



EMPLOYMENT TRIBUNALS

Claimant: Ms C Muswere

Respondent: University and College Union

Heard at: Manchester (in public via CVP)

On: 29-31 January 2025

Before: Judge Serr, Mr Dobson, Ms Eyre

Representation

Claimant: in person (no attendance on 30 and 31 January)

Respondent: Ms Ifeka, Counsel

JUDGMENT

1. The allegations of direct race discrimination all fail and are dismissed.
2. The allegations of harassment related to race all fail and are dismissed.
3. The allegations of victimisation all fail and are dismissed.

REASONS

The Claim

1. By a Claim form initially presented on 29 June 2022 the Claimant brings various claims against the Respondent- University and College Union. Those claims for direct discrimination, victimisation and harassment are brought as a member of that Union pursuant to s.57 EqA 2010.

The Issues

2. As will be seen the claims relate to advice and assistance that the Claimant sought from the Union following her removal from her employers premises on 11/3/22. Her employer was Burnley College ("the college") where she was employed as a trainee college lecturer. The claims cover a narrow compass of time- essentially from 14 March 2022 when she first made contact with the Trade Union to on or around 8/4/22. The purpose of contacting the Union was for advice and assistance in respect of the removal from her employment.

3. The issues were identified at a previous Preliminary Hearing (PH) conducted by EJ Callan on 13 May 2024. They are as follows (using EJ Callan's numbering) limited at this stage to liability :

Direct race discrimination about the following:

42.0.1 Alison Gander and/or Matt Arrowsmith assisted the College by misrepresenting the dismissal and thereby failing to identify the College's discriminatory acts;

42.0.2 Alison Gander diminishing the College's discriminatory behaviour by the College in dismissing the claimant;

42.0.3 Doing nothing about the College refusing to provide CCTV recordings requested in a SAR made by Ms. Gander on the claimant's behalf.

42.1 Harassment in respect of the following:

42.1.1 Alison Gander and Matt Arrowsmith giving the claimant advice which did not accurately reflect the claimant's situation.

42.1.2 Treatment by Matt Arrowsmith in stating the respondent would not advise her further if she was taking legal advice elsewhere.

42.2 Victimisation in respect of the following:

42.2.1 Alison Gander and Matt Arrowsmith giving the claimant advice which did not accurately reflect the claimant's situation.

42.2.2 Matt Arrowsmith's unwillingness to assist the claimant in her SAR In his email of 6 April 2022.

42.2.3 Alison Gander's treatment of the claimant by declining to assist her further with her SAR as expressed in an email of 8 April 2022.

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

1.1 Did the respondent do the following things set out in paragraphs 42.0.1- 42.0.3 above?

1.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant has not named anyone in particular who they say was treated better than they were.

1.3 If so, was it because of race?

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

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

2.1 Did the respondent do the things set out in paragraphs 42.1.1 and 42.1.2 above?

2.2 If so, was that unwanted conduct?

2.3 Did it relate to race?

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

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

3. Victimisation (Equality Act 2010 section 27)

3.1 Did the claimant do a protected act as follows:

3.1.1 Telling Alison Gander in a telephone conversation on 14 March 2022 that her Manager, Liam O'Malley, had discriminated against her by dismissing her.

