepted that the recipient might read that into it. The Colleague did not reply.

42. The claimant's clear understanding of the potential impact on the recipient is also illustrated from the evidence he gives of a conversation with a friend. On 20 August 2022 the claimant said he went to dinner with one of his female friends and asked her advice about what she would do if you dreamt about a person before they then appeared at the workplace. Should he tell the person about the dream? His friend advised him it would depend on the relationship you had with the person and that he should tell her about it if he was close to them.

43. The claimant accepted that he was not close to the Colleague. Based on our findings set out above about the claimant's Belief, as this was not a warning dream in accordance with his own beliefs the claimant was not obliged to share this dream. We also find that the Colleague fell outside of the category of those that he would share dreams with. We find that the reason he asked his friend whether he should do this, although he then ignored her advice, was because he appreciated that sharing details with dream with the Colleague could be misinterpreted. We find that he understood that sharing details of dreams could be misunderstood if they were shared with someone who was not a family or close friend. Nonetheless he deliberately chose to share the dream. This was a choice made in understanding of a possible negative reaction with no compulsion to do so and not an act that fell within the claimant's Belief.

44. We find that the claimant understood the potential impact of the messages on the Colleague, he understood that she could perceive them as him making advances to her and that she could understand that saying he wished to share more information meant it was information it was not appropriate to put in the team's message. While he said that was not his intention, he accepted that he knew that this was a potential interpretation and yet he sent the message anyway.

45. On 3 November the claimant then sent his Colleague an email entitled please have a look. It started by saying the last thing he wanted was for her to report him to his line manager for pestering her. The claimant accepted that he was aware that his Colleague may have thought this. The email went on to say that he was not trying to make a pass at her by fabricating things. He accepted that he was aware that the recipient could therefore think that that was the case.

46. He also went on to say that after this email he would refrain from all contact with her but that it was not fair on him to refrain without her knowing what had been happening for the last 11 months. It was his evidence that he was simply trying to show his Colleague that he was not lying and that she had been in his mind. Whatever his motives, we find that he understood the Colleague could have considered the email message to be him pestering her and making a pass at her. He sent the message understanding that was a possible reaction from the recipient.

47. This message does explain that the Colleague is the Vanessa he has been dreaming of but also does not explain that the claimant believes in prophetic dreams that always come true. This email does not express his
Belief.

48. He then explained that he had written about six pages to summarise how all this started last year then he came to realise two months ago that she was the Vanessa he'd been dreaming and writing poems and songs about. He told her that she was the one he was told to cross paths with, he was not going to send her all of the six pages, but he did send her some screenshots. He explained that the circled one was when he started writing about her.

49. The screenshots that he enclosed had four extracts. They circled one stated that he was "trapped and stanned by the essence of her smell". In answer to cross examination question as to what that word meant, the claimant accepted that stanned meant extremely devoted.

50. While the claimant said that this poem had nothing to do with the Colleague he accepted that his email had said that they circled item was when he started writing about her. He also accepted that the other extracts talked about "if you still believe in us let's try and work things out", "I'm all yours", "no one is as pretty as you". While he said these were not written for the Colleague and he was not sexually attracted to

her, he could understand that receiving these might lead to believe that was the case.

51. In submissions it was suggested that these poems were in fact gender neutral and there was nothing about them to suggest that they were written about a woman. That is not consistent with the claimant's evidence. It is not an argument that he has ever raised. It does not accord with him having told the Colleague that the circled one was about her. On the balance of probabilities, we think it unikely the claimant was writing to a man that no one was as pretty as you or that they should work things out. While we agree that reference to a smell could be about either a man or woman, this is the one the claimant indicated was written about her, further the the refence to the garden of Eden suggests Eve. We find that it was reasonable for the Colleague to believe they were written about her and was reasonable for the respondent to believe that they were referring to a woman not a man and therfore to find that they would not have been sent in the same way by the claimant to a man. On their face, given the context in which they are sent, they appear to be about the Colleague, and we consider that they do suggest a sexual attraction.

52. The claimant did not, however, accept that this was how the Colleague perceived it. He did not believe that she was in fact upset by the receipt of these messages. He believed that the Colleague had been encouraged to say that she was upset, and this had been fabricated by someone that he would not identify. She was in effect put up to this and did not herself raise a complaint. She had not raised a grievance or raised it with her line manager.

<u>The Colleague's reaction</u>

53. While the Colleague did not give evidence to this tribunal, we heard evidence from Ms Roe who carried out the initial investigation and who had communication with the Colleague while these messages were being sent. It is her account that after the Colleague had received the message of 24 October, she had sent a screenshot of that message captioned "Elrich is doing my head in". This was accompanied by a palm on head emoji. Ms Roe believed that this evidenced that she was annoyed by the message and potentially thought the claimant was a pest. It also represents frustration.

54. Miss Roe messaged back asking what he had done and then the Colleague's reply said LoL (laugh out loud) are you able to view the screenshot with another emoji showing sideways laughing. Having read it Ms Roe responded I'm so sorry, laugh out loud, with another concerned emoji and laughing emoji.

55. It was Miss Roe's evidence that she called the Colleague after she received this message, and the Colleague did not raise any specific concerns other than saying it was weird and something along the lines of the claimant was being a pest. She did not want to take matters any further at this point.

56. On 25 October the Colleague reached out again to Ms Roe and sent the screenshot of the messages sent that day with the caption “help” this is accompanied by another sideways laughing emoji. Ms Roe rang the Colleague to talk about it. It was her evidence that the Colleague seemed very shocked and made a comment that what was happening was really weird. Ms Roe told her not to reply to the claimant at that point.

57. In looking at the documents that the Colleague was sent there is nothing in the message of 25th of October which identifies that the claimant has a belief that he has prophetic dreams that come true only that he has been dreaming about her. We find that this document did not express the Belief on which he relies

58. When the Colleague received the email on 3 November, she then sent that to Ms Roe who became alarmed. She looked at the screenshots attached to 3 November email very quickly and believed that they contained comments about the Colleague which seemed sexual, obsessive and was as if there was a belief that the claimant and the Colleague would be together in some way. Ms Roe identified some of the phrases that made her concerned but confirmed that it was looking at matters in the round that made her alarmed.

59. In considering the email of 3 November there is also nothing in that document that says that the claimant has a belief in the prophetic power of dreams or that his dreams come true. He just tells the Colleague that he has had dreams about her in the past. There is also nothing in the poems which identify his psychic abilities and his belief in dreams. We find that these documents do not discuss or explain or set out the Belief on which he relies. At this point we find that nobody who had seen all received this correspondence would be aware of the Belief. There would simply be aware that the claimant has sent some correspondence that seemed weird and potentially alarming.

60. Ms Roe escalated this to HR but also called the Colleague to tell her she had done this and asked her to send through everything she had for investigation. The Colleague told Ms Roe that she was concerned about what the claimant had said, and she was worried about running into him at work. She would feel uncomfortable if she saw him.

61. During the investigation Ms Roe said that she continued checking in with the Colleague and it was her impression that the Colleague felt jumpy when she received phone calls from unknown numbers and was worried by picking up the phone.

62. It was accepted that the claimant was not given any of the information about these telephone conversations at any point during the investigation or subsequent disciplinary hearings. It was suggested that the Colleague was not alarmed as the emoji’s show a different reaction. It was suggested that Ms Roe’s account did not reflect the reality of the Colleague’s feelings.

