



EMPLOYMENT TRIBUNALS

Claimant: Mr Bashir Ahmed

Respondent: Royal Mail Group Ltd

Heard at: London Central

On: 3 April, 4 April 7 April, 8 April and 9 April 2025

Before: Employment Judge Emery

REPRESENTATION:

Claimant: In person

Respondent: Ms Daziel (solicitor)

JUDGMENT

The judgment of the Tribunal is as follows:

The complaint of unfair dismissal is not well founded and is dismissed. The claimant's dismissal was fair.

The complaint of victimisation is not well-founded and is dismissed.

REASONS

1. Reasons were given at the hearing; written reasons were requested.
2. The claimant alleges that he raised protected acts in relation to an incident at work in February 2021 in which he was injured, and that he was unlawfully victimised by being disciplined, during which notes of his investigation and disciplinary interviews were falsified, and by being dismissed; he also argues his dismissal was unfair.

3. The respondent says that the claimant was dismissed following a complaint made by a member of staff that she was being harassed by the claimant and a colleague, Mr Mohammad Ellahi, in relation to evidence she provided to the respondent in an employment tribunal claim brought by them both against the respondent. The respondent argues that it held a fair investigation process, after which it says the claimant was fairly dismissed for gross misconduct. It does not accept that the claimant was dismissed because of a protected act.

The Issues

4. Unfair dismissal

- a. The claimant was dismissed; the respondent says the reason was conduct.
- b. The tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
- c. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:
 - i. there were reasonable grounds for that belief;
 - ii. at the time the belief was formed the respondent had carried out a reasonable investigation;
 - iii. the respondent otherwise acted in a procedurally fair manner;
 - iv. dismissal was within the range of reasonable responses.

5. Victimisation (Equality Act 2010 section 27)

- a. 2.1 Did the claimant do a protected act as follows:
 - i. On 17 March 2021 – Making an internal complaint regarding alleged discrimination and health and safety breaches
 - ii. April 2021 making a grievance complaint about bullying and harassment
 - iii. Making a claim to the Employment Tribunal on 14 August 2021 (the respondent accepts that this was a protected act)
 - iv. Making a grievance complaint in March 2022

- b. Did the respondent do any of the following:
 - i. Suspend the claimant on 5th February 2023
 - ii. Fabricate the meeting notes of the first fact- finding meeting which took place on 8 March 2023 by omitting what the Claimant had said during the meeting and inserting instead what was in the manager's mind
 - iii. Fabricate the meeting notes of the disciplinary hearing which took place on 11 May 2023 by not including what the Claimant had said during the meeting but instead including things which the Claimant did not say
 - iv. Fail to produce an outcome of the misconduct process to date and also fail to respond to the Claimant's 2 objections to the fabrication of the meeting notes referred to in (ii) and (iii) above
 - v. Dismiss the claimant on 7 July 2023
- c. By doing so did it subject the claimant to detriment?
- d. If so, was it because the claimant did a protected act?

Preliminary issues and evidence

- 6. The Tribunal heard evidence from the claimant and on his behalf Mr Mohammad Ellahi, Ms Sandra Smith, Ms Fawziya Mohamed and from Mr Gai James-Ayok.
- 7. For the respondent the Tribunal heard evidence from Mr Anil Parmar, Work Area Manager at Mount Pleasant who investigated the disciplinary allegations, Mr Salim Koheerallee late Shift Manager who was the dismissing manager, from Mr Stephen Potter, Independent Case Manager based at Colchester who heard the claimant's appeal against dismissal, and from Mr Altaf Patel, Work Area Manager, who took the notes at the hearing with Mr Koheerallee.
- 8. I read all statements and documents referred to therein on day 1 of the hearing, the evidence started on day 2.
- 9. I took notes throughout the hearing, and the quotes in the judgment below are a verbatim account and not an exact quote of the answers given.

The relevant facts

- 10. On 7 March 2021, there was an incident at work involving the claimant. A planned fire alarm test took place; the claimant's case is that the noise was such

that he collapsed and lost consciousness. He went to hospital. He was then off work on sickness absence for a lengthy period. He says he suffered a personal injury. Ms Kulvinder Sharma, the Weekend Duty Manager, was a witness to events surrounding this incident.

11. The claimant submitted an employment claim about this issue on 14 August 2021 citing race discrimination, health and safety failings and part-time worker detriments. The respondent accepts that the allegations in this claim contains a protected act. Mr Ellahi also brought an employment tribunal claim based on this event, and on the respondent's application their claims were listed to be heard together.
12. The hearing date was originally listed to take place in June 2022. It was postponed, in part because of Ms Sharma's ill-health, and was relisted for week commencing 13 February 2023. It is the respondent's case that these dates are important as they coincide with the principal allegations of harassment made by Ms Sharma.
13. The respondent's position on the other 3 alleged protected acts is that the claimant raises issues of health and safety and part-time workers detriment in two internal grievances, but that none of these amounts to a 'protected act' as defined in the Equality Act.
14. These grievances state:
 - a. 18 March 2021: "Recently I was discriminated very badly and forced to work in an unsafe environment that has caused serious adverse effects ... which has been perpetuated by the weekend shift manager Harminder Bal." The complaint states that full time staff were allowed to leave work at 4.00pm, but part-time workers at 6.00pm, meaning that part-time workers would be exposed to a fire alarm test, that the fire alarm test was so loud that he was caused an injury. The complaint says that Mr Bal has been negligent in health and safety towards staff, "... discriminating staff, and threatening them with code of conduct ... only really prioritising clearing the work over health and safety and keeping senior full-time staff happy." (pages 312-3).