3.2 Did the respondent do the things set out in paragraphs 42.2.1 to 42.2.2 above?

3.3 By doing so, did it subject the claimant to detriment

3.4 If so, was it because the claimant did a protected act?

3.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

Procedure

4. There were a number of procedural problems at the outset of the hearing. The Claimant, who represented herself, had been of a fixed mindset that the present case could not proceed until the conclusion of the claim against the college for discrimination arising out of her dismissal. Previous Judges had rightly taken the view that the 2 cases were separate and distinct. In fact, the Tribunal claim against the college had concluded in 2024 but the Claimant was appealing to the EAT. The Claimant had refused to exchange witness statements with the Respondent at the date they were due according to the PH orders which was 25 November 2024. By a letter dated 15/1/25 EJ Slater confirmed her refusal to postpone this case stating that the Claimant provided no cogent reasons why the case cannot fairly go ahead until the final determination of appeals against the judgment in the case against the College. The EJ stated "It is a matter for you as to whether you choose not to provide a witness statement but, if you fail to do so, possible consequences could be that you could be prevented from giving evidence in support of your claim or your claim could be struck out".
5. The Respondent eventually sent the Claimant its witness statements on Thursday 23/1/25 without receiving any from the Claimant. On 26/1/25 the Claimant wrote to the Tribunal indicating she would be only available to attend on day 1 of the hearing and not for days 2 and 3. She provided a document dated 26/1/25 which attaches a statement of truth but is largely directed towards seeking an adjournment on the same basis, that the college claim must be concluded first.
6. At the start of the hearing the Claimant no longer sought to adjourn the whole hearing but wished to adjourn days 2-3 and complete the hearing on another occasion. The Tribunal refused. The claim dated back to 2022, the hearing had been listed as long ago as May 2024 at the PH, the reason for the non-attendance was not substantial, being related to generalised commitments and the witnesses on the Respondent's side, who had had serious allegations of discrimination

hanging over them for 3 years were present and ready to attend. The Claimant was told should she not attend, the claim would continue in her absence under Rule 47.

7. The absence of a witness statement from the Claimant was rectified by treating the claim form and a long recitation of the facts contained in a case management agenda provided by the Claimant ahead of the PH in May 2024 as her evidence. Ms Ifeka, Counsel for the Respondent, very fairly did not object to this course.
8. The case accordingly proceeded with the Tribunal being provided a 514 page bundle which both parties had by the start of the hearing. There were also 2 witness statements from the Respondent's witnesses Mr Arrowsmith and Ms Gander. The Claimant did not attend on the second and third day of the hearing as she indicated, and the case proceeded in her absence. Both she and the Respondent's counsel however provided written closing submissions which the Tribunal considered with care.

The Facts

9. The Tribunal made the necessary following findings of fact.
10. The Claimant was employed by the College as a trainee lecturer from August 2021. She appears also to have been undertaking a PGCE qualification alongside her employment at the same time. She was a member of the Respondent from December 2021 until late April 2022. She self identifies as black British.
11. The Respondent is a trade union representing a substantial number of members in the UK in the education and training sectors.
12. Alison Gander was a branch secretary with the Respondent assigned to the college branch. This was a voluntary role. She was also employed as a teacher at the college. The role of branch secretary included giving members guidance on employment law advice ("casework"). While Ms Gander had been given some training in this role, and had undertaken it for 12 years at the date of these events, she is not legally qualified and undertook the role in a voluntary capacity. It was the practice of the Respondent that case work be referred up to Regional Support Officers – who were persons employed by the Respondent at regional level. RSO's had more experience and training in casework and could provide a greater level of advice and guidance than Branch Officers.
13. Ms Gander had limited dealings with the Claimant until March 2022, but had met her previously as she had provided cover for some of Ms Gander's lessons while off sick.
14. Matthew Arrowsmith was an RSO for the Respondent's North West branch. He did not know the Claimant and had never met her. He in fact only communicated with her during the matters giving rise to these proceedings by email. He did not know her race.
15. On 14 March 2022 the Claimant wrote to Ms Gander stating that she had been sacked on Friday from the college by a person called Liam. In a subsequent phone call with Ms Gander, evidenced in a later email dated 21 March 2022 from Ms Gander to Mr Arrowsmith, she told Ms Gander that Liam came to her desk and told her to leave immediately because she was violent and a danger to students. She

was escorted out of the building because she had raised her voice. The Claimant said she felt she had been discriminated against because of her race.

16. Ms Gander sought a timeline from the Claimant to send to Mr Arrowsmith.
17. On 16 March the Claimant sent the requested timeline. The timeline alleged that the Claimant had been discriminated against and included what was said to be events leading up to her discriminatory dismissal. Ms Gander agreed to send the timeline on to Mr Arrowsmith.
18. On 19 March Ms Gander also asked the Claimant to send her a copy of her contract of employment which she would also send on to Mr Arrowsmith.
19. On 21 March Ms Gander sent a copy of the contract of employment to Mr Arrowsmith. Ms Gander also wrote an e-mail to Mr Arrowsmith summarising her understanding of the position with the claimant. The letter stated

“Our member, Chido Muswere (CM), a trainee lecturer in A level Business Studies in her probationary year (contract attached) was summarily dismissed on Friday 11/03/22 and has provided a timeline which I'm currently trying to make sense of. CM feels that she has been discriminated against because of her race. I can't find any direct evidence of this and fear that because of her status as a trainee teacher there will be little we can do for her”.

