EMPLOYMENT TRIBUNALS

Claimant: **Mr M Khan**

Respondent: **South Yorkshire Housing Association**

Before: **Employment Judge Shepherd**
Members: **Ms L Fawcett**
Ms J Rathbone

Appearances
For the claimant: **Mrs Khan (the claimant's wife)**
For the respondent: **Mr Barron, solicitor**
Interpreter: **Ms Malik**

JUDGMENT having been sent to the parties on 31 January 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant was represented by Mrs Khan and the respondent was represented by Mr Barron.

2. The Tribunal heard evidence from:

Mohammed Imran Khan, the Claimant;
Emma Shipley, Compliance Manager;
Andrew Collin, Head of IT;
Andrew Jones, HMT Manager.

3. The claimant's wife had requested a postponement or conversion to a video hearing because of the claimant's medical condition. This was refused on the basis that the case had been postponed on two previous occasions and there was no medical evidence in respect of the claimant's inability to attend a Tribunal hearing. A letter was then provided from the claimant's GP and the hearing was converted to a CVP video link hearing and the claimant's wife indicated that that would be satisfactory and that they were grateful.

4. The claimant's evidence was vague and unreliable. At times it was difficult to follow. An interpreter had been arranged shortly before the hearing at the request of, and for the benefit of, the claimant's wife. It had been explained to her that she had to prepare questions for the respondent's witnesses.

5. Emma Shipley was a clear and credible witness. There had been a very thorough investigation and outcome provided. No questions were asked by Mrs Khan in cross-examination.

6. Adam Collin was also a clear and straightforward witness. The claimant had provided no understandable grounds of appeal but Mr Collin reinvestigated thoroughly and provided a clear outcome. There were barely any questions asked in cross-examination from Mrs Khan. She asked about the effects of the actions on the claimant.

7. Andrew Jones' evidence was relatively straightforward. He said that he saw no malice in Lee Bateman but then when he saw the outcome of the investigation and the appeal he agreed with the findings. He said he could remember acknowledging the claimant on 8 November 2022 but could not remember what form that acknowledgement took. Mrs Khan asked him why the respondent had not spoken to the claimant's colleague who was with him, he said it was Dale Middleton. This was not a question that Andrew Jones could answer as he did not carry out the investigation or the appeal – the question should have been put to Emma Shipley or Adam Collin.

8. The Tribunal had sight of a bundle of documents which was numbered up to page 222. The claimant provided further documents in an 18 page presentation. The Tribunal considered those documents to which it was referred by the parties.

9. The issues to be determined were identified by Employment Judge Flanagan at a Preliminary Hearing on 6 March 2023. The parties agreed that these were the issues that the Tribunal was to determine at this hearing. They were:

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

1.1. The claimant describes himself as a British Pakistani.

1.2. What are the facts in relation to the following allegations:

1.2.1. On 1 November 2022 the claimant was working, stripping wallpaper at an address, when he stopped with four colleagues to have a tea break. The claimant states that Lee Bateman – a supervisor he met the previous day – aggressively told him to stop drinking tea and continue with his work. Mr Bateman's comments and tone were different to how he approached the other employees.

1.3. If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than

someone in the same material circumstances, but of a different race was or would have been treated?

2. Victimisation (Equality Act 2010 section 27)

2.1. Did the claimant do a protected act as follows:

2.1.1. On or around 1 November 2022, the claimant made an initial complaint regarding the conduct of Lee Bateman to Kevin Scott, a Senior Employee of the Respondent?

2.2. Did the respondent believe that the claimant had done or might do a protected act, in that he had raised Lee Bateman's conduct with a manager?

2.3. Did the respondent do the following things:

2.3.1. On 9 November 2022, Andrew Johns (a supervisor) ignore the claimant when at work (did not speak to him at any stage), but spoke to other employees in a normal manner?

2.4. By doing so, did it subject the claimant to detriment?

2.5. If so, has the claimant proven facts from which the Tribunal could conclude that it was because the claimant did a protected act or because the respondent believed the claimant had done, or might do, a protected act?