63. We have found Ms Roe to be a straightforward witness. We accept Ms Roe’s evidence that she understood and believed that the Colleague had been

alarmed by the messages. Considering the correspondence on an objective basis, as the claimant acknowledged, on its face it could be seen as pestering and a come on. We find that it is inappropriate to send a senior Colleague such messages. We find it reasonable for a recipient to have found the communication inappropriate and on the balance of probabilities we find that the Colleague did find it inappropriate and was alarmed by it. While the emojis do suggest less of a negative reaction, nonetheless we find that the Colleague was alarmed and concerned, particularly by the message of 25 October and the email attachment of 3 November.She had the very reaction the claimant considered was a possible one.

The investigation

64. Ms Roe explained that after she received the 3 November email, she felt the need to speak to HR about it. She therefore raised this with her manager, and she was advised by him to speak to an HR consultant who supported their business area. On her line manager's advice Ms Roe contacted the Colleague and asked her to send everything together email the timeline of what happened that you could share this with HR.

65. The Colleague did this and Ms Roe organised a meeting with the HR consultant which took place on 7 November. On that call they went through the email the Colleague had been sent and all the messages. Ms Roe was advised by HR that there was a need for an investigation as the messages may fall foul of the respondent's conduct standards. That meant she needed to have a meeting with the claimant. She was advised by HR that she did not need to tell the claimant in advance that there was an investigation meeting or what the purpose and content of that meeting would be but during that meeting she was talk through the messages he had sent to the Colleague with him to gain his perspective. Her main purpose was to gather facts so that it could be determined whether the matter would need to go to a disciplinary.

66. The claimant had a number of challenges to the fairness of the investigation and dismissal procedure, some of which he said were the result of the respondent not following its own policy.

67. Under the heading what is an investigation? The policy says that "We'll normally do an investigation to find out the facts. This may include speaking to you, talking to any witnesses, looking at things like emails or CCTV footage. Each investigation will be different depending upon the case. The investigation meeting or collation investigation facts is normally done by your line manager or next level manager, depending on the circumstances."

68. It was the claimant's contention that there is an expectation the investigating manager would speak to witnesses. On the facts of this case that would not be limited to the recipient of the email but to other work colleagues who could speak as to the claimant's character. It was agreed that this did not happen.

69. Looking at the wording of the policy we find that it specifies each investigation will be different depending on the case. The reference to talking to any witnesses is one of the things that may happen. We find that it does not mean that there is an expectation this will happen, nor is it a breach of the policy for other witnesses not to have been spoken to before the investigation meeting. The claimant did not identify anyone who should be spoken to. On the facts of this case when Ms Roe could see what the claimant had written herself and had spoken to the recipient she had more than sufficient to pass the matter to HR. We are satisfied that it did not amount to any procedural flaw that she did not speak to other witnesses. It does not impact the fairness of the procedure in all the circumstances.

70. The policy also states that "we will let you know when we have finished the investigation what happens next" and there are three possible outcomes. It was suggested to Ms Roe that it was her job as the investigating manager to write an investigation report and to make this decision as to which of the three outcomes was appropriate as the next step. Ms Roe disagreed. She confirmed that she has experience as an investigating manager and that she had always acted in the same way.

71. That is that she would take advice from HR as to how to conduct an investigation which is what she did here, being provided with the questions by the HR consultant. She then asked those questions with a note taker present in order to understand the employee's side of the story. It was her role to then pass that information to HR who made the decision as to what the next steps were. We also find that the policy says the investigation manager will either do the investigation meeting or collation of investigation facts but there is no expectation that there is a separate collation of investigation facts. Simply holding the meeting checking the notes and passing it to HR is not a breach of the policy

72. The claimant believed that it is unfair if an individual with his length of service is not given any advance notice of an investigation meeting. We find that there is no obligation to do so in the disciplinary process. It was the claimant's contention that the equality policy requires all staff to be treated fairly and that this principle must run through the disciplinary policy. It was clearly unfair to surprise him with an investigation meeting.

73. We find that there is no specific requirement in the disciplinary policy to give notice of an investigation meeting. We do not accept that it is unfair to do so. An investigation is an opportunity to discuss what may or may not have occurred so that a decision can then be taken as to whether any next steps are required. The claimant was not prejudiced by any lack of notice, and we find that he clearly understood what the meeting was about from the minute it began. Not giving 48 hours' notice when it is not required and had no impact on the claimant does not make the procedure in any way unfair.

74. It was Ms Roe's evidence that she had made no determination as to what the next steps were. She had not reached any decision as to whether the correspondence between the claimant and the Colleague amounted to harassment or sexual harassment. She simply investigated as instructed.

75. It was put to her that she was in fact biased and had made up her mind that the claimant was guilty of harassment by the very fact of stating that she found the messages attached to 3 November email alarming. We accept that she did find the emails alarming, which is why she contacted HR in the first place and then she properly and appropriately carried out HR's instructions on how to conduct an investigation meeting. That is not the same as reaching a conclusion that the claimant was guilty of harassment.

76. It was suggested both that she was reliant on HR, whose fingerprints were all over the matter, and she was not taking decisions so that the procedure was flawed, and that she was the decision-maker ensuring that the claimant was ultimately dismissed because she was prejudiced against the claimant because of his belief in his dreams. We find neither of these contradictory positions to be the case.

77. We accept Ms Roe's evidence about standard procedure inside the respondent and accept that she played a very limited role. We accept that she was genuinely concerned about what had been reported to her and with the agreement of her line manager reported matters to HR who also confirmed these were potentially serious. Thereafter she carried out a reasonable investigation by speaking to the claimant and reporting those findings to HR.

78. The claimant challenged the accuracy of the notes and particularly that they were in fact verbatim but missed out on parts of what he said. Ms Roe confirmed that the notes were not a full transcript of the whole meeting but reflected the words used as much as possible but not completely. As her email at the time confirmed the notes were written word for word as much as possible. The description of these notes and indeed the notes of the disciplinary meeting with the claimant and the meeting with the Colleague were criticised as inaccurate because they were said not to be verbatim but nonetheless used the first person. It was the claimant's contention that a summary would use the third person and that this approach when parts were clearly meant to be reported speech supported his position that the notes were inaccurate.

79. We understand that the notes were written to record direct speech accurately as much as possible but were not intended to be a complete transcript. We accept that the respondent's caveat at the front of its notes is intended to reflect that they are not a full and complete word for word account. They are to that extent a summary, but they do as much as possible reflect direct speech.

80. The claimant also stated that there were two sets of investigation notes. The bundle did contain a second set which had an additional page of the words "how long?" but there appeared to be no other differences between the notes. No explanation was given for that, given that there were no other differences we do not find that this shows the notes were inaccurate. We accept that they were the best rendition that the notetaker could make of what they heard.

81. Ms Roe was asked about the accuracy of the notes and told us that she could not at this stage recall exactly what was said at the meeting but had no reason to believe that the notes were inaccurate. We accept her position. The claimant accepted that there was no reference to his Christianity in the notes of the investigation meeting. He also accepted that there was no reference to his race. He did not identify either of these points as having been missed out from what he says are inaccurate notes.

