EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
MR F EUZEBIO		**TURNING POINT**

Heard at: London Central, by CVP

On: 8 to 10 December, 2024

Before: Employment Judge: Oliver Segal KC

Representations
For the Claimant: Mr A Blay, Legal Executive
For the Respondent: Mr D Flood, counsel

JUDGMENT

The claims of discrimination, victimisation and unfair dismissal are dismissed.

REASONS

1. The Claimant (C) worked for the Respondent (R) as a Night Support Worker based at R's Hazel House site (HH), between January 2020 and 12 June 2024, on which latter date he was dismissed for gross misconduct.

2. At a PH on 31 January 2025, C's claims against R were identified, in summary, as follows:-

Section 13 Equality Act 2010 (EqA): Direct discrimination because of sex

2.1. Did R treat C less favourably than Judith Black (JB) because of sex, by dismissing C and issuing a final written warning to JB?

Unfair dismissal

2.2. Did R dismiss C for misconduct after a reasonable investigation, and was dismissal a reasonable sanction?

Victimisation

2.3. C did a protected act (issuing a previous ET claim against R). Did R (a) harass C by pressuring him to withdraw that claim, (b) initiate the disciplinary proceedings which led to C's dismissal, or (c) dismiss C, because R believed C had done or was likely to do that protected act?

Wrongful dismissal

2.4. Was R entitled, as a matter of contract, summarily to dismiss C on 12 June 2024?

Evidence

3. There was an agreed bundle of documents.

4. We had witness statements and heard live oral evidence from:

4.1. the Claimant (C);

For the Respondent:

4.2.Mr Will Williams (WW), Operations Manager;

4.3.Ms Melanie Butler (MB), Service Manager;

4.4.Ms Leigh-Ann Cruickshank (LAC), Senior Operations Manager;

4.5.Ms Charlotte Woolley (CW), Team Leader at HH;

4.6.Miss Judith Black (JB), Support Worker at HH;

4.7.Mr Joel Rajkoomar (JR), Operations Manager.

Facts

5. R is a registered charity providing health and social care services specialising in working with vulnerable people, which includes some people suffering from drug and alcohol use, mental and physical health issues, unemployment and people with learning difficulties. R operates numerous services across England and Wales, including HH, where R provides accommodation and support to service users with complex mental health issues and needs.

6. A key accountability listed within the job description for Support Worker (such as C) is: *Complying with all H&S policies and procedures including serious untoward incidents …*

7. R had various relevant written Policies in place and provided workers like C with regular training, both in person and online.

8. However, there is no evidence that C was given any of those written Policies (he said he was not) – other than R's evidence that when sending round to Support Workers the monthly on-call rota, a copy of the On-Call Guidelines was attached to those emails. The latter document includes the following:

Problems with on call manager or response

Please consider that there may be times when the on call manager cannot answer the call immediately…You should leave a message and try again in ten minutes and repeat this several times. You may wish to complete a log of when you tried to contact the on call manager.

…

If you are unable to contact the on call manager and this is causing you concern then you should attempt to contact one of the other on call managers. …

9. C's training records were in the bundle. They do not include training on Medication or Suicide Prevention. It is unclear whether those training modules would have included anything specific to paracetamol overdoses. JB, who had done the training, was unaware that a paracetamol overdose might take some days to result in serious symptoms.

10. There were regular meetings, discussions, etc. to discuss incidents or issues which arose at work. While C would not have been present at all such discussions/meetings, because a night worker, he would have been included in some.

11. Mr X was a service user at HH, with whom C had dealt for a period of time. Mr X had significant mental health issues and had attempted suicide on at least one previous occasion.

12. There had been an issue between C and another worker in 2023, following which R had given C a final written warning, which was still 'live' at the time of the disciplinary process in 2024.

13. C considered he had been badly treated by that other worker and by R in relation to the issue in 2023 and in January 2024 told his line manager, CW, that he intended to take court action against that other worker and R. C initiated the ACAS Early Conciliation process in that regard on 12 February 2024 and issued a claim against R in March 2024.