The reference to Ms Gander saying there was little the union could do for her related to her understanding that the Claimant did not have two years qualifying service in order to bring an unfair dismissal claim. The Tribunal does not conclude that Ms Gander had rejected out of hand any possibility that the Claimant could in fact have been the victim of unlawful discrimination. She was keeping an open mind.

20. On 22 March the Claimant spoke to Ms Gander. Ms Gander said she needed to speak to Mr Arrowsmith before advising but doubted the claimant had an unfair dismissal claim due to her probationary status.
21. On 23 March Ms Gander tried to speak to Mr Arrowsmith but he was off sick. On the same day the Claimant wrote to Ms Gander stating that the college had blocked all her emails and that she could not even e-mail to ask for a subject access request (SAR). Ms Gander replied by saying that as her trade union representative she was pretty sure she could ask on her behalf. In fact the Tribunal finds that it would not be usual for a trade union representative to seek a SAR on behalf of one of its members. There was certainly no requirement for Ms Gander to do so and by offering to put in such a request on her behalf Ms Gander was going beyond what was necessary in her capacity as the Claimant's representative.
22. Over 24 and 25 March the Claimant sent multiple requests to Ms Gander to send SAR's on her behalf seeking CCTV footage featuring the Claimant. Ms Gander submitted 7 SAR requests to the college on the Claimant's behalf on 24 March and sent the Claimant the college's data protection policy. The Claimant in fact sent 10 emails to Ms Gander on 24 March. In her last e-mail of the day the Claimant said she had another 8 SAR requests. On 25 March the claimant requested a further 4 SAR's be sent by Ms Gander on her behalf. Dealing with the Claimants SAR

requests it became clear was becoming an unreasonable administrative burden on Ms Gander who, as it is already stated, was acting in a volunteer role and had other paid teaching duties in addition to her trade union position. Ms Gander asked the Claimant to send a collated request encompassing all her requests in an e-mail direct to the data controller or to herself who would then forward them on. The Claimant sent a collated request to Ms Gander who forwarded the request to the college.

23. On 28 March Mr Arrowsmith had a telephone discussion with Ms Gander. The contents of the phone call were evidenced in an e-mail of the same date. Mr Arrowsmith noted that the college had not formally explained the Claimant's circumstances and it was not clear whether she had been suspended or dismissed or neither. The e-mail stated that the employer cannot maintain that there was a dismissal following a disciplinary process without some written notice of the disciplinary hearing, a formal hearing being convened and a written notice of the outcome of that hearing. In oral evidence Mr Arrowsmith stated, and the Tribunal accepts, that while he was aware that it was possible to dismiss someone without any written confirmation of such, in his experience it was rare, and for an employer the size of the College extremely rare. Accordingly he wrote, and in the Tribunal's view was entitled to write, that without written notice of suspension or termination the Claimant should assume that she was neither suspended nor dismissed.
24. The e-mail went on to state that the employer needed to make their position clear. He suggested the Claimant write to the employer in the following terms:
'I understand that I am considered to have been on special paid leave since 11 March 2022. I am now serving you notice that I will return to full duties on Monday 4 April unless advised otherwise'.
25. He went on to state *"If she receives a phone call from the employer she should refuse to discuss any details, refer to her email and request a written response. If she receives no response she should return to work on Monday 4 April"*.
26. The purpose of writing such a letter was to require the employer to confirm what the position was with the employment status of the Claimant. The Tribunal does not find that this letter objectively viewed could be seen to cast doubt on the Claimant's version of events that had been given to Ms Gander nor did it undermine any assertion that the Claimant had been discriminated against. Given the lack of written confirmation emanating from the college the Tribunal finds it was reasonable of Mr Arrowsmith to suggest the Claimant write such a letter. Mr Arrowsmith indicated that it was what he described as a "tactic" that he had employed on a number of other occasions for other members in similar circumstances. Mr Arrowsmith did not doubt the Claimant's version of events, he was keeping an open mind. He was however trying to preserve the Claimant's position legally.
27. On same date Ms Gander wrote an e-mail to the claimant copying in Mr Arrowsmith. This followed on from a telephone call that the claimant had had with Ms Gander. The e-mail is lengthy and covers a number of different topics. Ms Gander indicated to the claimant that the Respondent would not be able to represent her if she had already instructed a solicitor or barrister. The Tribunal finds that this advice was correct and in accordance with the Respondent's policies which precluded the Respondent from providing legal advice in those circumstances. There was discussion about SARS. Ms Gander asked for any additional SAR to go in one consolidated SAR and that she would discuss with Mr