82. Ms Roe accepted that she was aware the claimant was Christian. The claimant has suggested by his representative's questioning that some individuals in the business were privileged, and this included the Colleague. No information was given as to what this privilege related to, but it appeared to be based on the fact that she became a senior manager more quickly than some other staff. This point was not raised at any point during the investigation, or disciplinary process or indeed in the claimant's written witness statement. Ms Roe did not accept that. We have no reason to think that the Colleague did attract any particular privilege, and we accept Ms. Roe's evidence on this point.

83. We find that the only point that the claimant raised in the meeting was that he had premonitions, and he explained that he could "kind of see things before they happened". We accept that is a partial expression of his Belief and is given as an explanation for why he sent the texts et cetera. It is, however, an expansion of the matters that he had shared with the Colleague to which she objected when he had not expressed his Belief. Furthermore, as he has agreed, there was no reference to his race or religion, and we find that neither of these points were on Ms. Roe's mind. We also find that she was not influenced in the step she took by the claimant's Belief because we have found that she was not the decisionmaker as to what happened next. Her views, which in any event we have found were not biased in any way, were not relevant to the decision.

84. We find that Ms Roe was acting appropriately as a manager and carried out the investigation as instructed. She played no part in the decision-making process and therefore even if she had prejudged the outcome, which we found she had not, it would in any event have made no difference. The decision to take the investigation to a disciplinary hearing was not made by her. The decision on the outcome of disciplinary proceedings was not made by her.

85. We also find that once HR had determined this could amount to harassment it had a duty to continue even where the "victim" said they just wanted it to stop, and it had stopped. It is the action of a reasonable employer to satisfy itself whether harassment had occurred and if there was any future risk.

<u>Organising the disciplinary process.</u>

86. Once HR received the information following the investigation Ms Cook was randomly allocated to the claimant's case. Ms Cook works in the UK People Advisory Team (Employee Relations Team) within the HR Department. There is a total of 7 people in the team, supporting roughly 4,500 employees

across the UK. She described her role as to support the managers within the business on all ER matters, including disciplinaries, grievances, appeals and sickness absence matters. For sickness absence cases she is aligned to a specific business area, as are all the other ER Colleagues. For all other ER matters she does not support an area of the business specifically and work is allocated based on capacity and impartiality. She explained as an example that she would not be allocated to an ER disciplinary appeal that she had been assigned to during the disciplinary process.

87. Specifically in her role Ms Cook helps managers to (i) understand and follow best practice, both in accordance with ACAS guidance and the respondent's policies and procedures; (ii) help with the preparation of materials needed for matters the manager is dealing with. such as letters; (iii) identify risks involved in any matters they are working on; and (iv) provide guidance to managers when they are making decisions on matters they are handling to ensure they are considering and taking into account the correct factors. Her witness statement explained that whilst she provided guidance to managers, the actual decision taken at the end of any disciplinary process should be theirs and whilst she guides managers, she is careful not to influence them or push them towards a specific outcome.

88. While initially there appeared to be some dispute about this, it became clear in submissions that the claimant did not take any issue with the role of HR as Ms Cook has set it out. It was his position that she had done more than this, and she had not merely provided guidance but had in effect written the contents of the outcome letter, have been biased towards

    the claimant and tried to influence the decision-maker and had some influence on that decision.

89. We find in allocating the case to Ms Cook the decision had been taken by another colleague that the matter was to be investigated as a disciplinary hearing. It is not clear who within HR took that decision, whether it was the HR consultant who provided support to Ms Roe or the head of the employee relations team in which Ms Cook works. We find that the allocation of the case to Ms Cook meant that her task was to set up a disciplinary hearing. The fact that there was going to be a disciplinary hearing was a decision that had already been made.

90. Ms Cook explained that she was provided with a pack of documents which included the minutes of the investigation meeting, the evidence pack, the timeline of the relevant screenshots of emails and team's messages and an email from the claimant which Ms Roe had forwarded to the HR consultant. She reviewed this and her sense looking at it overall, not based on one particular message but holistically, was that this was a serious matter.

91. Ms Cook then looked for an impartial hearing manager to chair the case. It is HR practice to do this by reviewing the pool of managers who have gone through hearing manager training and Jason Saunders was on that list and had the appropriate seniority to hear a complex case. Ms Cook then sent

him a team's message to ask him about his capacity to hear a serious disciplinary case.

92. It was suggested that Ms Cook had acted unfairly. She was already biased about the outcome because she had identified to Mr Saunders that the case was serious. In her message to him she had said "we have a serious case coming which is a potential dismissal so we need a more senior manager to hear the case stop it shouldn't take up too much time probably just the one meeting with the individual we need to have…"

93. It was suggested that it was not for her to make this decision. In doing so she was prejudging the outcome. This is an example of her overstepping the mark. It was also contrasted with the telephone conversation that she had with the claimant on 24 November shortly before he was sent the letter inviting them to a disciplinary hearing. In that phone call the claimant asked about possible penalties and Ms Cook gave a range from warning through to dismissal. She had not at that time indicated to the claimant that that it is a potentially dismissal offence and yet that is what she sets out in writing a few hours later.

94. It was not suggested that Ms Cook knew either the Colleague or the claimant prior to this process. In her witness statement that she said that she did not, this was not challenged, and we accept that that was the case. Nothing was put to her as to why she might be biased against the claimant. We find that there is no bias or prejudging in Ms Cook's actions. We accept her evidence that using her knowledge and experience as an HR professional she identified the email exchange as potential harassment by one employee of another. The respondent's disciplinary policy identifies harassment as gross misconduct. We find that she was entitled on the papers alone to reach the conclusion that this was a potentially serious matter. We also accept that it is part of her role as providing guidance to managers to identify this and it was therefore appropriate of her to indicate this to the potential hearing manager. That simply gives him the information about the weight of the case that he is to deal with, and it does not in any way prejudge the outcome.

95. The hearing manager would, in any event, have read that information before he heard the case as it is required to be set out in the invitation letter as indeed it was. Giving information on the phone that he will see in written form before he starts the disciplinary meetings cannot amount to bias. We find that it was appropriate for her to have shared this information with Mr Saunders. It would not have been appropriate for her to tell the claimant this on the phone as that would predate the invitation letter. As Ms Cook said on the telephone she could not advise the claimant that was not her role.

96. The claimant also suggested that Mr Saunders was not an appropriate hearing manager as he was not impartial. Mr Saunders explained that he had come across the claimant's name some five years ago when he was involved in managing security clearance but that was the limit of his knowledge of him. He agreed to accept the case because he did not feel that he had a conflict in the disciplinary matter against the claimant. It was

suggested that because he remembered the claimant's name and had characterised it as unusual that he had a number of different names on different legal documents that he was in some way prejudiced against the claimant.

97. It was put to him that it was usual for example for women to have different names on different legal documents as in some cultures it is customary for women to change their name on marriage. Mr Saunders accepted that, he confirmed that it was a while ago but the best recollection there were three documents with different names, and he did not feel that was usual. However, he did not feel that that recollection of the claimant was sufficient for him to be prejudiced or anything other than impartial.

98. We accept that in any organisation managers are likely to have come across names and details of other staff even if they are not directly in their line of report. It would not be a practicable requirement for a hearing manager to have had no contact whatsoever with an individual. We are satisfied that Mr Saunders took his role seriously. He considered and rejected the possibility that he could be prejudiced because of this prior indirect contact, and we find that he was not.