14. On 26 February 2024, at an Away Day, C alleges both CW and JR spoke to him (separately) and sought to persuade him not to pursue that tribunal claim. CW and JR deny that any such conversations occurred, CW says she had not been made aware of ACAS contacting R and JR says he was entirely unaware of any claim/potential claim. It is not possible for me to reach a firm view as to whose evidence is reliable in this context. On the balance of probabilities, I accept the evidence of CW and JR, for the following reasons:

    14.1. It is possible, though not that likely, that CW and JR would have been made aware of the ACAS EC process before 26 February or at all – particularly in the

case of JR; and if not aware of it, it is very unlikely that they would have raised the issue of C's potential claim at the Away Day.

14.2. It is inherently rather unlikely that if CW and JR had been aware of the ACAS EC process, they would have tried to persuade C not to pursue his claim, let alone at a structured work event.

15. On Saturday 16 March 2024, C worked a long shift, which only ended at about 9.30pm. During that shift, at about 5pm, Mr X approached C and told him that he had (deliberately) taken 32 paracetamol tablets (in a presumed suicide attempt) three days earlier and had told a staff member at the time. Mr X gave C the empty packaging of the paracetamol tablets. C asked Mr X if he wanted C to call 111 or an ambulance, Mr X said he did not. At that time, Mr X did not present with any particular physical symptom of note.

16. The CIM notes (an ongoing record compiled by the support workers for each shift, in respect of each service user) for 13 to 16 March, available for C to inspect on 16 March, disclosed that Mr X had been unwell at times, including earlier on 16 March, but made no mention of Mr X having taken a paracetamol overdose – from which, had he explored the point, C would have been able to conclude that Mr X had not told another staff member on 13 March that he had taken a paracetamol overdose.

17. C decided not to call 999 or 111, but to monitor Mr X's condition during the remainder of his shift. C made a note on the CIM system of what he had been told.

18. It is not clear whether and if so when C attempted to alert more senior management about the incident. There is always an On-Call Manager (OCM), who is identified in a rota and whose phone number is available to support workers in the event of an emergency or other situation where prompt guidance is required. During the disciplinary process, including at the appeal, C told R that he had made a single call to the OCM, who was JR at the time, which was not answered. He did not leave a message, although JR told me that his mobile had a voicemail facility. C was initially unable to recall when he made this call, but later said that it was at about 6.30pm (i.e. about 90 minutes after Mr X gave him the information about the paracetamol overdose). JR's phone record did not show a call from the HH landline (from which C said he had called). During the disciplinary process, C asked R to obtain records of

outgoing calls from the HH landline. R declined to do so (it is not clear whether such records would have been obtainable if R had attempted to do so). C told this tribunal that he had called the OCM multiple times, but none of those calls had been answered. Mr Blay suggested that the apparent discrepancy between that account and the account C gave during the disciplinary process was due to a lack of clarity in the way C expressed himself or was understood.

19. I do not accept C's evidence that he attempted to call multiple times. That is inconsistent with his repeated accounts to R during the disciplinary process; and it is especially implausible in light of the express criticism of C in the dismissal letter that he had only attempted to call the OCM on one occasion, that C would not correct any misunderstanding his (twice) written grounds of appeal and/or at the appeal meeting.

20. As to whether C called the OCM at all, I cannot be confident. C did not record in the CIM notes that he had made that call. For present purposes, it is not a critical issue, given that R accepted during the disciplinary process that he had done so.

21. Towards the end of his shift, at 9.15 pm, C emailed a generic HH email address, writing that Mr X *"informed staff at around 17:00pm that he took 32tablets of paracetamol on Wednesday 13/03/2024, that he informed staff on duty about it and staff FE asked if he is okay or should he call 111, he said no, that he's fine, he is just telling me what happened few days ago and he gave me two empty packs of paracetamol box."* The email would, in the normal course of events, not be read – or at least might well not be read – until the following Monday, 18 March. JR did not in fact read it before that time.

22. At about 9.15 pm, C handed over to JB (who had just returned from a long period of annual leave). He told JB what Mr X had told him – the paracetamol packaging was visible in the staff office – and told her that he had called the OCM. C did not make it clear to JB he had not been able to speak to the OCM. C told JB that Mr X seemed to be fine. JB later checked once on Mr X by listening to the sounds of his being asleep in his room (snoring) through the door. She did not attempt to wake him or enter his room.

23. The following day, Mr X became very unwell because of the paracetamol overdose and was taken to hospital, where her remained for some days. He recovered in hospital.

24. MB was appointed by R's HR department to investigate the incident and more particularly to identify if C and/or JB had a case to answer that *"You may not have followed due process when you were informed that a service user had taken an overdose of paracetamol".* Both C and JB were suspended from duty pending investigation on 26 March 2024.