In his evidence the claimant stated that he was "generally treated unfairly", that the issue was being "treated differently" because of being part-time, that there was discrimination in the different treatment of full-time and part-time employees, also saying that the full-timers are "mostly white".
 - b. 12 and 15 April 2021 (344-351): the 12 April complaint is similar to the March complaint: "I was victimised, discriminated against, and bullied" by Mr Bal. He says he asked for "equal rights" between full and part-time staff on health and safety issues, or he would make a discrimination

complaint (344). On 15 April 2021 the claimant repeated much of the above in an interview about his grievance – referring to an unsafe working area and drilling (351).

In his evidence, the claimant stated that this was about Mr Bal's "unfair treatment because I am a part-timer..."

- c. The 4th alleged protected act is a grievance dated 23 March 2023 (408): following his return to work from the 2021 incident, he had a return-to-work interview and he was asked whether his sickness absence was because of an accident at work. He says he wanted the answer to be ticked 'yes' but his manager Anil Parmar refused to accept this; that consequently the form was not completed, and he was not allowed to return to work. The grievance then outlines the 2021 fire alarm incident.
15. The claimant's evidence regarding Mr Ellahi, his co-claimant in the joined cases, was that he had very little contact with Mr Ellahi up to the hearing listed to commence in June 2022 and postponed to 13 February 2023, that they were colleagues, "not friendly". Both were, says the respondent, involved in attempts to intimidate Ms Sharma in relation to their tribunal claim.
16. The first alleged incident occurred on 8 May 2022. The claimant's case, which he made throughout the disciplinary process, is that on this date Ms Sharma had approached him at work and said that she wanted to speak to him outside at the end of his shift. He says he spoke to a colleague, Ms Sandra Smith, immediately after this conversation saying what Ms Sharma had just told him.
17. Ms Smith provided a statement at the disciplinary process in which she made this clear – that the claimant told her that Ms Sharma had asked to speak to the claimant outside at the end of his shift (627). In her evidence at this hearing, Ms Smith reiterated the same evidence, believing it was a strange thing for Ms Sharma to say.
18. At the end of his shift (Ms Sharma's shift ended later that evening), the claimant says he waited outside work for Ms Sharma, who did not appear. He says that he chatted with Ms Mohamed for a few minutes, and that they both left at the same time. Ms Mohamed confirms this account in her tribunal witness statement.
19. The claimant then contacted Mr Ellahi, who had Ms Sharma's phone number. Mr Ellahi send a text message to Ms Sharma saying, "Hi this is [the claimant's] number ... he was waiting for you outside, now he has gone home. You can call him and tell him what you wanted to tell him." (618). Ms Sharma did not respond.
20. Ms Sharma's evidence throughout the subsequent process was that she did not ask to speak to the claimant that day, she was not aware he was waiting outside

for her, that she felt harassed and intimidated by this text, such that she called her husband to collect her that evening. She took a lengthy sickness absence after. This absence caused the employment tribunal hearing listed for June 2022 to be postponed.

21. On 30 January 2023 Ms Sharma spoke to Mr Bal about an incident which had occurred the day before. The HR notes states that Ms Sharma told Mr Bal “that she is being cornered and harassed by both Mr Ellahi and Mr Ahmed whilst at work and whilst she was off sick.” They both spoke to the plant manager and Mr Bal records that Ms Sharma said she “would like this intimidation and harassment to stop.” (664).
22. Ms Sharma submitted a formal complaint for ‘intimidation and harassment’ against the claimant and Mr Ellahi the same day. She complains of the following, saying there were 6 ‘events’:
 - a. Event 1: the 8 May 2022 alleged incident.
 - b. Event 2: calls from Mr Ellahi: When of sick, Ms Sharma received several calls from Mr Ellahi which she did not answer.
 - c. Event 3: Mr Ellahi called her on 10 October 2022; he talked about Ms Sharma being ‘harassed’ by managers, and that she could bring a legal case, and that in relation to his and the claimant's tribunal claim, she should “... go back and check my statement and change it before the hearing”.
 - d. Event 4: the call at (3) led to her going off sick on 11 October 2023 and she was put this led to her going off sick on 11 October 2023 and was put on anti-depressants by her GP “because I was so fearful...”.
 - e. Event 5: Mr Ellahi sent her a text on 20 October 2022, that he will call her soon, that he called her on 7 November 2022 from “some random number” and that he talked to her about a harassment claim she could submit. He called again on 27 & 28 November but she did not pick up his calls “... as I was very anxious and felt threatened” by his previous calls;
 - f. Event 6: on her return to work in January 2023 “they both are trying to talk to me. I have been ignoring them, but they kept blocking my way; Mr Ellahi tried to speak to her, she ignored him “But they both follow me with their eyes everywhere I go and I feel traumatised”. On 29 January 2023 at a training session Mr El Elahi came up to her and “whispered that I think everything is sorted at your end...”.
23. The email says that Ms Sharma felt “so terrified” by these events (468-9).