Arrowsmith submitting it. Ms Gander also said that she had discussed her case with Mr Arrowsmith and that she should write a letter to her employer in the terms that Mister Arrowsmith had suggested. If she was to receive no response she should return to work on Monday 4 April. If the employer confirmed that she was dismissed then the Claimant may have a claim for wrongful dismissal with a compensation payments of one month. The letter also refer to an ACAS form that the claimant had completed which indicated discrimination in respect of her termination.

28. Finally, the e-mail referred to a photo of a letter that the Claimant had sent Ms Gander. That letter was from the college but refer to the claimant being removed from the PGCE course. Having reviewed the letter the Tribunal is satisfied that that is not a letter of dismissal but a letter confirming the Claimant was to be removed from that course.
29. The Claimant wrote multiple emails to Ms Gander that day some of which were sent late at night. The Claimant indicated that she would not follow the advice being provided by Mr Arrowsmith because she did not want to go back to work, she was dismissed. In fact the Claimant misunderstood the advice being provided to her. In absence of written evidence of dismissal or suspension the Claimant was being advised to write to her employer in order to get them to set out the position.
30. On 29 March both Ms Gander and Mr Arrowsmith communicated with the Claimant in an attempt to explain the strategy being adopted on the purpose of writing the letter to the employer. Ms Gander wrote in an e-mail "the advice we have given is designed to prompt the college into putting something in writing to you about the reasons for your dismissal. They're unlikely to want you to turn up in college and will most likely respond to that effect. The written evidence is what we need to go forward with your case". Mr Arrowsmith asked the claimant to "hold off commencing early conciliation prior to discussion as this will allow more time to take advice and prepare and a necessary legal submissions". Additionally, in a separate e-mail Mr Arrowsmith stated that as the employer hadn't formally explained the circumstances unless the college confirmed it in writing she was considered not to be dismissed. It went on to state "we need the employer to make their position clear without you legitimising a dismissal by writing to ask for your job back".
31. The Claimant wrote an e-mail to Mr Arrowsmith stating that she had had legal advice. Mr Arrowsmith responded that the respondent would not advise her further if she was taking legal advice. As previously indicated that response conformed with the rules of the Respondent's scheme. The Respondent does not provide legal assistance to members who are in receipt of legal advice from a professional advisor separately. The Claimant responded to Mr Smith suggesting that he was lying to her. She wrote separately to Ms Gander stating "I am not sure why Matt is lying to me" and suggesting she was being asked to send emails under duress. The suggestion that Mr Arrowsmith was lying was baseless, as was the suggestion that was she was asked to send emails to her employer under duress.
32. Mr Arrowsmith later in the day confirmed the Respondent could not advise the Claimant if she was taking alternative legal advice. Mr. Smith indicated that if the Claimant wished to take an initial legal opinion on the prospects of a tribunal claim she could make an application under the Respondent's legal scheme. To do this she needed to provide Mr Arrowsmith with a numbered narrative with reference to an appendix to allow him to consider the evidence before making a decision on

whether to support referral to the legal scheme. He attached the scheme rules and guidance to the e-mail. On 30 March Mr Arrowsmith confirmed that the application had to be sent to him and that he might suggest amendments or request particular evidence. If he thought it had merit he would arrange for a solicitor to be assigned to offer a legal opinion. The Claimant despite receiving this information and indicating she would consider doing so, did not make such an application at any time.