99. The claimant also disputes Mr Saunders' impartiality because of what he said is his prior knowledge of the Colleague. Mr Saunders agreed that he was the indirect line manager of the Colleague some years previously. It was not suggested that Ms Cook in selecting Mr Saunders was aware of this and chose a manager who was not impartial. We find that this was not something that she was aware of and as her witness statement makes clear she knew neither the Colleague nor the claimant before becoming involved.

100. For the same reasons we find that Mr Saunders was not prejudiced in the Colleague's favour because of this previous contact. He took his role seriously and considered the point appropriately. It is not practicable in any organisation for that be a requirement of no contact whatsoever between parties and we find that this limited previous knowledge was not enough to prejudice the outcome and that Mr Saunders was not prejudiced either in favour of or against the claimant or the Colleague. We accept his evidence that he would have declined to be the hearing manager in any case where he thought the was conflict as he understands the impact his decision could have on people's livelihoods.

101. By letter dated 24 November 2022 the claimant was invited to a disciplinary meeting. That was the heading of the letter. It explained that following investigation meeting these are the details of the disciplinary hearing that he needed to attend. The claimant was told was right to bring an employee or trade union representative to the meeting as a companion. He was told that the meeting was to discuss a gross misconduct allegation namely potential harassment to another employee. The letter enclosed the relevant documents and policies. The letter explained that at the meeting the claimant could explain his point of view and make them aware of anything else to do with the allegations. The letter also explained that because of the seriousness of the issues the disciplinary penalty could be

dismissal. The letter was prepared by HR and the allegation was set out and determined by HR.

102. To prepare for the hearing Mr Saunders read the various documents that he was sent. His initial thoughts were that what happened was quite unusual and he had not come across anything like this before. It appeared to him to be objectively strange. He was satisfied that the investigation had already been done appropriately as it covered the relevant points as the main evidence was the message and emails themselves. Mr Saunders explained that he did not believe he needed more information about the claimant's employment at the respondent, but he did of course need to speak to a disciplinary meeting because notes of what happened at the investigation were not all was the best way of understanding someone's position. Mr Saunders is also very keen to speak to the Colleague.

103. It did appear to Mr Saunders when reading the messages and in particular that the attachments to the 3 November email contain comments that appear to be of a sexual nature, and he felt it was therefore important to understand how the Colleague felt. As the allegation was harassment Mr Saunders understood that the Colleague's perspective and feelings were very important to understand. He needed the context.

Further investigation by the hearing manager

104. Mr Saunders was criticised by the claimant for confusing his role and as well as being the hearing manager now becoming the investigating officer where the policy requires a separation of these roles. We find that while the policy has a section for investigation and a section for the formal disciplinary process it specifies that if new details come up, or it's decided that more investigation is needed, the manager can stop the disciplinary meeting and carry out further investigations. While the inference is that further investigations arise after the disciplinary meeting, we can see no reason why a hearing manager cannot carry out further investigation. We find that it would be artificial to prevent a hearing manager from doing so as the decision-maker must be satisfied that they have sufficient facts. We do not accept the proposition that Mr Saunders was unable to meet with the Colleague and that somehow in doing so the procedure is flawed.

105. Mr Saunders and Ms Cook as notetaker met with the Colleague on 25 November 2022.The Colleague confirmed that she felt uncomfortable by the claimant's contact with her. Her discomfort came really from two specific messages which are the one sent on 25 October and the email of 3 November. These made her feel really uncomfortable. She explained that there was an occasion when she received a WhatsApp message on her personal phone from an unknown number, she panicked as she thought it was the claimant. She discussed the messages with her boyfriend and parents they were also really worried about. She was fearful about the possibility of seeing the claimant and was worrying even about working at home in case a message popped up as it might be him. Whether all future contact stopped or not, the damage had been done.

106. Mr Saunders was criticised for what was said to be his pressing the Colleague until he got the answers that he wanted. It was also suggested that he and Ms Cook must have discussed the claimant's potential dismissal, although that is not shown in the meeting notes, because in response to a question about what her ideal outcome would be the Colleague talks about feeling guilty at the thought of him being dismissed. We have accepted that the notes are accurate and accepted the evidence of the respondent's witnesses that this did not occur.

107. It was also suggested that it was the Colleague's boyfriend who did not want the claimant on site. It appeared to be suggested that he was a senior figure within the respondent company. This was not put directly, and we accept that neither Mr Saunders nor Ms Cook were aware of who the claimant's boyfriend was. Whover he was he had nothing to do with the decisions taken.

108. We find that Mr Saunders believed the Colleague and based on an objective reading of the communications themselves, as the claimant has already accepted, it is possible to see these as an uninvited and approach by a male colleague towards a female colleague expressed in a way that caused unease which is inappropriate in the workplace in these circumstances. We accept both that Mr Saunders believed that the account given by the Colleague in that meeting is a genuine reflection of the way that she felt and that it was in fact a genuine reflection. We find that she was therefore very uncomfortable about the claimant's contact, was panicked at the possibility of contact from him both in the office space and even when she was working from home.

<u>The disciplinary meeting</u>

109. Mr Saunders then met the claimant on 28 November. As the notes record there is no reference made to the claimant's race by the claimant, other than the commentary he reported he gave to the Colleague in a dream about his being mixed race, nor was there any reference to his Christian faith.

110. Mr Saunders' written witness statement set out that the claimant did not give much detail in the meeting about what he believed. The details he gave were to give the background as to why he had sent the messages that were the subject of the disciplinary hearing. As we have already found, none of this was apparent from the messages themselves. While Mr Saunders accepted that the claimant said he had premonitions and that he talked to a messenger in his dreams, the claimant did not go into details even when asked questions about it. He did not provide information that his belief in dreams and premonitions was a strong belief that he held. Nonetheless we find that the claimant had given details of his Belief as an explanation for what happened although as we said, the messages he sent did not reference this.

111. Mr Saunders asked the claimant whether he felt the need to pass the message on and whether or not that overrode any local laws or company

laws. The claimant explained that he passed the information onto the Colleague, and he did not want her to think that he was lying. The claimant has already accepted that these were not warning dreams and within his own belief system he had no obligation to pass this information on. It was his choice to do so.

112. In the notes the claimant identifies that he writes poems about love and when women read them it happens to entice them and make them think he is talking about them. The claimant disputed the accuracy of the notes, but we made a finding that they do reflect what was said. He explained that he had thought about sending messages to his female line manager but had decided not to did not want them to be misunderstood. The claimant explained to Mr Saunders that he was not trying to seduce the Colleague or make a pass but that it may come across like that but that's simply how other people interpret them. He accepted that the Colleague had not suggested that they were connected in any way or form but explained that he wanted to share what he had been dreaming about.

113. He was asked if he had considered how the recipient might feel on receiving these messages. He explained that he was hoping she would ask him about the premonitions and that he was not trying to make her feel uncomfortable, that was the last thing he wanted to do. The claimant explained that he did not want the Colleague to feel uncomfortable or take it in a different way. In his view if they did not make sense to her, she could simply delete them. He would not be pursuing it any further. In answer to a question about whether he thought it was appropriate in the work environment to have sent these, he said it would depend on how people interpret it. It was probably in his wording. He expressed his deepest sympathy and said he did not intend to make the Colleague feel uncomfortable, he was just trying to engage that she was aware of what had happened.

