



## EMPLOYMENT TRIBUNALS

Claimant: Mr K Chouhdry  
Respondent: Coventry Building Society

Heard at: Midlands West (by CVP)

On: 11, 12, 14, and 15 November 2024

Before: Employment Judge Mr J S Burns  
Members Ms J Malatesta and Ms H Craik

### Representation

Claimant: In person  
Respondent: Ms C Millns (Counsel)

### REASONS

(requested by the Claimant on 29/11/24 for the judgment signed on 15/11/24).

1. The claims were for direct race discrimination, alternatively harassment related to race; and victimisation, as per the list of issues settled at a CMPH on 24/11/23 which is reproduced for convenience in the Schedule to these Reasons.
2. The documents were in a bundle of 538 pages. One or two additional documents were admitted into evidence during the hearing.
3. We heard evidence from the Claimant and then from the Respondent's witnesses Paul Davis, Nicholas Smith, Jack Bradley, Bradley Corey, Teodora Slivenova, and Audrey Cassidy.

### Relevant law

4. Section 4 Equality Act 2010 (EA) provides that race is a protected characteristic and section 9 provides that race includes a person's colour, nationality or ethnic or national origins.

### Direct Racial Discrimination

5. Section 13 EA provides that a person discriminates against another if, because of a protected characteristic, he treats another less favourably than he treats or would treat others.
6. The requirement is on the Claimant to show less favourable treatment by comparison with an actual or hypothetical comparator whose relevant circumstances must be the same or not materially different.

#### Harassment

7. Section 26 provides that a person harasses another where he engages in unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating the other's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. In deciding whether conduct has this effect the following must be taken into account: the perception of the other, the other circumstances of the case and whether it is reasonable for conduct to have that effect.

#### Victimisation

8. This is defined in section 27 of the EA and it occurs where the victimiser subjects another to detriment because the other has done a protected act or the victimiser believes the other has done or may do a protected act. A protected act is defined to include bringing proceedings under the EA or giving evidence in such proceedings or doing anything in relation to the Act or alleging a breach of the Act, (provided the allegation is not both false and made in bad faith)

#### Onus of proof

9. Section 136 provides that if there are facts from which a court could decide, in the absence of any other explanation, that a person has contravened a provision under the EA, the court must hold that the contravention occurred, unless the person shows that he did not contravene the provision.

#### Findings of fact and conclusions

10. The Claimant, who is British Asian, was a self-employed contractor, engaged by Crimson Limited through his limited company, Jamal Goodyear Ltd, to provide specialist services as an Operations Analyst to the Respondent. From 4/11/22 he worked as an operations analyst for the Respondent at its head office in Coventry until his assignment was summarily terminated by the Respondent on 1/3/23.

11. The Claimant worked from December 22 as part of small team called Shift B, the leader of which was Mr Smith. Other members of the shift were Mr Corey and Mr Bradley. The team reported to Ms Slivenova and she reported to Ms Cassidy.

12. Mr Smith failed in his responsibilities as shift leader by leading and fostering a laddish and unruly culture at work. This affected the messages exchanged in the Shift B Whatsapp group and the speech and conduct between the shift workers while at work. We have seen some of the messages written by Mr Smith, Mr Corey and others during the period of the Claimant's assignment. The messages include perverted sexual content and are obscene, distasteful, and highly inappropriate in a workplace context. Mr Bradley and the others also used obscene abusive language and gestures towards colleagues at work.

13. To some extent the Claimant on his own admission participated in this, for example by writing sexist messages referring to Ms Slivenova, and making jokes about Mr Bradley's level of food consumption.

14. There was nothing in the Respondent's pleadings, witness statements or submissions for this case which showed any recognition or repudiation of this pattern of offensive behaviour in its

work force. We had some evidence from Ms Cassidy (but only in response to a direct question from the judge) to the effect that the Respondent, after the events which are relevant to this case, has taken some steps to informally warn the culprits to mend their ways. We hope for the sake of the Respondent's remaining workers that it has taken and will take proper steps to clean up its work place and take tough action against this kind of behaviour in future.

