



EMPLOYMENT TRIBUNALS

Claimant: Abass Bello

Respondent: Gasrec Limited

Heard at: Cambridge Employment Tribunal

On: 3, 4, and 5 February 2025 and 27 February 2025 in chambers

Before: Employment Judge Freshwater
Tribunal Member Ms W Smith
Tribunal Member Ms H Gunnell

Representation

Claimant: in person

Respondent: Mr Sheehan (counsel)

RESERVED JUDGMENT

1. The claimant's complaint of direct race discrimination is not well-founded and is dismissed.
2. The claimant's complaint of direct religion discrimination is not well-founded and is dismissed.
3. The claimant's complaint of harassment contrary to section 26 of the Equality Act 2010 is not well-founded and is dismissed.
4. The claimant's complaint of unauthorized deductions from wages contrary to section 13 of the Employment Rights Act 2022 is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant is Mr Abass Bello and the respondent is Gasrec Limited. The respondent is a company that supplies renewable fuel to road transport vehicles.
2. Mr Bello issued a claim in the Employment Tribunal. These are the reasons for the judgment reached in this case.

Procedure and hearing

3. The case was heard in person at Cambridge Employment Tribunal.
4. The tribunal was referred to a bundle of documents of 326 pages.
5. The tribunal read the witness statements of: Mr Bello Darren Moor, Anthony Robinson, Derek Spencer and Malcolm Aitken.
6. The tribunal heard oral evidence from Mr Bello, Mr Moor, Mr Robinson and Mr Spencer. Mr Aitken was unable to give evidence as he was too unwell to attend the hearing.
7. Mr Bello was supported by a Yoruba interpreter.

Issues

8. The issues were agreed between the parties (see pages 71 to 74 in the bundle) and are summarised below.

Time limits

9. Are the allegations out of time?

Direct Race Discrimination

10. Did the respondent fail to give the claimant training with regard to the "dead man's button"?
 - 10.1. If so, was that treatment less favourable treatment? The claimant relies upon the following comparators: Derek, Malcolm, Albert and David.
 - 10.2. If so, was this because of the claimant's race?
11. Did the respondent fail to make the claimant permanent until November 2021?
 - 11.1. If so, was that treatment less favourable treatment? The claimant relies upon the following comparators: Shawn, Albert and Matthew.
 - 11.2. If so, was this because of the claimant's race?
12. Did the respondent dismiss the claimant?
 - 12.1. If so, was that treatment less favourable treatment? The claimant relies upon the following comparators: Albert and Dave.
 - 12.2. If so, was this because of the claimant's race?

Direct religious belief discrimination

13. Did the respondent fail to make the claimant permanent until November 2021?

13.1. If so, was that treatment less favourable treatment? The claimant relies upon the following comparators: Shawn, Albert and Matthew.

13.2. If so, was this because of the claimant's religious belief?

14. Did Derek, Peter, Tony and Trevor (the respondent's employees or agents) send an email in November 2021 stating that the claimant should not be employed permanently because they were unhappy about him praying?

14.1. If so, was that treatment less favourable treatment? The claimant relies on hypothetical comparators.

14.2. If so, was this because of the claimant's religious belief?

Harassment related to religious belief

15. Did the respondent engage in conduct as follows:

15.1. The claimant alleges that he had just finished praying when Malcolm went past and said "you terrorists that is how you pretend to be so prayerful". The claimant says that this occurred in November 2021.

15.2. In the same month, the claimant said he was praying when Derek was starting his shift and stepped on the claimant's prayer mat. When the claimant asked him why he had done it, Derrick said "get out of there".

Unauthorised deductions

16. Did the respondent make unauthorised deductions from the claimant's wages?

Law

17. Section 13(1) of the Equality Act 2010 states that:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

18. Section 26 of the Equality Act 2010 states that:

"(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.”

19. Section 26(4) of the Equality Act 2010 states that:

“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.”

20. Section 13 of the Employment Rights Act 1996 states:

“(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction....

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.”