114. Mr Saunders explained that he felt the claimant's responses seemed to be confused, as at one point he said he didn't think his messages would make her feel uncomfortable and he wasn't trying to make her uncomfortable, and then he said he didn't consider whether it would and he then went on to say he had a conversation with Neil, his companion, who made him understand that the way he say things may be different to how the recipient receives it and that he didn't want to continue the chat with Vanessa "because I might say something inappropriate".This also led him to think there might have been more inappropriate thoughts and perhaps he could have said more in the future, had this matter not been reported. We find he was motivated by his own desire to share his dream, which was a choice he made and paid little regard to what he understood could well be how the recipient felt about receiving these messages.

115. Mr Saunders in his witness evidence explained that he thought about the claimant's answer that he would not make the comment he did to someone who was external to the respondent, and Mr Saunders felt that

this demonstrated the claimant knew it would be inappropriate to do that. Mr Saunders concluded that the claimant understood the difference between right and wrong.

116. In the meeting notes Mr Saunders confirms that he understood that the communication with the Colleague did not relate to a sexual nature. The Colleague had received unwanted information that had left her feeling a certain way. He also said that he didn't think anyone felt there were sexual attempts.

117. Following this meeting Mr Saunders undertook further investigation about the claimant's conduct and character at work and spoke to the regional business manager. He did not discuss the outcome but asked him what the claimant was like as his general character could affect his decision. From this conversation Mr Saunders understood that no similar concerns have been raised about the claimant. Mr Saunders also advised that it will be very difficult to affect a separation between the claimant and the Colleague.

118. We accept Mr Saunders account that he did not discuss with his senior Colleague but simply gathered further information about the practicalities of any future working relationship and necessary information about the claimant's prior conduct. We accept that Mr Saunders was aware of the claimant's length of service and his unblemished disciplinary record and that he took these matters into account when considering his decision.

119. Mr Saunders then sent Ms Cook a summary of his thoughts on his meeting with the claimant. We accept his evidence that his thoughts at the time were that the claimant seem to have no consideration of how someone receiving messages might feel particularly when they were a female employee. Mr Saunders felt that had the Colleague not raised any concerns the claimant might say similar things in the future. Mr Saunders believed that the effect of the claimant's comments on the Colleague had been severe and that was important for him to consider this. He believed it met the definition of harassment in the respondent's bullying and harassment policy.

120. Having given his initial thoughts to Ms Cook, and before he formed his final view, there was a telephone call between Mr Saunders and Ms Cook when he talked through the outcome and expanded on the email he had sent her with his further thoughts. We accept his account of this which was not challenged. Those further thoughts were that the definition of harassment had been met because, whether intended or not, the comments had created a hostile environment for the Colleague, and he felt that it was related to her sex. He would not have said the same things to a man. The specific comments were made because the Colleague was a woman.

121. In submissions the claimant's representative suggested that Mr Saunders had in fact confirmed that the comments were neither of a sexual nature nor on the grounds of sex. The note of the investigation meeting deals only with whether the comments are sexual. We accept Mr Saunders'

witness statement that this comment meant the disciplinary allegation was not about physical touching or attempts to do so. This is largely because the claimant had said that was not the case and he accepted his view. From that perspective they were not sexual comments, however, it was his view that they had a sexual undertone, and it was reasonable to read them that way, particularly from a young woman receiving them from an older man and that they were sent because there was a male/female dynamic within the messages. The claimant would not have sent them to a man. The claimant accepted Mr Saunders as a credible witness and we have found him to be so. We've also found that the screenshots attached to the 3 November email were not genderneutral poems. We have also found that the claimant did say that he writes love poems about women.

122. Mr Saunders said that he also turned his mind to whether or not it was reasonable for the Colleague to feel the way that she did, and he felt that it was. He felt that her feelings were genuine. He also did not believe that the claimant was apologising for what he had done or how he had made her feel because he had not really considered this and that he would possibly do it again. Mr Saunders then came to find a conclusion that the claimant's actions were gross misconduct because it was sufficiently serious, and the effect was severe.

123. We find that the decision-maker had a genuine belief that the claimant had sent unwanted messages to a Colleague which had the effect of creating a hostile, offensive or intimidating environment for the recipient. He had a genuine belief that the claimant was guilty of harassment in particular in relation to the 25 October message and the email of 3 November. He formed this genuine belief following a reasonable investigation. His decision was based on the content of the messages and their impact.

124. He then moved on to consider what the appropriate sanction was. The disciplinary policy confirms that an act of gross misconduct will likely result in summary dismissal but says that as the last resort. He discussed the sanction on the call with Ms Cook and discussed with her whether a lesser sanction was appropriate.

125. Ultimately, Mr Saunders concluded that dismissal was the correct approach for two reasons. The claimant's conduct was entirely inappropriate and had a profound effect on another Colleague. It was harassment and amounted to gross misconduct. It had an effect on the Colleague and while it might have been possible, it would be extremely difficult, to keep the claimant and the Colleague apart. In the future he felt that as the claimant didn't really understand he had done anything wrong, and his remorse was more related to the fact that his feelings weren't reciprocated, it was possible that he could do the same with other women in the business. In reaching his decision Mr Saunders confirmed he took into account the claimant's length of service and previous clean disciplinary record. We accept his evidence.

126. We also accept the evidence of Mr Saunders and Ms Cook that they had a conversation in which Mr Saunders was advised that dismissal had been a penalty in a similar incident. We find it was entirely appropriate for guidance to be given by HR as to consistency of penalty. It is appropriate for a line manager making the decision to dismiss to take into account consistency. While the claimant criticised the fact that this other case was not disclosed, we have no reason to doubt the evidence of either witness and we accept what they say.

127. We find that a reasonable employer would be entitled to summarily dismiss a long-serving employee with an unblemished record in the circumstances. They did so having formed a genuine belief that the claimant had harassed another Colleague and their belief that he was guilty of misconduct was both genuine and reasonable in all the circumstances.

128. It is agreed that Ms Cook put together the outcome letter. We accept the evidence of Ms Cook and Mr Saunders that she did so based on the documents he had sent her and their conversation. We accept that it reflected Mr Saunders' view and not Miss Cook's views. Mr Saunders reviewed the final outcome and confirmed that it accurately reflected his thoughts. We find that Mr Saunders was the decision-maker. The outcome letter reflects the evidence that Mr Saunders has given us as to his thought process and we do not find that HR interfered in this or influence the outcome.

129. Mr Saunders confirmed that the claimant's race and religion played no part in his decision. While he was aware that the claimant believed he had premonitions, his Belief did not form part of the decision-making. He made a decision because of what the claimant had done and how it had made somebody feel. We find that Mr Saunders was reacting to the messages themselves, what was in those and the impact that they had on the claimant. While he heard the claimant's explanation as to the context in which he felt it necessary to send those messages, the dismissal was based on the content of what the claimant sent. As we have identified that does not reference the claimant's Belief.

130. The outcome letter was shared with the claimant at a further meeting. The claimant did not appeal. He states he was unable to do so because he was so overwhelmed as a result of the decision.

<u>Procedural challenges to the fairness of the dismissal</u>

131. A number of criticisms are made out to the process adopted based on what is said to be breaches of the respondent's policy which we have not dealt with in the chronological narrative. We address those here.

132. Under the heading "what happens if the formal disciplinary process starts?" The policy references asking witnesses if we can share statements. It is the claimant's position that the expectation is there should be witness statements. Again, on the wording of the policy it is not a breach not to ask

for other witness evidence. They are not mandatory under the policy but will depend upon the need.