33. Had the Claimant been dissatisfied with the decision of Mr Arrowsmith in respect of referral to the legal help scheme she could have sought a review under the scheme which would have been conducted by someone independent of Mr Arrowsmith. Although she had no reason to believe Mr Arrowsmith would not conduct a fair assessment of her case this should have provided her with confidence in the scheme.
34. There was a pause in the communications between the Claimant and Ms Gander and Mr Arrowsmith until 6 April. On 6 April the Claimant wrote to both asking if they had sent the SAR request. Mr Arrowsmith responded on the same day providing advice again about submitting a request for legal support through the respondents legal scheme and providing advice on limitation to bring a claim. In respect of the SAR he stated that the claimant should submit the SAR herself stating "it is your data and your request". Mr Arrowsmith did provide a template request letter which it was suggested that the Claimant strictly adhere to. For the avoidance of doubt the Tribunal is satisfied that that was all Mr Arrowsmith was required to do in his role as a regional support officer.
35. On 7 April the Claimant wrote to Ms Gander without copying in Mr Arrowsmith. She asked if Ms Gander had sent the second SAR request to Philip or if not, if she was not going to do it. This was a deliberate attempt on the part of the Claimant to bypass Mr Arrowsmith who had already given her an answer in respect of the SAR position so far as the Respondent was concerned.
36. On 8 April Ms Gander replied stating correctly that Mr Arrowsmith had already answered the question in a previous e-mail stating that the Claimant should submit the saw herself. The e-mail also stated that "I note that Phil Glass Burnley college data protection officer emailed you on the 24 March and 25 March so you should have no trouble submitting your request. I was happy to help you contact him initially but you should do so yourself now". This reply was appropriate from Ms Gander and represented all that she needed to do.
37. It seems that the college may have refused to have provided some of the CCTV based on how long the footage was stored under its policy. The Claimant had been provided with the policy and the Respondent could not, and was not required to be, involved in a dispute about whether the SAR was being properly complied with or not.
38. The Claimant complained to the Respondent's president who considered her complaint and rejected it in writing and then to the Tribunal about the conduct of Mrs Gander and Mr Arrowsmith.

The Law

Direct race discrimination

39. Protection against direct discrimination is provided for at s.13 of the Equality Act 2010:
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.
40. When the claim is based on direct discrimination or victimisation, in practice tribunals in their decisions normally consider, first, whether the claimant received less favourable treatment than the appropriate comparator (the 'less favourable treatment' issue) and then, secondly, whether the less favourable treatment was on the relevant proscribed ground (the 'reason why' issue). Tribunals proceed to consider the reason why issue only if the less favourable treatment issue is resolved in favour of the claimant. Thus the less favourable treatment issue is treated as a threshold which the claimant must cross before the tribunal is called upon to decide why the claimant was afforded the treatment of which she is complaining.
41. In *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, it was said that the real question in direct discrimination cases was "what, consciously or unconsciously, was the [alleged discriminator's] reason". Unlike causation, the Court considered, that question required a subjective test. Causation is a legal question whereas a respondent's reasons for action are a question of fact.
42. Direct evidence of discrimination is rare and a tribunal must consider the possibility of unconscious discrimination by carefully examining the surrounding circumstances and drawing inferences where appropriate.

Victimisation

43. In respect of victimisation EqA 2010, s 27(1) provides:
"A person (A) victimises another person (B) if A subjects B to a detriment because
-
- (a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act."
- "Protected act" is defined at EqA 2010, s 27(2):
"Each of the following is a protected act –
- (a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act".'
44. The employer or in this case union must subject the employee to a detriment "because" the latter has performed a protected act. The language used in EqA 2010, s 27 matches that in the definition of direct discrimination at s.13. It follows, therefore, that, the protected act has to be an effective cause of the employer's detrimental actions but does not have to be the principal cause.