24. The matter was escalated to the respondent's solicitor and Ms Sharma spoke to the solicitor on 30 January, she was asked to provide a statement of events.
25. In his evidence at the tribunal, the claimant argued that this was planned – that speaking to the solicitor shows that this is “more than coincidence, they planned to victimise me and strike-out my case”.
26. The claimant was next in work on 4 February 2023, and he attended a meeting with his union representative. He was told that “serious allegations” had been made by Ms Sharma. The claimant referred to the accident at work in 2021, that the complaints of Ms Sharma were “total lies”, in fact he had tried to ignore Ms Sharma, that he did not stare at her or block her, that he would not want to contact her, that her statement was “full of total lies”. The claimant was asked to leave the building for a 24-hour “cooling off period” and to report work the next day where he would be told about the next steps (472-3).
27. On 5 February 2023 the claimant was suspended from work on a “precautionary suspension” pending an investigation into “unacceptable internal behaviour – bullying and harassment”. The reason for suspension was because he is alleged to have “harassed and intimidated” Ms Sharma (477-79).
28. On 7 February 2023 Ms Sharma provided a signed witness statement in support of an (unsuccessful) application by the respondent to strike-out his and Mr Ellahi's claim on the basis of alleged intimidation of a witness. It references all the ‘Events’ set out in her 30 January 2023 email.
29. In addition, Ms Sharma's witness statement says that she felt “intimidated and frightened to give evidence”. It refers to texts sent by Mr Ellahi on 7 and 8 May 2022 which asked her about her internal statement on the February 2021 incident, which had recently been given to the claimants as part of the disclosure process in that claim. It refers to texts on 10 May 2022 from Mr Ellahi in which he sent her photos of her internal statement saying, “have you looked at this” (the statement and appendixes of texts and calls - 611-19).
30. Mr Parmar was appointed investigating manager, despite complaints from the claimant that Mr Parmar would not be independent. Mr Parmar sought advice from HR on the appropriate steps to take, as an example seeking support on the questions he should be asking the claimant and Mr El Elahi (489).
31. Mr Parmar confirmed to the claimant in writing that his suspension would be maintained on 7 February, this was reviewed weekly, for example on 14 February 2023 (503), 22 February 2023 (505), 28 February 2023 (528), 8 March 2023 (532), 15 March 2023 (534), 21 March 2023 (543). 29 March (553) and on each occasion the rational for continuing the suspension was the same.

32. Ms Sharma was interviewed on 19 February 2023 about incidents involving the claimant and Mr Ellahi. The notes of interview say that Mr Ellahi approached Ms Sharma at work, saying that he knew she had given a witness statement to Mr Bal; on another occasion he asked her "have you gone through your statement carefully." She says that Mr Ellahi stated the claimant wanted to speak to her. She says she did not respond on these occasions.
33. Then says Ms Sharma, she received Mr Ellahi's 8 May 2022 text. She says that she was concerned that the claimant may have been waiting outside for her, she was frightened and so she called her husband to pick her up from work. She says that she believed these interactions with Mr Ellahi and request to meet with the claimant were an attempt to get her to change her statement.
34. Ms Sharma says that Mr Ellahi stared at her at work to try to get her attention, she ignored him. She says that Mr Ellahi called her on several occasions, she ignored most of these calls, on one occasion he called her from a different number and she answered, he wanted to know how she was doing and would not answer when she asked him why he was calling. She says that she was off sick after this incident, and that on her return, in early January 2023, both the claimant and Mr El Elahi would stare at her at work, the claimant "would keep watching [me] move...". She says that on a Worktime Learning session on 29 January 2023, both the claimant and Mr Elahi asked her "everything is okay"
35. On 3 March 2023 the claimant was sent a letter inviting him to a fact-finding meeting on 8 March 2023; he was given the opportunity to attend with a colleague or union rep (530). He was sent notes of the meeting and asked to carefully read them and amend "where you feel necessary"; Mr Parmar would consider the amendments and advise the claimant if they are or are not accepted.
36. The claimant attended the meeting with his Union rep. He was given Ms Sharma's statement to read. In questions he denied having Ms Sharma's number, that he had not sought to contact her about his tribunal claim; instead, it was her who asked to see him outside that she said, 'I will speak to you not inside but outside'.
37. He said that immediately after this conversation he told a colleague, Sandra Smith about Ms Sharma wanting to speak to him outside, that Ms Smith responded that this was "strange ... interesting". That he waited outside at the end of his shift, he spoke to Ms Mohamed, that "after waiting for a few minutes, as there was no sign of [Ms Sharma] we both left." He says that he called Mr Ellahi and mentioned waiting for Ms Sharma, that as he did not have her number "Mr Ellahi passed the message". He said he did not know why Ms Sharma wanted to speak to him.

38. In his evidence at tribunal the claimant says that this was “unusual and suspicious” behaviour by Ms Sharma. He says that he was not expecting her to speak to him. He did not consider asking Ms Sharma what this was about “as she is on a different floor.” He says that he was not aware that Ms Sharma was a witness for the respondent or that she had provided an internal statement – this was only given to him when the bundle was provided on 2 June 2022.
39. The claimant’s evidence was he did not know that Ms Sharma had submitted a tribunal statement which supported the respondent’s case until he was provided with this in February 2023. He said he did not know Mr Ellahi had attempted to contact Ms Sharma on several occasions in October and November 2022. He said he did not know Mr Ellahi had sought to ‘compel’ Ms Sharma to change her statement in his case, or that Mr Ellahi had asked Ms Sharma to go to a cafe to meet with them both.
40. The meeting notes say that at the 29 January 2023 learning session the claimant did not stay behind with Mr Ellahi and then try to block Ms Sharma from leaving; the notes say that he said only Mr Ellahi stayed behind, but that he “cannot recall whether he stayed behind or not.” He said he did not know why Ms Sharma would make this allegation against him. He denied staring at Ms Sharma at work (537-42).
41. Mr James-Ayo gave evidence at this tribunal about the 29 January 2023 training. His evidence was that he is clear he was the last person to leave the training, that the claimant and Mr Ellahi had left by this time.
42. The claimant had requested cctv footage of these incidents. On advice from HR Mr Parmar sought the footage on a managerial request for this data (548); this request was approved by ER for use in a disciplinary investigation (548-9). However, it was later confirmed by the data team that the footage was only retained for 30 days and then deleted.
43. On 22 March 2023, the claimant sought amendments to the meeting notes of the 8 March 2023 investigation meeting. The main change he sought was to what he considered a factual inaccuracy: he argues he did not say that he recalled Mr Ellahi staying behind on 29 January, in fact his answer was “I can't recall ... I don't know”, that it was “not true” they both stayed behind and that he could not know what happened after he had left. He says that his answer “made it clear” that neither he nor Mr Ellahi stayed behind. “Your notes need to be corrected as you put that incorrectly by misleading the questions and not asking exact questions. Now I am correcting your notes that should be based on the questions you put in your note.” (550-51).
44. On 24 March 2023, Mr Ahmed responded: “I have received your amendments to the interview notes from our meeting on 8 March 2023. I can confirm I have