133. The investigation carried out by the respondent is challenged as not sufficiently reasonable. It was submitted that insufficient consideration had been given to harassment law. We have found that Ms Cook was able and did advise on matters of policy. We have found that Mr Saunders was aware of the company's definition and had this in mind.

134. It was also said that the investigation was unfair because the notes of Mr Saunders meetings with the Colleague were not provided to the claimant any stage, nor were his notes of his chat with the senior manager. Further, the chat messages between the Colleague and Ms Roe, which contain the emoji's, were not provided to the hearing manager or the claimant.

135. In regard to the failure to provide the exchange between Ms Roe and the Colleague it was submitted that had the hearing manager seen the laughing response and comment that the claimant was delusional he would have concluded that the Colleague was not harassed by these messages.

136. We have found that the use of emoji's does not mean that the Colleague did not feel concerned or harassed. She certainly felt things changed from 25 October and 3 November. Mr Saunders met with the Colleague and formed his view based on her demeanour and questions there. We do not find that not providing him with this exchange would have made any difference. It is not a flaw in the procedure.

137. The claimant's record was taken into account by Mr Saunders and sharing that his clean record had been confirmed by another manager would have made no difference.

138. As to the notes of the meeting with the Colleague, in all the circumstances of this case there is no dispute as to what the claimant sent. The claimant could not gainsay her reaction as it was hers to have. The decision maker did consider on an objective basis if it was reasonable of the Colleague to have been upset. We do not find that the claimant seeing the notes of her reactions would have made any difference to the outcome and it does not make the procedure unfair.

<u>Repudiatory breach</u>

139. There is no doubt that the claimant sent the team's messages and email that are the subject of this hearing. We have found that on an objective basis they were sufficient to make the recipient feel alarmed, particularly from the 25 October message and 3 November email with attachments. We have also found that the recipient was alarmed and concerned. She was frightened by what she received, and the messages had the impact of creating a hostile and intimidating environment for her. We also find that the messages would not have been sent to a man and that this was harassment on the protected grounds of sex.

140. We find that the claimant was aware that they could have caused this impact and sent them in any event. He was aware of the possible impact of his actions, his Belief did not require him to send these messages (nor dd the messages refence the Belief) and yet he did it anyway.

141. The respondent's own policy makes it clear that it takes harassment very seriously. It makes it clear that it amounts to gross misconduct. We also find that harassment is a serious matter and that should be well understood by all employees regardless of any policy. We find that to harass another employee in the way the claimant did is a clear repudiatory breach of his contract.

Law/Submissions Belief

142. S 10 of the EQA includes the following definition of belief.

> "(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief."

143. In Grainger plc and ors v Nicholson 2010 ICR 360, EAT, the Appeal Tribunal provided important guidance of general application on the meaning and ambit of 'philosophical belief'. It was held that a belief can only qualify for protection if it:

i. is genuinely held

ii. is not simply an opinion or viewpoint based on the present state of information available

iii. concerns a weighty and substantial aspect of human life and behaviour

iv. attains a certain level of cogency, seriousness, cohesion, and importance, and

v. is worthy of respect in a democratic society, is not incompatible with human dignity and is not in conflict with the fundamental rights of others.

The respondent disputes iii and iv.

144. Criterion iii potentially excludes beliefs that have a very narrow focus. In Harron v Chief Constable of Dorset Police it was concluded this criterion 'might be thought to exclude beliefs that had so narrow a focus as to be parochial rather than fundamental'. It is therefore clear that the subject matter of the belief in question must be of some general importance.

145. Mr Justice Burton expanded on the fourth criterion in *Grainger plc and ors v Nicholson* by saying that, notwithstanding the removal of the requirement in what is now S.10 EqA for a philosophical belief to be 'similar' to a religious belief, it remains necessary for the belief to have 'a similar status or cogency to a religious belief'. Burton J went on to state that even beliefs that do not govern the entirety of a person's life, such as

pacifism and vegetarianism, are potentially covered. He also accepted that the belief does not need to constitute or allude to a fully fledged system of thought, provided that it otherwise satisfies the criteria. As to coherence, Lord Nicholls in *R (Williamson and ors) v Secretary of State for Education and Employment* (above) stated that, for the purposes of Article 9 ECHR, this means simply that the belief must be 'intelligible and capable of being understood' and that 'too much should not be demanded in this regard'.

Freedom to hold a belief

146. We were referred to Eweida v United Kingdom (2013) 57 EHRR 8 which held that, in a direct discrimination claim under section 13 of the Equality Act 2010 , the essential question was whether the act complained of was done because of the protected characteristic. It follows that it is necessary to characterise the putative discriminator's reason for acting. In the context of the protected characteristic of religion or belief, a distinction was recognised between the case where the reason was the fact that the claimant held and/or manifested the protected belief and the case where the reason was that the claimant had manifested the belief in some particular way to which objection could justifiably be taken.

147. On the facts of Eweida the tribunal had found that the respondent took the disciplinary action against the claimant, not because he was a Christian or held a belief in the traditional family, but because he expressed the latter belief, and his other views about homosexuality, in the national media in circumstances which, on the tribunal's findings, justified the action taken.The decsion confrimed that the distinction applied by the tribunal was correct since it conformed to the orthodox analysis whereby the "mental processes" which caused the respondent to act did not involve the belief but only its objectionable manifestation; and that, accordingly, there was no error of law in the tribunal's decision on direct discrimination (post, paras 68, 71, 72, 74, 80, 102, 103).

148. We were also referred to Page v NHS Trust Development Authority [2021] EWCA Civ 255, at paragraph 68. This also identified that in the context of the protected characteristic of religion or belief, case law recognises distinctions between the case where the reason is the fact that the claimant holds and/or/manifests a protected belief and the case where the reason is that the claimant had manifested that belief in some particular way to which objection could justifiably be taken.

149. We considered Mackereth v Department for Work and Pensions [2022] IRLR 721 paragraph 126 in which the ET concluded a tribunal could draw permissible distinction between the claimant's beliefs and the particular way in which she wished to manifest those beliefs.

Direct Discrimination

150. The claim includes direct discrimination. S13 of the Equality Act ("EqA") provides "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.".

151. S.13 EqA focuses on whether an individual has been treated 'less favourably' because of a protected characteristic, the question that follows is, treated less favourably than whom? The words 'would treat others' makes it clear that it is possible to construct a purely hypothetical comparison.

152. Whether the comparator is actual or hypothetical, the comparison must help to shed light on the reason for the treatment. Shamoon v the Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11 identified that the comparator required for the purposes of the statutory definition of discrimination must be a comparator in the same position in all material respects of the victim so that he, or she, is not a member of the protected class. There must be 'no material difference between the circumstances relating to each case' when determining whether the claimant has been treated less favourably than a comparator.