Findings of fact

21. Mr Bello started working for the respondent on 7 November 2018 as an agency worker. He was employed by the respondent from 1 December 2021 until 25 January 2022. His job title was Station Operator, and his role was to refuel customer gas vehicles and support site operations.

22. Mr Bello identifies as Black Nigerian and as a Muslim.

23. The “dead man's button” is a safety system on the refueling equipment that Mr Bello used in his work. The evidence of Mr Moor is that the button

“is either integrated into the dispenser or, it is a button on the hand grip connected to the dispenser through a cable. It ensures that in an emergency or if the operator becomes incapacitated, the button is released and the fuel immediately stops flowing.”

24. The respondent did not fail to give the claimant training about the “dead man’s button”. There is evidence of the training in the bundle (page 145). During his oral evidence, the claimant denied that he had been trained and denied that it was his signature on the document. However, this was not raised before the hearing (for example in his witness statement) and we do not find this evidence to be credible.
25. The respondent did not offer the claimant a permanent contract until November 2021. That is an agreed fact, evidenced in the bundle.
26. The evidence before us is that Shawn Spencer had electrical qualifications that the claimant did not. It is true that he was offered a permanent contract before the claimant, however this was on the basis of his qualifications.
27. Albert was said by the claimant to be white, but the evidence of the respondent was that this is not the case. The claimant was surprised to hear this but did not challenge the evidence. Albert was, though, given a permanent contract at the same time as the claimant. This is because there were two vacancies at the time.
28. Matthew was not in the same position as the claimant at work. He was responsible for training the claimant, and others, in refueling vehicles.
29. Dave was working under the supervision of the claimant and was accepted to have done what the claimant told him to do. Dave was an agency worker.
30. The claimant was not offered a permanent contract of employment until November 2021, but before that happened, he was given more shifts whilst the respondent calculated its business needs.
31. An anonymous email was sent to Mr Moor in November 2021, but it did not say that the claimant should not be employed permanently because the author was unhappy about him praying. The concerns were about time keeping and the amount of pay, as well as the operation of the button whilst filling trucks. This email is found at page 122 in the bundle.
32. On 15 January 2022, Gasrec’s Remote Operating Monitoring Centre reported that Mr Bello had left two trucks unattended whilst fueling them. He had been seen overriding the “dead man’s button”. This was a breach of important health and safety procedures.
33. Mr Bello’s employment was terminated by the respondent on 25 January 2022 during a meeting between and Mr Bello. Mr Bello was paid one week’s salary in lieu of notice.
34. Mr Bello appealed the decision on 26 January 2022. The appeal was

unsuccessful and the decision to terminate his employment was upheld.

35. Mr Bello was on probation and so the disciplinary procedure was not strictly applicable to him. However, the respondent decided to use it and adopted what can best be described as a hybrid approach. This was not entirely satisfactory, for example when Mr Bello was invited to what was the disciplinary meeting with Mr Robinson, Mr Bello was not told as much. The email inviting him was headed “investigatory meeting”. Mr Bello was not told that somebody could accompany him. Not much turns on this, but the tribunal records that that it is understandable – in our view – that Mr Bello may have felt on the back foot.

Facts relating to harassment – the majority view

36. The majority view of the tribunal was that the allegations made by the claimant in respect of his claim for harassment did not occur. The reason for this is that the burden is on the claimant to prove, on the balance of probabilities, that the factual incidents he alleged took place. The majority view was that, although there was not the friendly working relationship between the claimant, Mr Spencer and Mr Aitken, that was claimed by Mr Spencer and Mr Aitken, that the evidence of the claimant was, as a whole, less credible.
37. This is because the claimant said in his evidence that the investigatory meeting notes, appeal meeting notes, and even his signature on the training record were all false. These were allegations raised for the first time in the hearing. They were not set out in his witness statement, which he made having read the documents. It can be seen on page 124 that the claimant had discussed that after the investigation there would be a referral to Mr Robinson because Mr Bello sent an email to Mr Robinson that evening. Mr Bello did not tell us what did happen in the investigatory meeting, which we would have expected if he was adamant the notes were false.
38. In addition, it was not until these proceedings that the claimant made the specific harassment allegations. He did not make a complaint before, during or after the disciplinary procedure.
39. The claimant was unhelpfully defensive in his evidence when interacting with the respondent’s legal representative. He did not accept anything that was put to him, even when supported by documents in the bundle. It is fair to say that the claimant was much more interactive with the tribunal and gave fuller answers to our questions. However, overall, this was sufficient to cast doubt on the overall credibility of the claimant.
40. One of the members of the tribunal did not agree with this determination of the facts. The minority view is set out below for completeness.