accepted the changes made to the notes and will consider them when making my decision..." (552).

45. There was a further fact-finding meeting with Ms Sharma on 23 March 2023; Ms Sharma provided more information on the text and alleged request to meet with the claimant on 8 May 2022; she again denied asking to speak to the claimant.
46. Mr Parmar considered that the potential disciplinary penalty meant that this was a matter which needed to be passed to a "higher authority manager" to consider what action may be necessary. Mr Koheeeallee was appointed as a disciplinary investigator, and on 21 April 2023 he invited the claimant to a formal conduct meeting.
47. The claimant was informed that the allegations were: (i) gross misconduct on 8 May 2022 "when you attempted to intimidate [Ms] Sharma ... by waiting outside of work for her and asking a colleague to inform [her] that you were waiting for her"; (ii) gross misconduct by approaching Ms Sharma on 29 January 2023 "and made her feel intimidated when you stood in front of her, therefore blocking her for being able to leave the area." (559-60).
48. The meeting was rearranged because of the claimant's rep's non-availability; it took place on 11 May 2023. Following the meeting the claimant was again invited to make changes to the notes, which would be considered by Mr Koheeeallee (566); the notes sent to the claimant are at 567-73.
49. The meeting notes show the following: about the 8 May 2022 incident, the claimant repeated his statements from the previous hearing, that Ms Sharma had asked to meet him outside, that he did not know why, "I don't know only she would know"; that he waited outside "because she wanted to see me". He waited outside and then texted Mr. El Elahi to say that he was leaving. He said he did not know why Ms Sharma would feel scared or intimidated.
50. Mr Koheeeallee made the following point: that it was "strange" that the claimant had no idea why Ms Sharma wanted to speak to him, yet he texted Mr Ellahi to let Ms Sharma know he was waiting outside. The claimant stated that he assumed she may know about the case, at this time he did not know she was a royal mail witness. He said that this allegation was "set up" by Messrs Bal and Parmar.
51. On the alleged incident on 29 January 2023, the claimant denied crossing Ms Sharma's path or standing in front of her, the notes say he "can't remember" whether Mr El Elahi was present.
52. On alleged eye contact with Ms Sharma; he says that he saw her on her return to work in January 2023: "I had made an eye contact even though I was trying to avoid her as she was a potential witness to the case...". He said that he did not

follow her with his eyes, that the sorting station meant he would be standing with his back to her if she walked past. The claimant said that he has asked for cctv footage, as this evidence would show that the allegations were “untrue and fabricated.”

53. The claimant responded to the notes, “I disagree with your formal interview notes and they are not a true and accurate record.” He says that the notes format meant that he wrote a separate document “as the true and accurate record of the meeting...” (575). He raised the fact that Mr Parmar had agreed to his amendments to the 8 March 2023 meeting notes, but Mr Koheeeallee was relying on the 1st version.
54. The claimant made changes to the notes, including that he had spoken to Sandra Smith; that he was “suspicious” of Ms Sharma’s reasons “Why can’t she speak inside...?”, and so spoke to Ms Smith about it.
55. He says he did not know the reason why Ms Sharma would want to speak to him, that “It could be she knew my tribunal case...”.
56. He refers to talking to Ms Mohamed outside while waiting for Ms Sharma, that he called Mr Ellahi to pass his number to Ms Sharma; that in fact Mr Ellahi had not said that he was still waiting outside; he quoted from the text sent to Ms Sharma.
57. About the 2nd allegation, he said that this charge “does not even exist” in Ms Sharma’s statement; she does not say that he stood in front of her and blocked her from leaving. He says he was ignoring Ms Sharma as by this date he knew she was a witness for royal mail, having received her signed witness statement dated 23 May 2022. He accepts that he put her name forward as a potential witness but since he became aware of her involvement, he “had no discussion with her, not talking at all. I was totally avoiding her.” He says it was totally untrue he blocked her way on 29 January 2023.
58. The claimant was dismissed by letter dated 7 July 2023, on grounds that he breached business standards by attempting to intimidate Ms Sharma by waiting outside of and asking a colleague to inform her he was waiting for her; gross misconduct by inappropriate behaviour on 29 January 2023 by standing in front and blocking Ms Sharma from leaving the area. The claimant was dismissed without notice (591-2).
59. The rationale for dismissal is contained in the decision report. Mr Koheeeallee outlines the history of events; he records in his “deliberations” that he had reviewed the evidence from Ms Sharma, the claimant and Mr Ellahi and found Ms Sharma’s evidence to be the most credible. She had been consistent, whereas the claimant had admitted waiting outside.