15. One aspect of Mr Smith's bad behaviour and schoolboy antics was his habit of throwing rubber ducks around at work. This occurred in January 2023. The Claimant did not participate in this, and he disliked it, particularly when he was struck at least twice on the head and face by rubber ducks thrown by Mr Smith and possibly by others on the shift.
16. The Claimant contends that also in January 23, when Mr Bradley was away on leave, the Claimant heard Mr Smith muttered something under his breath in a fake Indian accent, whereupon Mr Corey interjected "*you cant say that Nic its racist*". Both Mr Smith and Mr Corey denied that this occurred. Whether or not this incident occurred was one of the few main disputes of fact in the case.
17. On the one hand, we found Mr Smith to be an unimpressive witness, and a person whose other proved misconduct shows that he likes to indulge in highly inappropriate banter at other people's expense. On the other hand, the Claimant himself, in answer to a question from the employment judge, admitted having lied to his colleagues at work about a serious error he had made, and his own credibility as a witness is not beyond doubt.
18. The Claimant's evidence (about Mr Smith having used a fake Indian accent), taken at its highest, was vague. He was unable to say what, if any, words had been uttered in the accent, or on what date or at what time they had been uttered. He used the terms "*mumbling*" and "*noise*" to describe what he heard, which suggests that, if he heard anything from Mr Smith on the occasion he has tried to describe, it was incoherent and unclear.
19. The Claimant does not suggest that he complained (about the use of the fake Indian accent) at all even to those present at the time he says it occurred, although it is agreed that, when he was hit by the thrown rubber ducks, he made his displeasure known immediately and obtained an apology about that from Mr Smith.
20. It is also agreed that the rubber-duck-throwing was just horseplay and not malicious. Nevertheless the Claimant felt able to make an immediate complaint about it.
21. If the Claimant, at much the same time, had heard Mr Smith deliberately mocking him by faking an Indian accent, it is surprising that, even on his own account, he did not immediately object to that also.

22. At the beginning of February 23 there was a series of conversations between the Claimant and his line manager Ms Slivenova, prompted by the fact that the Claimant had missed a work deadline at the end of January. There was a dispute between the parties as to the exact date of the conversations and the evidence about the dates is inconclusive. It is unnecessary for us to make a finding about the exact dates of these conversations which however we find took place during the period 1<sup>st</sup> to 3<sup>rd</sup> February 23. No notes or contemporaneous documents were produced to confirm what was said at the time.
23. There was a discussion about the Claimant having “hundreds of unread work emails in his Inbox”. One of these missed emails had been sent to facilitate him obtaining access to some information he needed for his work. In effect he was being tackled by Ms Slivenova about his unsatisfactory work performance.
24. It is agreed that, in response to this, during these conversations, the Claimant complained to Ms Slivenova about what he described as a “toxic and hostile atmosphere at work”, that he had been hit by the thrown rubber ducks and that he wanted to be moved to another Shift.
25. There was a dispute in the evidence as to whether the Claimant, during these conversations in early February 23, had also complained to Ms Slivenova about the claimed use by Mr Smith of the fake Indian accent.
26. It is agreed that after the Claimant’s assignment had been terminated, the Claimant did make a complaint about this orally to Ms Slivenova on 1/3/23 and then by email on 2/3/23.
27. We accept as genuine the messages (produced in evidence as pages 266A and 266B) from Ms Slivenova on 1/3/23. These show that the allegations about the fake Indian accent were “news to her” that day and she was immediately pursuing them as serious. She escalated the complaint by asking the Claimant for further details, contacting Mr Smith to ask him about what she then termed “serious allegations”, and discussing the matter with her line manager..
28. We find that had the Claimant complained about the claimed use of the fake Indian accent at an earlier date, she would have responded in the same way then.
29. It is notable that in the Claimant’s written complaint (the email of 2/3/23), paragraph 2 refers expressly to the Claimant’s previous conversations with Ms Slivenova in early February 2023, but in so doing refers to a previous complaint about duck throwing only. He did not write in that paragraph that he had raised the fake Indian accent comment in early February 2023. The email does refer to the claimed comment, but only on the second page, and seemingly as an afterthought, and it does not state that Ms Slivenova already knew about this allegation and/or had done nothing about it. This is in marked contrast to how the Claimant referred to having previously told Ms Slivenova about the duck throwing.
30. All this is consistent with Ms Slivenova’s evidence that duck throwing only and the generalised allegation of a “toxic and hostile workplace” but not the fake Indian accent were raised by the Claimant with her prior to the termination of his assignment.
31. We find for these reasons that, contrary to the Claimant’s case, he did not complain about the “fake Indian accent” to Ms Slivenova in the first few days of February 23, even though he was discussing with her the claimed “toxic and hostile atmosphere”. If the claimed fake Indian accent incident had really occurred, we find he would have mentioned it then.