153. A complaint of direct discrimination will only succeed where the tribunal finds that the protected characteristic was the reason for the claimant's less favourable treatment. We considered the question of the degree of connection between the employer's action and the influence of the alleged discrimination and the Supreme Court decision in Royal Mail Group Limited v Efobi (2019) EWCA Civ 18 paragraph 28

> *"The aspect of section 136(2) which is the focus of this appeal is not the only respect in which the opportunity was taken to alter the wording of the old provisions so as more clearly to reflect the way in which they had been interpreted by the courts. The old provisions referred to "an adequate explanation" (or "a reasonable alternative explanation"). Those phrases were also apt to mislead in that they could have given the impression that the explanation had to be one which showed that the employer had acted for a reason which satisfied some objective standard of reasonableness or acceptability. It was, however, established that it did not matter if the employer had acted for an unfair or discreditable reason provided that the reason had nothing to do with the protected characteristic: see eg Glasgow City Council v Zafar [1997] 1 WLR 1659, 1663; Bahl v The Law Society [2004] EWCA Civ 1070; [2004] IRLR 799; Laing v Manchester City Council, para 51".*

154. This decision confirmed the question is whether discrimination had nothing to do with the decision or the behaviour of an alleged wrongdoer responsible for the impugned conduct.

155. In the Supreme Court decision in R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and ors 2010 IRLR 136, SC. Lord Phillips's explained that direct discrimination can arise in one of two ways: where a decision is taken on a ground that is

inherently discriminatory, or where it is taken for a reason that is subjectively discriminatory.

156. The 'but for' test will apply principally in cases where some kind of criterion has been applied that is indissociably linked to a protected characteristic and, in that sense, is inherently discriminatory. However, in the majority of cases, the best approach is to focus in factual terms on the reason why the employer acted as it did. This entails the tribunal considering the subjective motivations of the putative discriminator in order to determine whether the less favourable treatment was in any way influenced by the protected characteristic relied on.

157. As Lord Nicholls put it in Nagarajan v London Regional Transport 1999 ICR 877, HL:

> *'Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on [protected] grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances.'*

Harassment

158. Harassment is defined at s 26 Equality Act 2010

(1) A person (A) harasses another (B) if—
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of— (i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
(2) A also harasses B if—
(a) A engages in unwanted conduct of a sexual nature, and (b) the conduct has the purpose or effect referred to in subsection (1)(b).
(3) A also harasses B if—
(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a) the perception of B;

(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect.

159. Guidance as to the approach to be adopted in harassment cases in the light of that definition was laid down in Richmond Pharmacology v Dhaliwal [2009] ICR 724 EAT, which identified three elements. There must be (1) unwanted conduct, (2) which had the purpose or effect of either (a) violating the Claimant's dignity or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for her, and (3) that must be related to the relevant prohibited ground (here, disability). In Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor [2020] IRLR 495, HHJ Auerbach said,

> *"24… the broad nature of the 'related to' concept means that a finding about what is called the motivation of the individual concerned is not the necessary or only possible route to the conclusion that an individual's conduct was related to the characteristic in question. …*
>
> *25. Nevertheless, there must be still, in any given case, some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be."*

Burden of proof in discrimination

160. Igen v Wong Ltd [2005] EWCA Civ 142, [2005] ICR 931, CA. remains the leading case in this area. There, the Court of Appeal established that the correct approach for an employment tribunal to take to the burden of proof entails a two-stage analysis. At the first stage the claimant has to prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out to the tribunal's satisfaction (i.e., on the balance of probabilities) is the second stage engaged, whereby the burden then 'shifts' to the respondent to prove, again on the balance of probabilities, that the treatment in question was 'in no sense whatsoever' on the protected ground.

161. The bare facts of a difference in treatment and a difference in status only indicate a possibility of discrimination, they are not 'without more' sufficient material from which a Tribunal can conclude that there has been discrimination, Madarassy v Nomura International [2007] IRLR246 CA.

Unfair Dismissal s 98(1) ERA

162. Once the employer has established a potentially fair reason for the dismissal under section 98(1) of ERA 1996 the tribunal must then decide if the employer acted reasonably in dismissing the employee for that reason.

163. Section 98(4) of ERA 1996 provides that, where an employer can show a potentially fair reason for dismissal:

> *"... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) -(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and(b) shall be determined in accordance with equity and the substantial merits of the case.*

164. Where misconduct is said to be the reason for dismissal then, as set out in British Home Stores Ltd v Burchell 1980 ICR 303 EAT, the respondent must show that it believed the claimant guilty of misconduct, it had in mind reasonable grounds upon which to sustain that belief, and at the stage at which the belief was formed on those grounds, it carried out as much investigation into the matter was reasonable in the circumstances.

165. It is not enough that the employer has a reason that is capable of justifying dismissal. The tribunal must also be satisfied that, in all the circumstances, the employer was actually justified in dismissing for that reason. It must consider whether in all the circumstances it was reasonable for the employer to treat that reason as sufficient reason to dismiss. In this regard, there is no burden of proof on either party and the issue of whether the dismissal was reasonable is a neutral one for the tribunal to decide.

166. When assessing whether the respondent adopted a reasonable procedure and was reasonable in treating the reason as sufficient to dismiss, the tribunal must use the range of reasonable responses test.

167. By the case of Sainsbury's Supermarkets Ltd v Hitt 2003 IRLR 23 tribunals were reminded that throughout their consideration in relation to the procedure adopted and the substantive fairness of the dismissal, the test is whether the respondent's actions were within the band of reasonable responses of a reasonable employer.

168. In this case the Court of Appeal decided that the subjective standards of a reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed. The tribunal is not required to carry out any further investigations and must be careful not to substitute its own standards of what was an adequate investigation to the standard that could be objectively expected of a reasonable employer.

169. We were referred to a number of authorities by the claimant's counsel on the issue of a fair procedure and considered Greater Glasgow Health

Board v. Mullen (Unfair Dismissal; range of reasonable responses) [2023] EAT 122 where a range of procedural defects rendered the process unfair

170. We also considered Ramphal v. Department for Transport UKEAT/0352/14/DA and agree that although a dismissing or investigating officer is entitled to seek guidance from Human Resources or others, such advice should be limited to matters of law and procedure and to ensuring that all necessary matters have been addressed and achieve clarity. A Claimant facing disciplinary charges and a dismissal procedure is entitled to expect that the decision will be taken by the appropriate officer, without having been lobbied by other parties as to the findings he should make as to culpability, and that he should be given notice of any changes in the case he has to meet so that he can deal with them.

Wrongful dismissal

171. Wrongful dismissal is a dismissal in breach of contract. Fairness is not an issue: the sole question is whether the terms of the contract, which can be express or implied, have been breached. The employee will have a claim in damages if the employer, in dismissing them, breached the contract, thereby causing them loss.

172. There may be cases where a misconduct dismissal is fair, but a tribunal considers that the conduct in question was not sufficiently serious to amount to a repudiatory breach warranting summary dismissal.

Conclusion

173. We have then considered the findings of fact as we have made them and the applicable law as we have set out above. Our conclusions are set out below, adopting the issues list as a framework.

Unfair dismissal

174. It was not disputed that we should determine this claim in accordance with the Burchell test. We are familiar with the fact that we should not substitute our decision for that of the employer. With that in mind we reach this conclusion on this head of claim. We have found that Mr Saunders was the decision-maker. No one else interfered with this decision and in particular there was no inappropriate interference from HR. We found that Ms Cook acted appropriately and professionally throughout and carried out her role within the appropriate boundaries.

175. We have found that Mr Saunders had a genuine belief that the claimant had committed the misconduct alleged, namely harassment of another employee on the grounds the protected characteristic of sex. He had reasonable grounds for reaching that belief following a reasonable investigation. He considered both the subjective impact of the conduct on the Colleague and objectively whether it was reasonable for that conduct to have had the impact.