60. Mr Koheeeallee also says in his findings that he spoke to Ms Smith who saw the claimant and Ms Sharma talking; he says Ms Smith's evidence was that the claimant did not mention anything about Ms Sharma asking to meet outside. He said that he found it "more credible" that the claimant "had reason to speak" to Ms Sharma, and that he believed the claimant wanted to discuss Ms Sharma's witness statement "and attempt to intimidate her into changing her statement".
61. Mr Koheeeallee was asked about the apparent discrepancy between his findings, that he says he has spoken to Ms Smith, and the fact that Ms Smith's evidence to Mr Parmar was that the claimant did tell him what Ms Sharma had allegedly said to him; that Ms Smith denies speaking to Mr Koheeeallee. Mr Koheeeallee accepted in his evidence that this was an error; that it was Mr Parmar who had spoken to Ms Smith.
62. Mr Koheeeallee says that he discounted Ms Smith's comment of what the claimant relayed to her; he accepts that this was said by the claimant to Ms Smith, but because Ms Smith did not hear what Ms Sharma had told the claimant it has little value as evidence.
63. Additionally, Mr Koheeeallee said that he had spoken to Ms Mohamed, who was outside briefly with the claimant, who stated that she left to go home and that the claimant stayed outside work.
64. However, Ms Mohamed is clear in her witness statement to this tribunal that she and the claimant left together, and that she said so to Mr Koheeeallee (paragraph 9 statement). Mr Koheeeallee accepts that this shows a discrepancy in the evidence.
65. The report concludes that the two witnesses provided by the claimant "do not support" the account he has given regarding 8 May 2022.
66. Mr Koheeeallee concluded that the claimant wanted to speak to Ms Sharma about her statement, that there was no other reason for this conversation to happen. He said this conduct was "intimidating", and it did intimidate Ms Sharma.
67. On allegation 2: Mr Koheeeallee states that the claimant has changed his story – saying initially that he thought Mr Ellahi stayed behind but now does not remember. He said that this incontinency, plus the fact the claimant could not provide evidence to confirm he did not stay behind, and that Ms Sharma's account had credibility and was more consistent, led him to conclude that this incident occurred. The claimant could not explain why Ms Sharma would make up such an event.
68. In his evidence, Mr Koheeeallee accepted that the claimant had said at the interview with Mr Parmar that he could not recall if Mr Ellahi had stayed behind.

He argued that the evidence strongly pointed to Mr Ellahi and the claimant having intimidated Ms Sharma on various occasions, that he accepted Ms Sharma's account of events, and that a minor discrepancy in the notes does not affect this decision.

69. Mr Koheeeallee' evidence was that he did briefly speak to Mr James-Ayok; he pointed out that Mr James-Ayok could not recall them speaking, not that it did not happen. He says that Mr James-Ayok told him was he could not recall the issue on 29 January 2023.
70. My James-Ayok was clear in his evidence to tribunal that he was the last to leave this training, not the claimant or Mr Ellahi.
71. In his conclusions, Mr Koheeeallee states that there is no evidence that Ms Sharma would lie or make up these allegations; he did not accept the claimant had been truthful. The evidence suggests that the claimant did wait outside and had reason to intimidate Ms Sharma; his witnesses' evidence does not corroborate his account.
72. Mr Koheeeallee acknowledged the claimant's long service, 20 years, and his clear conduct record. He says he considered a suspended dismissal and transfer as an alternative sanction "however I do have concerns that as [the claimant] has denied all wrongdoing and does not appear to understand the impact of his behaviour ... I do not have any confidence" that the claimant would not act similarly in another office (593-7).
73. The claimant appealed his dismissal, arguing that the decision was pre-decided and an act of victimisation; that Mr Parmer and Mr Koheeeallee had "fabricated" their meeting notes, and there is no evidence for the allegations (599).
74. The claimant's evidence was that he did not tell Mr Ellahi that he wanted to speak to Ms Sharma on 8 May 2022. His case is that he had issues with Ms Bal, that Ms Sharma was also unhappy with Mr Bal, "she was getting sick and stressed and made a complaint, she wanted a transfer." He says that Mr Bal and Ms Sharma "are now working together", and that Ms Sharma instead made a statement of complaint against him one week before his employment tribunal hearing.
75. The claimant asked for the appeal to be dealt with in writing without a hearing. The appeal manager, Mr Potter, agreed and sent questions for the claimant to answer. Amongst other questions asked was whether Ms Smith had witnessed the claimant's interaction with Ms Sharma on 8 May 2022. The claimant was given documents, including Ms Sharma's 7 February 2023 witness statement and copies of messages, Ms Sharma's notes of interview, Ms Smith's note of interview (609-627).

76. In response to questions, the claimant said that Ms Sharma's interview notes contains "false, fabricated stories and inconsistencies", he questions whether these notes were amended after his meeting with Ms Parmar "to align with the newly created false narrative..."; he does not accept that Mr Koheeeallee had spoken to witnesses, as his report says.
77. Mr Patel was clear in his evidence that his notes were accurate, and in fact aligned in large part with the claimant's version of the notes, which appear to be a transcript of a recording.
78. The claimant's appeal was dismissed. In his reasoning dated 22 September 2023, Mr Potter says many of the issues raised by the claimant are not relevant to the disciplinary case; that although there may have been an issue with his amended notes of the interview with Mr Parmar not being seen by Mr Koheeeallee, he has taken account of all of the claimant's amendments to the notes of Mr Parmar and Mr Koheeeallee in reaching this decision.
79. Mr Potter argues that Ms Sharma had no reason to meet with the claimant, that her recent contact with Mr Ellahi was about her evidence in their tribunal claim, and that she did not want to meet with them. He accepts that the claimant may have told Ms Smith about an interaction with Ms Sharma, his view is that in doing so the claimant was "preparing a scenario" in case he was reported for intimidating Ms Sharma.
80. Mr Potter argues that the claimant was aware that Ms Sharma had provided an internal statement and that the 8 May 2022 incident must be seen in the context of the claim which was originally scheduled to take place in June 2022. It is "... totally inconceivable that [the claimant] either did not know or would not consider that [Ms Sharma] would be a witness in that Tribunal."
81. Mr Potter concludes that the claimant and Mr Ellahi "... conspired to try and intimidate [Ms Sharma] into changing her statement." He says there is no reason why Ms Sharma would want to speak to the claimant outside the workplace; the fact that she got her husband to pick her up shows that she is "...scared, not someone wanting to talk."
82. Mr Potter argues that the 29 January 2023 incident must be seen in the context of Mr Ellahi's repeated attempts to contact Ms Sharma when she was on sick leave, and that both had tried to talk to her when she returned. "This essentially boils down to" to who to believe. He says that Ms Sharma "had absolutely nothing to gain", whereas the claimant "had everything to gain by persuading" Ms Sharma to change or withdraw her statement. He said that he therefore had a "reasonable belief" that the claimant had stood in front of her to try to block her "in an attempt to intimidate her" (635-643).