32. We note also that after the Claimant's assignment had been terminated on 1 March 2023 he sent a WhatsApp message reading "*No Bad feelings – Best of luck for the future, gents*" to the Shift B group (including Mr Smith), which we find he would be unlikely to have done if he had been the subject of racist behaviour from Mr Smith.
33. For these reasons and notwithstanding our negative view of Mr Smith as a shift leader and witness, having applied section 136 of the Equality Act 2010, we find that the Claimant has not adduced facts from which we could in the absence of an explanation reasonably conclude that Mr Smith "mumbled in a fake Indian accent" as the Claimant complains he did. Alternatively, if we should have found that a prima facie case was established, we are nevertheless persuaded by the Respondent's explanation and we find that it did not occur.
34. For these reasons the claims of direct discrimination and harassment fail.
35. The claimed detriments relied on for the victimisation claim are set out in the Schedule.
36. There was a lack of contact between the Claimant and his manager Ms Slivenova, after 3/2/23, in relation to his complaints, but the reasons for that were (i) Ms Slivenova thought that the duck throwing complaint was closed, (she had discussed it informally with Mr Smith) (ii) there had not been a complaint about racism, and (iii) Ms Slivenova was on holiday for about ten days in mid-February 23.
37. Ms Slivenova did raise genuine performance issues with the Claimant on 27/2/23. The cause of her raising them was the inadequate performance itself rather than the Claimant's complaints, such as they had been. In addition to missing deadlines, and not reading emails in his Inbox, the Claimant had not taken notes which he needed to take in order to do his work properly, and on 11/2/23 he had made a serious mistake by "triggering a batch run", which mistake he had tried to cover up with lies when it was discovered. When these matters came to light and after Ms Slivenova had returned from holiday, she, in tandem with other senior managers, decided that they did not want to continue with the Claimant's assignment, for those reasons. Hence the termination was caused not by the Claimant's complaints, such as they had been, but because his work standard was seen as inadequate.
38. Although the Claimant did complain about a fake Indian accent, which complaint was a protected act, the act occurred only after the matters relied on as detriment in the victimisation claim, and therefore those matters cannot have been caused by the protected act in any event. For these reasons the victimisation claim must also fail.

Employment Judge J S Burns  
30/11/2024

Postscript

In his email requesting the above written Reasons the Claimant stated: “*Unfortunately, I was unwell during the hearing, and I believe this impacted my ability to fully participate. I am currently awaiting a letter from my GP, which will provide further details regarding my health during the hearing. ...*”

For the benefit of anyone who may have to deal with this issue further, I record that during the Final Hearing the Claimant referred a few times to having felt suicidal in the past. I requested him not to make these references as they were unhelpful. He did not suggest that he was feeling suicidal during the hearing. During the hearing he appeared slightly emotional at times but was courteous and composed throughout, participated as fully as we would have expected from most litigants in person, did not raise any current health issues and did not request any general adjournment.

At the end of the hearing (and after I had given in extempore oral form the judgment, and the Reasons which now appear above in written form), I advised him that if he was suffering current mental ill-health he should approach his GP or otherwise try to access support services. I did this because of the outcome of the case, the Claimant’s reference to past suicidal feelings and the slight indications of emotional distress he had shown at some points during the hearing,

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SCHEDULE OF CLAIMS/ISSUES

Direct race discrimination (Equality Act 2010 section 13)

1.1 Did the respondent do the following things:

1.1.1 Subject the claimant via its employee, Mr N. Smith, to an incident in which Mr Smith mumbled things in a fake Indian accent

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

1.3 If so, was it because of race ?

Harassment related to race (Equality Act 2010 section 26)

2.1 Did the respondent do the following things:

2.1.1 Subject the claimant via its employee, Mr N. Smith, to an incident in which Mr Smith mumbled things in a fake Indian accent

2.2 If so, was that unwanted conduct?

2.3 Did it relate to race? 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?

2.4 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.

Victimisation (Equality Act 2010 section 27)

3.1 Did the claimant do a protected act as follows:

3.1.1 Reported the fake Indian accent incident to Ms Teodora Slivenova, the IT Operations Manager in a call on 3 February 2023?

3.2 Did the respondent do the following things:

3.2.1 Made no contact with the claimant after the call on 3 February regarding his disclosure

3.2.2 In a call on 27 February 2023, Ms Slivenova made spurious allegations regarding the claimant's performance by reference to his poor note taking and another matter relating to his execution of instructions given to him on another occasion.

3.2.3 Terminating his contract on 1 March 2023

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?

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