25. MB interviewed various people, including JB and (on 11 April 2024) C. At his investigation interview, C gave the account of events set out above, saying he could not remember when during the period 5 – 9pm he had tried calling the OCM. He said that R was pursing a 'personal vendetta' against him, related to his race (C is black), asking why R had not suspended the day staff at HH – implying that C had taken Mr X at his word when he told C he had informed staff on 13 March about the overdose, without checking the CIM notes. C referred to his unhappiness about the way R had dealt with the previous matter in 2023.

26. At JB's investigatory interview, she was upset, concerned for Mr X and that she might have contributed to the effect of the overdose, and was apologetic.

27. MB recommended that both C and JB face disciplinary proceedings, although she considered JB's level of culpability to be less than C's, given C had been the staff member first approached, whereas JB had failed to verify what she had been told on handover.

28. When WW was appointed to hear the disciplinary hearings for both C and JB, he was provided with MB's report, including notes of all the interviews she conducted and various policies and other relevant documents. WW did not feel he needed to do any further investigating before conducting the disciplinary hearings.

29. At C's disciplinary hearing on 12 June 2024, C repeated the account of the incident he had given MB. His union representative expressed concern that MB's investigation had not been sufficiently thorough, in particular that the HH landline call logs had not been sought. C maintained that he had acted appropriately, given

that Mr X was not presenting with any notable symptoms and said that he *"would do the same thing again"*.

30. The relevant part of WW's witness statement, which I accept as true, sets out the basis for his decision to dismiss C:

22. What was particularly striking during the hearing was Mr Euzebio's lack of accountability and awareness of the seriousness of his actions (or lack of action in this case). Despite knowing what transpired with the Service User, he maintained that he would not have done anything different.

23. Mr Euzebio was responsible for supporting service users with complex mental health needs which included those with suicidal ideation. Upon being informed of the overdose, Mr Euzebio should have taken immediate steps to safeguard the individual and seek medical attention or further support from the on-call manager. Especially in light of the earlier CIM records which confirm the Service User was feeling unwell.

24. Even if Mr Euzebio did call the on-call manager once, this was not a sufficient response. The on-call guidance (pages 86 – 888) is clear, if no answer you should leave a message and make multiple further attempts (10-minutes apart). If the employee is unable to get in contact with the on-call manager, they should escalate to the second-level on call manager or another manager listed on the rota. Mr Euzebio did not do this, he called once and then sent an email four-hours later at the end of his shift.

25. Ultimately, I considered that Mr Euzebio response to the information provided to him was wholly inadequate and resulted in the Service User being seriously unwell and being admitted to hospital. ...

31. WW dismissed C with immediate effect at the conclusion of the disciplinary hearing. He sent C an outcome letter dated 17 June 2024, setting out his reasons for dismissing in similar terms. WW told me that he considered that C's conduct was properly characterised as gross misconduct by reference to R's disciplinary policy, which lists examples of gross misconduct as including *""serious neglect of duties, or serious or deliberate breach of contract terms or conditions or policy"; "serious carelessness/negligence in the performance of duties including action or inaction, which threatens the health or safety of a client, colleague or member of the public, ..."*; and/or *"a serious breach or action which leads to or has the potential to lead to safeguarding investigations, contractual default notices, poor CQC ratings and other actions by regulatory agencies"*.

32. WW also conducted JB's disciplinary hearing on 28 June 2024. JB, he felt, took immediate accountability for her actions and apologised for them; she had relied on C telling he had contacted his manager(s). In those circumstances, WW decided JB should be issued with a final written warning.

33. C appealed his dismissal by letter of 21 June 2024, criticising the sanction as too harsh for a first offence (sic), and on the basis that he had called the OCM and the HH call logs would have verified that. He supplemented those grounds by letter of 23 July 2024, adding that:

    33.1. He had respected Mr X's autonomy in not calling an ambulance.

    33.2. He had been given no relevant protocols explaining what to do in such a situation.

    33.3. He had reflected on his actions and was keen to learn.

    33.4. He felt the dismissal was an act of victimisation because of his earlier tribunal claim (since withdrawn).

34. LAC conducted the appeal hearing on 2 August 2024 (at which C was represented by Mr Blay). LAC's role was to reach her own decision on the appropriate sanction, focusing in particular on the grounds of appeal. LAC found that:

    34.1. The sanction of dismissal was appropriate, even if the first instance of misconduct, given the severity of the C's failure to respond appropriately to the information about Mr X's overdose – regardless of Mr X's wish not to call 999 or how he presented at that time.