Closing arguments

83. Both parties made verbal closing arguments. I refer to them where appropriate in my conclusions section below.

The Law

84. Employment Rights Act 1996 – Pt X Dismissal

s.94 The right

- (1) An employee has the right not to be unfairly dismissed by his employer

s.98 General

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show
- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it
- (a) ...
 - (b) relates to the conduct of the employee
- (3) ...
- (4) Where the employer has fulfilled the requirements of subsection (1), 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 issue

85. Equality Act 2010

s.27 - Victimisation

- (c)
- (1) 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.
- (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.

Case law:

86. Dismissal – process

- a. *The BHS v Burchell test - Graham v Secretary of State for Work and Pensions (Jobcentre Plus) [2012] EWCA Civ 903:*

“35 ...once it is established that employer's reason for dismissing the employee was a “valid” reason within the statute, the ET has to consider three aspects of the employer's conduct.

1. First, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case
2. Did the employer believe that the claimant was guilty of the misconduct for which he was dismissed
3. Did the respondent have a reasonable ground for that belief.

“36 If the answer to each of those questions is “yes”, the ET must then decide on the reasonableness of the response by the employer. ... In performing the latter exercise, the ET must consider, by the objective standards of the hypothetical reasonable employer, rather than by reference to the ET's own subjective views, whether the employer has acted within a “band or range of reasonable responses” to the particular misconduct found of the particular employee. If the employer has so acted, then the employer's decision

to dismiss will be reasonable. However, this is not the same thing as saying that a decision of an employer to dismiss will only be regarded as unreasonable if it is shown to be perverse. The ET must not simply consider whether they think that the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that of the employer. The ET must determine whether the decision of the employer to dismiss the employee fell within the band of reasonable responses which "a reasonable employer might have adopted". An ET must focus its attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any internal appeal process) and not on whether in fact the employee has suffered an injustice."

b. The ACAS Code states that a properly conducted investigative process:

- i. enables the employer to: discover the relevant facts to enable him to reach a decision as to whether or not an offence has been committed;
- ii. secures fairness to the employee by providing him with an opportunity to respond to the allegations made and, where relevant, raise any substantive defence(s); and
- iii. even if misconduct is established, it provides an opportunity for any factors to be put forward which might mitigate the offence, and affect the appropriate sanction.

c. *W Weddel & Co Ltd v Tepper* [1980] IRLR 96:

"... [employers] do not have regard to equity or the substantial merits of the case if they jump to conclusions which it would have been reasonable to postpone in all the circumstances until they had, in the words of the [employment] tribunal in this case, "gathered further evidence" or, in the words of Arnold J in the Burchell case, "carried out as much investigation into the matter as was reasonable in all the circumstances of the case". That means that they must act reasonably in all the circumstances, and must make reasonable inquiries appropriate to the circumstances. If they form their belief hastily and act hastily upon it, without making the appropriate inquiries or giving the employee a fair opportunity to explain himself, their belief is not based on reasonable grounds and they are certainly not acting reasonably'."

d. *University College London v Brown* [2021] IRLR 200: what was the purpose of the employer in determining to hold the appeal when it did? It involves considering the thought process of the

person who made this decision.

87. Victimisation – protected act

- a. *Beneviste v Kingston University UKEAT/0393/05*: The complaint must complain of treatment which is on grounds of a protected characteristic specified in the Equality Act – e.g. detrimental treatment on grounds of race, or sex (or any other Equality Act 2010 protected characteristic). Merely making a criticism, grievance or complaint without suggesting that it was on grounds of a protected characteristic was not sufficient to amount to a protected act.
- b. *Durrani v London Borough of Ealing UKEAT/0454/12*: Referring in a grievance to being "discriminated against" is not necessarily enough, without more which suggests that the complaint is discrimination on grounds of a protected characteristic.
- c. *Fullah v Medical Research Council and another UKEAT/0586/12*: while a grievance need not contain the word 'race' or other protected characteristic, the context must indicate that the discrimination relates to a relevant Equality Act protected characteristic.