45. The threshold for what constitutes a detriment is a low one, the test being simply whether the treatment is of such a kind that a reasonable worker would or might take the view this is to their detriment- see *Warburton v The Chief Constable of Northamptonshire Polic* (2022) EAT 22.

Harassment relating to a relevant protected characteristic

EqA 2010, s 26(1) provides that:

“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.”

46. Harassment, is a form of conduct. It must be unwanted; it must relate to a protected characteristic; and it must either have the purpose or the effect of creating what is referred to as an “adverse environment”.
47. The words ‘related to’ in S.26(1)(a) have a broad meaning and holding that conduct that cannot be said to be ‘because of’ a particular protected characteristic may nonetheless be ‘related to’ it — *Hartley v Foreign and Commonwealth Office Services 2016* ICR D17, EAT. The EHRC code of practice on employment at paragraph 7.10 states that protection from harassment also applies where a person is generally abusive to other workers but, the form of the unwanted conduct is determined by that workers protected characteristic.

The Burden of Proof

48. Section 136 of the Equality Act 2010 provides:

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

49. S.136 creates a 2 stage process. In the first stage the employee must prove facts from which the employer could conclude, in the absence of an adequate explanation that the employer committed an unlawful act of discrimination. The Tribunal must ignore any explanation given by the Respondent at this stage. If there is a prima facie case of discrimination the burden then shifts to the employer to provide a non-discriminatory explanation for the difference in treatment. Unreasonable treatment alone is usually insufficient to draw an inference of discrimination.

S.57 Equality Act

50. Finally as the Tribunal indicated this is a claim against a trade union by one of its members. This is the provision that makes it unlawful for a Trade Union to directly

discriminate, harass or victimise its members or prospective members. The provision addresses unlawful discrimination. Poor service or negligent representation by a union is not per se contrary to this section- *Furniture, Timber and Allied Trades Union v Modgill* [1980] IRLR 142, EAT. That said, in appropriate circumstances it may give rise to an adverse inference of discrimination.

Conclusions

51. Applying the law to the facts the Tribunal concludes as follows.

42.0.1 Alison Gander and/or Matt Arrowsmith assisted the College by misrepresenting the dismissal and thereby failing to identify the College's discriminatory acts;

42.0.2 Alison Gander diminishing the College's discriminatory behaviour by the College in dismissing the claimant;

52. The Tribunal is not of the view that Ms Gander or Mr Arrowsmith misrepresented the dismissal or diminished the College's discriminatory behaviour. Mr Arrowsmith was presented with limited information. As would normally be expected from an employer the size of the College there was no documentary evidence of a disciplinary procedure being implemented, no evidence of suspension on any terms and no documentary evidence of a dismissal. The advice to write a letter to the employer in the terms that he did (advice of which was then adopted by Ms Gander) was a reasonable and rational approach in the circumstances. It would, or may have caused the employer to formalise the Claimant's employment status in writing and potentially to preserve her position as to pay. The rationale was explained to the Claimant. While other options were available, such as Ms Gander informally raising with her employer the Claimant's case and seeking clarification herself, that does not of itself mean the option suggested by Mr Arrowsmith could be criticised.

53. Likewise, the fact that Ms Gander suggested in correspondence that the Claimant was unlikely to have an unfair dismissal claim but may have a claim for breach of contract was not unreasonable in the circumstances. Ms Gander is not legally qualified and had limited information at the time. The lack of 2 years qualifying service would indeed preclude the Claimant from bringing an unfair dismissal claim under s.98 ERA. Nothing Ms Gander said or did would prompt a reasonable trade union member into thinking that a claim for race discrimination was being discounted or their version of events disbelieved.

54. Even if, contrary to the above, the Tribunal ought to have concluded that the terms of the letter being suggested by Mr Arrowsmith and then Ms Gander was a detriment to the Claimant, the Tribunal is quite satisfied it had nothing whatsoever to do with the Claimant's race. Mr Arrowsmith was unaware of her race having never met her. He had suggested this form of correspondence on other occasions for other members in similar circumstances. Accordingly the claim for direct discrimination on these grounds fail.

42.0.3 Doing nothing about the College refusing to provide CCTV recordings requested in a SAR made by Ms. Gander on the claimant's behalf.