176. The claimant suggested that the procedure was flawed for at least 12 reasons. We have addressed all of these in our findings of fact and have found that they either did not occur or were not sufficient to amount to a breach of process to make any decision procedurally unfair. We conclude that not only was there a fair reason for dismissal but a fair process was followed.

177. We also conclude that dismissal was within the range of reasonable responses taking into account all the circumstances of the case. We've accepted Mr Saunders reasoning as to why he reached this conclusion and we cannot say that his decision fell outside the range of reasonable responses We therefore conclude that the dismissal was a fair dismissal in all respects.

Wrongful dismissal

178. Here we must determine whether the terms of the claimant's employment contract had been breached. Did he do anything which amounted to a repudiatory breach of his employment contract which in turn would mean that he was not entitled to any notice pay.

179. Unlike a finding of unfair dismissal, at this point we must determine whether not we have found facts that indicate there was a breach of contract. We have found that there was a repudiatory breach. We have found that the claimant did send messages which were capable of being construed as harassment and that they were construed as harassment by the recipient. We've also found that an objective basis it was reasonable to form this view.

180. We conclude that the claimant had therefore created an intimidating or hostile environment for a Colleague and that he had done so on an objective basis. We are satisfied that harassment is a sufficiently serious matter to be a repudiatory breach of contract and conclude the claimant had therefore, by his own actions, undermined the fundamental relationship of trust and confidence that must exist between the parties. He is not entitled to any notice pay.

Direct discrimination Belief/Christian faith

181. We then turned to the question of his Belief and considered whether or not it is capable of being a protected characteristic. The respondent disputes that it is and submit that it fails to meet to particular tests those are that it

vi. concerns a weighty and substantial aspect of human life and behaviour

vii. attains a certain level of cogency, seriousness, cohesion and importance.

182. We understand from the legal principles that beliefs that have a narrow focus may be excluded if they are parochial rather than fundamental.

The subject matter of the belief in question must be of some general importance. While it is accepted that people of different religions and beliefs worldwide believe in the power of dreams, the Belief is expressed to be that the claimant believes in prophetic dreams that predict the future and **he** is gifted with that psychic ability **and** that the majority, although in evidence he said all, of his dreams come true.

183. We understand the Belief he is seeking to rely on is very specifically about his own gift. We are satisfied that it would not gain protection merely because it was connected to any Christian belief. We conclude that that is a narrowly focused belief and is not a general importance as it concerns an individual's belief in his own particular abilities and no more than that. We do not consider that it meets the test set out in case law as Grainger iii.

184. We would not need to go any further to consider Grainger iv but were invited to go further in case we were wrong in any of our conclusions. We understand that the fourth Grainger criterion is that the Belief must have a similar status and cogency to a religious belief. While it doesn't have to govern every aspect of an individual's life, it must be a fully-fledged system of thought. On the claimant's own evidence the Belief does not influence his conduct at work and has a small impact on his conduct outside of work as he shares his dreams only in a very limited basis. We would also find that it does not meet this criterion. We conclude that the Belief does not qualify as a philosophical belief under the Equality Act. Even if , which we do not accept, the claimant's Belief motivated the respondent it is not a protected characteristic.

185. While the claimant also relies on his Christian faith and we have found that the decision-maker was unaware of it. It therefore could play no part in what happened.

186. We conclude for these reasons any claim based on either Belief or Christian faith can not suceed on these facts.

<u>Difference in treatment</u>

187. While we have found that 2 of the characteristics the claimant relies on can not apply here, nonetheless we have gone on to consider whther the claimant was treated differently than a hypothetical comparator. We conclude that on these facts any one who does not share any one or more of the claimant's characteristics (so was not christian, of a different race or white and who did not have the Belief) but had sent the same messages would have been treated the same way. We conclude there was no difference in treatment between the claimant and a hypothetical comparator with no material difference between the circumstances relating to each case. That is the case for each of the characteristics seperately and jointly. His claim for direct discrimination does not suceed on this basis.

188. Whil we do not consider there was any difference in treatment, we have nonetheless gone on to consider the burden of proof. There was no dispute as to the relevant legal principles engaged here. There is a

twostage burden of proof. Is not enough for the claimant to identify simply a difference in treatment, to establish a prima facie case the claimant must establish sufficient material which the tribunal could conclude that the reason for the difference in treatment was the protected characteristic. In this case one or all of his race, religion or his Belief. There needs to be something more than different treatment.

189. In submissions the claimant relied on a number of things as the "something more" that was capable of shifting the burden. These are not attributed to a particular characteristic.

190. These were that the investigation officer and disciplinary hearing manager carried out an unfair dismissal process and procedure despite being competent. The statement made by Mr Saunders that the claimant's communications don't relate to a sexual nature which it was submitted amounts to an admission by the respondent that there was no harassment. We have made a positive finding that the dismissal process was carried out appropriately and was not unfair. We have also found that the respondent did find the claimant guilty of harassment on the protected characteristic of sex. That is different from sexual harassment. We have also found that the Colleague was concerned and worried by the messages. We have found neither of these things relied on happened so they can not amount to the something more than an allegation of different treatment.

191. The claimant also relied on the following. The fact that the Colleague had said it would be fine if the claimant stopped and he did stop and yet the disciplinary process was still undertaken. The fact that the exchange of messages between the Colleague and Helen Roe show that the Colleague was not sexually harassed and the outcome letter specifying that the claimant had contact with the Colleague in his dream created a wrong impression.

192. We have found that initiating a disciplinary process was reasonable in the circumstances even if the contact had stopped. We have found that the Colleague was subjected to harassment on the grounds of her sex by the claimant and the messages evidence that. As to any reference in the outcome letter to contact in the dream, it was the claimant's account that Vanessa had thrown herself on his neck.

193. We have concluded that the respondent acted fairly and properly in taking the steps it did. We do not accept that any of these things amount to evidence of something more. If they were capable of doing so then any employer taking justified disciplinary action would find that the claimant had shifted the burden of proof.

194. Even if the claimant had persauded us that the burden of proof had shifted (and he had also persauded us there was some difference in treatment) we conclude that the respondent took its actions for non discriminatory reasons.

195. The claimant was not dismissed for manifesting his Belief. He did not set it out his Belief in the communications themselves. Even if it can be said that the decsion maker had knowledge of the Belief (and it was protected) , there is of course a distinction between the case where the reason is the fact that the claimant holds and/or/manifests a protected belief and the case where the reason is that the claimant had manifested that belief in some particular way to which objection could justifiably be taken. Here the words he used and the attachment he sent justifiably and reasonably was objection. His messages and email were objectively capable of causing offence and did cause offence. The reason for dismissal was the objectionable way he had written to the Colleague.

196. In summary he was dismissed for conduct which amounted to gross misconduct. He sent communications to which offence could objectively be taken. It was taken. It was about the way that he wrote them. It created a hostile and intimidating environment for a younger female Colleague. The claimant had no compulsion to send those emails, it was not part of his own belief system and in any event his Belief is not protected. His dismissal had nothing whatsoever to do with his race but was entirely as a result of his own gross misconduct.

197. For all these reasons none of the claims suceed.

F Mclaren

Employment Judge McLaren

Date 16/11/24

For the Tribunal

O. Miranda
22/11/2024