88. Victimisation – connection between protected act and detriment

- a. Detriment: *MOD v Jeremiah [1979] IRLR 436, [1980] ICR 13, CA*: a detriment exists 'if a reasonable worker would take the view that the treatment was to his detriment'. A detriment must be capable of being objectively regarded as such (per *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11*); 'an unjustified sense of grievance cannot amount to 'detriment'.
- b. *Deer v University of Oxford [2015] EWCA Civ 52* - the conduct of internal procedures can amount to a 'detriment' even if proper conduct would not have altered the outcome.
- c. Reason for the treatment: *Greater Manchester Police v Bailey [2017] EWCA Civ 425*: the detriment must be 'because' of the protected act – the question is the "reason why" the treatment occurred. Once the existence of the protected act, and the 'detriment' have been established, in examining the reason for that treatment, the respondent's state of mind is likely to be critical. However there is no need to show that the doing of the protected act was the legal cause of the victimisation, nor that the alleged discriminator was consciously motivated by a wish to treat someone badly they had engaged in protected conduct. A respondent will not be able to escape liability by showing an absence of intention to discriminate, provided that the necessary link in the mind of the discriminator between

the doing of the acts and the less favourable treatment can be shown to exist.

- d. *Woods v Pasab Ltd (T/a Jones Pharmacy) [2012] EWCA Civ 1578*: 'the real reason, the core reason, for the treatment must be identified' .
- e. *O'Donoghue v Redcar and Cleveland Borough Council [2001] EWCA Civ 701*: Where there is more than one motive in play, all that is needed is that the discriminatory reason should be 'of sufficient weight'
- f. *Garrett v Lidl Ltd UKEAT/0541/08* : A claim for victimisation is not dependent upon the claim which gives rise to the protected act being successful.

Conclusions on the evidence and the law

Unfair dismissal

- 89. When he was suspended, the claimant was told that it was for alleged bullying and harassment. The legal test for 'harassment' is clear: either harassment is (1) intentional, or it is (2) unintentional *but* it will amount to harassment if the complainant feels fear, alarm, distress because of that treatment, *and* it is objectively reasonable for the complainant to feel this way.
- 90. I accept that the claimant may well not have intended to deliberately harass Ms Sharma, that he may not have intended to cause her fear or alarm or distress.
- 91. The claimant argues that there are different explanations for that conduct – that Ms Sharma did ask to meet him outside of work, that he mentioned this to Ms Smith, that he was not waiting outside for her as Ms Sharma alleges but that the text specifies he has left work and gone home, that he did not harass her on 29 January.
- 92. But Ms Sharma did complain. I accept that at this stage the respondent had two choices: to allow the claimant to remain in work or to suspend him from work pending an investigation.
- 93. I accept that it was within the 'range of reasonable responses' for the respondent to (i) take Ms Sharma's complaint at face value pending further investigation (ii) take it seriously (iii) accept that there may be a link between the alleged acts complained of by Ms Sharma and his employment tribunal claim, and (iv) determine that a preliminary suspension was the only realistic option.
- 94. At the time the claimant was suspended, Ms Sharma had shown to the respondent some of the text messages and calls from Mr Ellahi. It was apparent

from one message that Mr Ellahi was referring to her internal statement relating to his and the claimant's tribunal claim.

95. Based on Ms Sharma's complaint and the evidence she had provided, it was within the range of reasonable responses for the respondent to determine that there was a potential disciplinary case to answer. Given the proximity to the claimant's employment tribunal hearing, it was reasonable for the respondent to conclude that there may be a link between these incidents and his and Mr Ellahi's tribunal claim. It was within the range of reasonable responses to conclude that this was a potentially serious issue which merited suspension to ensure Ms Sharma could not be approached at work. As the respondent put it in closing, a serious complaint had been made which the respondent must investigate.
96. The claimant's evidence at this hearing was that he had little interaction with Mr Ellahi: this is contradicted by the fact he is texting Mr Ellahi about Ms Sharma on 8 May 2022, and in the days before and after Mr Ellahi was directly texting Ms Sharma.
97. The respondent was entitled to conclude that the claimant was aware that Ms Sharma was a witness who had provided an internal statement which was not supportive of the claimant's position. It is clear from Mr Ellahi's text to Ms Sharma containing pages of this statement, that the claimant's evidence at tribunal that he only saw this statement on 2 June 2022 when the hearing bundle was provided, was untrue.
98. In saying this, I have not substituted my own opinion. The test is whether other similarly resourced employers would have found that there was a potentially serious disciplinary issue of bullying and harassment and suspended an employee based on similar evidence and in similar circumstances – the range of reasonable responses test – and I conclude that such employees would be suspended.
99. In the disciplinary process, I accept that there are some procedural failings. The claimant was not given a copy of Ms Sharma's interview notes prior to the disciplinary hearing, he read it at the investigation interview with Mr Parmar and commented on it at this hearing, but he was not given a copy. The respondent accepts this was not reasonable. But, the claimant was given a copy in advance of the appeal and was able to make written submissions on it.
100. I conclude that this procedural failing was serious, but that it does not mean that the overall process was unfair, or outside of the range of reasonable responses, as the claimant was given the opportunity to comment on the statement and he was given a copy in advance of the appeal. This procedural failure was rectified during the appeal.