Harassment – minority view

41. One of the members of the tribunal was satisfied on the balance of probabilities that the allegations made by the claimant did happen. This is to say that Mr Aitken did say to the claimant that “you terrorists that is how

you pretend to be so prayerful”, and that Mr Spencer did stand on the claimant’s prayer mat.

42. The reason for this view is that there was clearly some animosity between Mr Spencer, Mr Aitken and the claimant. This is evidenced by the anonymous email (page 122) which Mr Spencer said in the course of his evidence that he sent. He then backtracked on that, but the tribunal as a whole did not find his evidence convincing. In addition, during the investigation meeting notes (see page 125) the claimant thought that he had been requested to attend “because of Malcom”. It therefore seemed to the tribunal member that, more likely than not, Mr Aitken and Mr Spencer were not being truthful about their working relationship with the claimant. For these reasons, the tribunal member determined that the evidence of the claimant was more credible.

Unauthorised deductions

43. The claimant gave no clear evidence about when he had worked. At one point he told us that he had worked in February 2022, but then said that he had not.
44. We are satisfied that the claimant did not work in February 2022. He was paid until 31 January 2022. On page 144 in the bundle, we can see that the claimant was paid in February for one week’s notice and one day.
45. The claimant was summarily dismissed on 25 January 2022. One week’s notice would take him to 1 February. This is why he had a pay of 1 day in his February payslip. This is described in the dismissal letter at page 133 in the bundle.
46. Under his contract of employment, the claimant was not entitled to any notice or pay in lieu of notice in the event of being found guilty of gross misconduct. He was not entitled to a month’s pay in lieu of notice whilst on his probation period. Therefore, the fact that he was paid one week’s pay in lieu of notice was an act of discretion by the respondent. There was no entitlement.

Time limits

47. Mr Bello contacted ACAS on 10 February 2022 and an Early Conciliation Certificate was issued on 23 March 2022. He presented his claim on 31 March 2022.
48. In his witness statement, Mr Bello says that he tried in every possible way to ask why his contract had been terminated before going to ACAS and the Employment Tribunal.

Conclusions

49. The tribunal is satisfied it is just and equitable to extend the time limits in this case. Although time limits were set out in the list of issues, no questions were asked of Mr Bello in his cross-examination, and we have taken that into account. In all the circumstances of the case – in particular

the nature of the claims of discrimination– the tribunal went on to consider the merits of the complaints.

50. The respondent did not fail to give Mr Bello training with regard to the “dead man’s button”. It is clear that he did have the necessary training.
51. The respondent failed to offer Mr Bello a permanent contract until November 2021. However, it was not less favorable treatment. The comparators put forward by the claimant are not materially the same.
52. No email was sent as alleged by Mr Bello, but in any event he was offered a permanent contract in the same month as the email in the bundle. There was no less favourable treatment as a result of the sending of the email.
53. The respondent did dismiss the claimant but this was not because of his race or his religious beliefs. He was dismissed following the outcome of the disciplinary meetings on the basis of the breach of important health and safety procedures. It was decided that Mr Bello’s conduct amounted to gross misconduct.
54. In light of the majority view, the complaint of harassment is not made out because there is no factual basis for it.
55. No payments are outstanding to the claimant and so there have been no unauthorised deductions.
56. The claims are therefore dismissed.

Approved by:

Employment Judge Freshwater

30 April 2025

JUDGMENT SENT TO THE PARTIES
ON

6 May 2025

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are

exceptional circumstances, you will have to pay for it. 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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/