55. There is no question that the Respondent did nothing in respect of the Claimant's SAR request. Ms Gander initially submitted a significant number of SAR's on the Claimant's behalf. She advised the Claimant to consolidate multiple requests into a single document. There was discussions about who to direct the SAR to at the college and the Claimant was provided with a template request form to assist her. This was all the Respondent was required to do. Accordingly, the Tribunal does not find that the Claimant suffered any detriment by being required to submit the SAR's herself.
56. The Respondent was not in a position to force the college into responding to the SAR requests. It did all it was required to do.
57. Even assuming that, having initially agreed to submit SAR's on her behalf, by subsequently requiring her to submit them herself the Claimant has been subjected to a detriment, the Tribunal is quite satisfied that the reason was nothing whatsoever to do with her race. The volume of queries and requests that were being sent, often at unsociable hours, caused Ms Gander initially to ask the Claimant to submit them herself. Mr Arrowsmith was of the view that it was not the role of the Trade Union to submit SAR's on any members behalf and this was then adopted by Ms Gander. Accordingly, the claim for direct discrimination also fails on this ground.

42.1.1 Alison Gander and Matt Arrowsmith giving the claimant advice which did not accurately reflect the claimant's situation.

58. This is essentially already addressed by the Tribunal. The advice that was given was not inconsistent with the facts as the Respondent knew them at the material time. Nothing the Respondent did could be viewed as suggesting that they disbelieved the Claimant in respect of alleged racial discrimination or the circumstances of her removal from the college. This of course contrasts with the Claimant's approach to Mr Arrowsmith who she had suggested was being untruthful. The advice given certainly did not have the purpose or effect of violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The claim for harassment on this ground fails.

42.1.2 Treatment by Matt Arrowsmith in stating the respondent would not advise her further if she was taking legal advice elsewhere.

59. Mr Arrowsmith's communication with the Claimant indicating that the Trade Union would not provide advice to her if she was in receipt of separate legal advice from another source accorded with the Respondent's legal help scheme. It was prompted by the Claimant indicating that she had received legal advice from elsewhere. In fact it was the same or similar advice she had received from Ms Gander. Mr Arrowsmith did not state that the Respondent had made a decision not to provide advice, merely that it would not if she in fact was receiving legal assistance elsewhere. Accordingly nothing Mr Arrowsmith did in this regard had the purpose or effect of violating the Claimant's dignity, or creating an intimidating,

hostile, degrading, humiliating or offensive environment for her. The claim for harassment on this ground fails.

42.2.1 Alison Gander and Matt Arrowsmith giving the claimant advice which did not accurately reflect the claimant's situation.

42.2.2 Matt Arrowsmith's unwillingness to assist the claimant in her SAR In his email of 6 April 2022.

42.2.3 Alison Gander's treatment of the claimant by declining to assist her further with her SAR as expressed in an email of 8 April 2022.

60. The Tribunal has already addressed these claims essentially earlier on. The Claimant telling Ms Gander in a telephone conversation on 14 March 2022 that her Manager, Liam O'Malley, had discriminated against her by dismissing her was, it is accepted, a protected act within the meaning of the legislation. However the decision not to submit the Claimant's SAR's on her behalf was not a detriment to her, and if it was it had nothing whatsoever to do with the Claimant telling Ms Gander in a telephone conversation on 14 March 2022 that her Manager, Liam O'Malley, had discriminated against her by dismissing her.

61. Likewise the advice did accurately reflect the Claimant's situation as the Respondent knew it, or at least was not inconsistent with it. The advice to write the letter in the terms that Mr Arrowsmith did, and the preliminary advice in respect of a lack of a claim for unfair dismissal but a possible claim for wrongful dismissal was not a detriment to the Claimant or if it was had nothing whatsoever to do with the Claimant telling Ms Gander in a telephone conversation on 14 March 2022 that her Manager, Liam O'Malley, had discriminated against her by dismissing her.

62. For these reasons the claims for victimisation also fails and is dismissed.

Employment Judge

31 January 2025

Date: 10 February 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

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

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>