    34.2. C did not make sufficient attempts to contact an OCM and did not follow the procedure with which LAC was familiar in that regard – although she accepted in the tribunal that the particular procedure she referred to was a 'localised' one, not adopted at HH.

    34.3. Whether or not there had been a 'training gap, as C alleged – and I have accepted – *"Regardless, as an experienced Support Worker working with vulnerable service users, I consider it was common sense to call emergency*

services when informed that a vulnerable person had overdosed, and that training was not necessarily required in order to take appropriate action in these instances".

34.4. C had not taken accountability for his actions during the disciplinary or during the appeal process – the latter finding in relation to the appeal process is perhaps harsh given the terms of C's second appeal letter (referred to above).

35. LAC confirmed her decision to reject C's appeal by letter of 8 August 2024.

The Law

Unfair dismissal

36. There was no dispute between the parties on the legal principles applicable to s. 98(4) ERA 1996, both parties referring me to the well known Burchell 'test' applicable in conduct dismissals (a genuine and reasonable belief of the employer in the employee's guilt, based on a reasonable investigation), and R reminding me that I should not substitute my own judgment for that of R, but decide whether R's decision to dismiss was one which a reasonable employer might take.

37. Ofsted v Hewston [2024] EWCA Civ 410 is authority for the proposition that an employee who refuses to accept that his actions constituted gross misconduct cannot be fairly dismissed for that attitude if he reasonably believed that his actions were appropriate – although an employer is entitled to give credit to an employee for showing insight and/or contrition for serious misconduct, by way of mitigating the potential sanction.

The discrimination claim

38. S. 13 EqA 2010 (the Act) provides that

(1) 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.

39. Section 136 of the Act provides, as to the burden of proof, that

(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.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

40. Although the two-stage analysis of whether there was less favourable treatment followed by the reason for the treatment can be helpful, as Lord Nicholls explained in Shamoon at [8], there is essentially a single question: *"did the claimant, on the proscribed ground, receive less favourable treatment than others?"*

41. I refer to well-known remarks of Mummery LJ in Madarassy v Nomura International Plc [2007] ICR 867, [56-58] on the burden of proof issue, in the context of a claim that the claimant had been treated less favourably than actual comparators: that for stage 1 of the burden of proof provisions to be met, what is required is that *"a reasonable tribunal could properly conclude"* from all the evidence, that discrimination occurred.

Victimisation

42. Section 27 of the Act provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, …

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

…

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

43. Section 136 (reversal of the burden of proof) applies to victimisation claims: Greater Manchester Police v Bailey [2017] EWCA Civ 425.

44. As in a discrimination claim, the claimant must show that the protected act was a significant influence, or an effective cause of the detriment complained of. He does not have to show that it was the sole or main cause.

45. In Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] ICR 1065, a greater distinction was drawn between the 'but for' test and that which should be applied in employment discrimination cases. Lord Nicholls considered that the test (at least in the context of victimisation) must be: what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously, was their reason? Looked at as a question of causation, 'but for …' was an objective test; but the anti-discrimination legislation required something different. The test should be subjective: *"Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."*

Discussion

70. Mr Blay provided written submissions and both he and Mr Flood made helpful oral closing submissions. I do not set out those submissions in detail here, but will refer to them as necessary.

The complaint of unfair dismissal

71. The essential issue is: was R entitled to treat C's actions in responding to the information Mr X gave C about having taken a paracetamol overdose as gross misconduct, in all the relevant circumstances which include C not having had specific formal training relating to the delayed effect of taking a paracetamol overdose?

72. The following matters persuade me that R was entitled to do so (indeed that I share R's view – although not strictly legally relevant):

    72.1. Mr X was clearly someone the detail of whose information could not be safely relied on: C himself in evidence described what Mr X told him as *"unreliable"*. Thus, while it seemed very likely that Mr X had indeed taken a paracetamol overdose (as evidenced by the empty packaging), his statement to C that he had done so 3 days ago and told a staff member about it on that day could not be relied on – indeed seemed almost certain not to be true in relation to

telling the other staff member, since C (who had worked on 14 March as well as 16 March) had not previously been told about it, and the CIM notes for 13-15 March made it clear that staff members working during that time had not been told by Mr X he had taken an overdose. In those circumstances, C should have known that a vulnerable service user with a history of suicide attempt(s) had taken a very large quantity of paracetamol at some time recently and had received no medical intervention since.