101. I accept also that there is a discrepancy between Mr Ellahi's 8 May 2022 text and Ms Sharma's subsequent account. The text does not say the claimant was still waiting outside. It suggests Ms Sharma had asked to speak to the claimant. But I conclude that the respondent was entitled to accept Ms Sharma's point which was that she had not asked to speak to the claimant outside. The fact he had waited for her and that she characterised Mr Ellahi's text as unwanted and alarming meant that the respondent was entitled to accept that these events were unwanted, and caused Ms Sharma to feel harassed.
102. I accept that it was reasonable - within the range of reasonable responses - for the respondent to conclude that the text was unwanted and caused Ms Sharma significant stress. As she has provided a statement which supported the respondent's case, the respondent was entitled to consider what conceivable reason could Ms Sharma have for wanting to meet with the claimant? The claimant could not say why; Ms Sharma denied wanting to speak to him, and the documentary evidence – texts – supported the respondent's conclusion that this interaction was unwanted and that it was linked to their tribunal claim.
103. It was also within the range of reasonable responses for Mr Potter to conclude that the claimant may have made a misleading comment to Ms Smith on 8 May 2022. Mr Potter did not accept there was any conceivable reason why Ms Sharma would want to speak to the claimant in private outside the office, he was entitled to conclude that this was an attempt by the claimant to cover his back, that the text was a clumsy attempt to get Ms Sharma to speak to him.
104. I also accept that the claimant's witness genuinely believe that nothing wrong occurred following the training on 29 January 2023. But Ms Sharma gave evidence of quite subtle conduct – eyes swivelling, turning in their chair, along with several calls while she was off sick. The claimant and particularly Mr Ellahi had been persistent in their approach to Ms Sharma; Ms Sharma was deeply unhappy at this treatment, as evidenced by her subsequent grievance. At this date, it would have been apparent to the claimant and Mr Ellahi that Ms Sharma had not complained; other employees would have been oblivious to the subtext of any interactions between them and Ms Sharma and would not have been looking for anything untoward. Ms Sharma was fully aware of the incidents which had occurred. The incident on 29 January 2023 was very brief, and would not necessarily have been noticed by anyone not aware of this history.
105. Had Mr James-Ayok's statement been available at the disciplinary process, I conclude that it would have been within the range of reasonable responses for the respondent to discount it, for the reasons set out above: the respondent can conclude that Mr James-Ayok did not see what he was not looking for.
106. I accept that there were discrepancies with the notes taken at the meeting with Mr Parmar; however Mr Parmar accepted the amendments in full. While Mr

Koheeeallee was not given the full email containing his amendments prior to the disciplinary hearing, he was given them prior to his decision.

107. But the respondent's evidence was clear: even with the claimant's version of the notes of this interview, the decision would have been the same. This is because the respondent genuinely, and reasonably, believed Ms Sharma was a credible witness. In addition, I accept that Mr Potter had sight of and considered the claimant's versions of the notes at appeal. I accept that it was within the range of reasonable responses to conclude that these discrepancies made no difference to their genuine conclusion that as Ms Sharma was a credible witness.
108. I also accept that the notes of Mr Patel were not fabricated. I accept his evidence that he took a detailed summary of the – sometimes heated – exchanges, whereas the claimant had recorded the interview and was able to quote verbatim. I also accept his evidence that there is no substantive difference between the notes, albeit the claimant's account is more detailed.
109. I accept therefore that throughout the disciplinary process, from preliminary suspension to the appeal resolution, the respondent had a genuine belief that the claimant had harassed Ms Sharma on 8 May 2022 and 29 January 2023. Given the evidence, notwithstanding the procedural failings set out above, it was within the range of reasonable responses for the respondent to conclude at the end of the process that the claimant had committed the acts as alleged for reasons connected to his tribunal claim.
110. For these reasons, the claimant's dismissal was fair.

Victimisation

111. On the claim of victimisation. I do not accept that the internal grievances and complaints amount to a protected act. While there is reference to 'discrimination' it is clear that the complaint was about discrimination against part-time workers. To be a protected act, the allegation must relate to a 'protected characteristic' i.e. an Equality Act characteristic contained in section 6 of that act. The claimant accepted in his evidence that his complaint was about part-time worker's conditions in comparison to full-time workers. The absence of any hint of a reference to Equality Act protected characteristics means that these grievances cannot amount to a protected act.
112. The claimant argues that the issues in this claim were acts of detriment because he raised a tribunal claim. I accept the respondent's argument that there is no evidence that the claim was the reason why he was put through a disciplinary process was because of his protected acts. I accept that had the events with Ms Sharma not occurred, the claimant would not have been disciplined because of his tribunal claim.

113. While there is an obvious connection with this claim, as the alleged acts of harassment were related to this claim, this was not the reason why the claimant was disciplined and dismissed. There was no connection between the claimant's tribunal claim and the disciplinary process. The only reason why the claimant was disciplined and dismissed was because the respondent genuinely believed that he had harassed Ms Sharma. He was suspended and put through the disciplinary process solely because the allegations made by Ms Sharma.
114. The respondent did not subject the claimant to detriment because of the fact he brought a tribunal claim. There was no evidence of any link in the mind of the disciplinary managers between the claimant's tribunal claim and the claimant's suspension, the disciplinary process and his dismissal. He was dismissed because of what the respondent genuinely believed were acts of intimidation by him towards a witness in that claim.
115. The two sets of notes were not deliberately altered; there were errors in setting down all that was said. As Mr Patel made clear, the meeting he attended was occasionally heated, and it was sometime difficult to follow and then summarise the conversation. In any event, Mr Parmar accepted the claimant's corrected notes.
116. I accept that Mr Koheeeallee did not initially have the corrected notes of the interview with Mr Parmar. This was an error in uploading the claimant's email with the corrections and this was explained to the claimant at the time. The claimant gave the agreed notes to Mr Koheeeallee, who took these into account. In addition, Mr Potter was given the corrected notes, and the claimant's version of the notes of his interview with Mr Koheeeallee, and I accept he read these and took these into account.
117. I conclude that there is no evidence which suggests that notes were altered because of the claimant's prior tribunal claim. They contained some errors, the claimant's corrections were agreed, and the failure to initially give Mr Koheeeallee the correct notes had nothing to do with his tribunal claim.
118. For these reasons the claim of victimisation fails.

Approved by

**Employment Judge Emery
20 June 2025**

Judgment sent to the parties on:
24 June 2025

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For the Tribunal:

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