72.2. C also knew from the CIM notes that Mr X had been unwell earlier on 16 March.

72.3. C did not know how or how quickly paracetamol taken in large quantities affected a person, but obviously knew that the amount taken by Mr X massively exceeded a safe dose.

72.4. In the circumstances, it was imperative for C either to seek urgent medical assistance, or – if he could contact a more senior member of staff quickly – to follow the instructions of that manager.

72.5. C did neither. On his case (that he called the OCM), C showed some awareness of the potential seriousness of the situation; but, as Mr Flood pointed out, that 'makes it worse' for C: given C did rightly understand this was a potentially serious situation, to make only one call – and that after, it would seem, an hour and a half – and then do nothing further when that call was unanswered, clearly exposed Mr X to a potentially serious risk to his health (which, in the event, occurred).

72.6. R was, in my view, correct to characterise the correct response by C to what he was told by Mr X as 'common sense' – what R considered any sensible person would do faced with the same situation; however, C had four years' experience as a support worker in the relevant environment and there was in those circumstances no excusing his failure to respond appropriately.

73. R also took into account C's lack of insight into the seriousness of his negligent response, particularly at the disciplinary hearing, in deciding that it could have no confidence that faced with a similar situation in the future C could be trusted to react

appropriately. I consider R was entitled to do so. This was not a case, like Hewston, in which the employer sought to 'elevate' to a gross misconduct case an action which could not properly be so described, on the basis that the employee correctly resisted the charge of serious misconduct. Rather, this was a case in which any potential mitigation of his serious misconduct by C demonstrating a clear understanding and admission of his failure to safeguard Mr X's health, was not provided by C.

74. I do not consider that the difference in treatment as between C and JB was such as to render C's dismissal unfair by reason of unjustified inconsistency of approach by R. The circumstances were not the same, for the following reasons:

74.1. C was the staff member first presented with the situation, some hours before JB started her shift, and therefore the staff member with the primary responsibility for responding appropriately.

74.2. JB was told by C he had called the OCM, not that he had failed to speak to him. JB was entitled to understand that whatever C had done/not done, it had been authorised by the OCM.

74.3. JB did provide the mitigation of her misconduct (failing to verify the position as described to her by C) by demonstrating a clear understanding and admission of her failure to safeguard Mr X's health. Mr Blay accepted in submissions that the approach adopted by an employee to their misconduct during a disciplinary process might constitute legitimate mitigation in respect of the sanction decided on by the employer.

The sex discrimination claim

75. It is not clear to me whether in this case R had the burden to explain the difference in the treatment between C and JB.

76. However, in the circumstances and for the reasons set out above, R amply demonstrated that the reasons for that difference in treatment had nothing to do with the difference in the sex of C and JB.

The victimisation claims

77. The claim in relation to alleged harassment on 26 February 2024 must fail on the facts, given my finding that on the balance of probabilities the conversations relied on as detriments did not occur.

78. While I accept that HR, which authorised the institution of a disciplinary investigation into the conduct of C and JB, can be taken to have been aware of C commencing ACAS early conciliation – and thus of a 'protected act' – there is no evidential basis for inferring that decision to have been influenced by C's protected act. On the contrary, given the outcome in Mr X's case (severe, perhaps life-threatening ill health, potentially caused or exacerbated by the failure of members of staff to take appropriate safeguarding actions), it was entirely predictable that a disciplinary investigation would be required. And, of course, the same investigation (with the same initial outcome) took place into the conduct of JB, who had not done a protected act, as into the conduct of C.

79. There is no evidence that WW knew of any protected act – he says he did not. In all events, his decision to dismiss is clearly explicable, and I have found justified, for reasons unrelated to any protected act. I find the decision to dismiss was not in any way influenced by a protected act done by C.

The wrongful dismissal claim

80. Given I have found that C's conduct on 16 March 2024 was fairly characterised as gross misconduct, this claim must also fail.

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Employment Judge Segal KC

11 December 2025

_____

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

9 January 2026

FOR THE TRIBUNAL OFFICE