2.6. If so, has the respondent shown there was no contravention of section 27?

3. Remedy for discrimination or victimisation

3.1. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

3.2. What financial losses has the discrimination caused the claimant?

3.3. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

3.4. If not, for what loss should the claimant be compensated?

3.5. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

3.6. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

3.7. Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

3.8. Did ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

3.9. Did the respondent or the claimant unreasonably fail to comply with it by [specify breach]?

3.10. If so, is it just and equitable to increase or decrease any award payable to the claimant?

3.11. By what proportion, up to 25%?

3.12. Should interest be awarded? How much?

The parties confirmed at the start of the hearing that they agreed that those were the issues the Tribunal was to determine.

Findings of fact

5. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings the Tribunal made from which it drew its conclusions:

6. Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Some of the Tribunal's findings are also set out in its conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact.

7. The claimant was employed by the respondent from 9 August 2021. He was employed as a plasterer within the Home Maintenance Team (HMT) .

8. On 1 November 2022 the claimant was working on a property owned by the respondent and occupied by a tenant.

9. Lee Bateman, supervisor, attended the property at approximately 8.30 – 8.45 and found that the claimant and three other employees were having a tea break.

10. Lee Bateman indicated to all of the members of staff there that he did not feel they had time to be laughing and joking and they needed to get on with the job. Lee Bateman said that the claimant was the only member of the team holding a cup of tea and, during the investigation, Lee Bateman said that the claimant had been smirking.

11. On 2 November 2022 the claimant sent an email to Kevin Scott indicating that he had been really stressed by the way he had been spoken to. He said that Lee Bateman walked in and shouted at him and told him to get work done. The claimant put this cut down and started work. Lee Bateman only spoke to the claimant like that and he had been "okay with the other lads" but it was only said to the claimant in an aggressive tone.

12. A fact finding meeting took place with Lee Bateman and Andy Jones, HMT Manager, on 4 November 2022. Lee Bateman indicated that when he arrived at the property it was

clear that hardly any work had been carried out and everyone was standing around. His first comments about getting back to work were aimed at everyone. He did make a second comment to the claimant as he continued leaning on the work top drinking tea in a leisurely manner.

13. The claimant was off sick from 10 November 2022 by reason of stress at work.

14. Emma Shipley, Compliance Manager, was appointed to hear the claimant's grievance.

15. Emma Shipley had some difficulty arranging a meeting with the claimant. However, she interviewed all the available witnesses and met with the claimant on 2 February 2023.

16. On16 March 2023 Emma Shipley sent a letter to the claimant providing the outcome of his grievance. This was a detailed outcome following having interviewed the claimant, Lee Bateman, Andy Keyes, Nathan Paxton, Lee Herrington, Kevin Scott, Andy Jones and Vaughn Walker.

12. It was stated in the outcome letter:

1. **"Singled out by Lee Bateman (LB) and told to get back to work even though other operatives carried on talking and laughing.**

   …In summary, I find that the evidence confirms that LB did speak to you and other operatives on the day in question. All witnesses confirm this is the case. I also consider that the witness statements support your view that you were on this occasion singled out. All witnesses believed that the reason for this was due to you having a cup of tea in your hand, this differs from your interpretation that you were singled out due to your race. On the balance of probability I do feel that the incident occurred and that LB did speak to you inappropriately but that LB's actions were not racially motivated and were based on the circumstances that day.…

2. **Singled out by Lee Bateman in relation to the equipment you were using and Lee Bateman questioning you to see if you were telling the truth.**

   …On the balance of probabilities, a conversation did take place between you and LB about the use of the tool you are using and that you did go to another property where VW was working. Evidence will show that you did borrow a steam stripper but not a bigger scraper due to it not being available. No one else can corroborate that the conversation took place about Lee B questioning why you didn't have a bigger scraper, you are unclear who else witnessed this conversation. The fact that you came back with the steam stripper shows that you had been to another

property. I have considered whether it was reasonable for LB to request you to find an alternative tool for the job required, and whether there was anything in his request that would indicate racist motivations. Based on the evidence I have I believe this conversation took place because LB wanted to ensure that you have the right tools for the job in the most efficient way. I don't believe this was racially motivated .No one raised a concern about a conversation taking place between you and LB when you arrived back at Regent Street, neither could you offer any witnesses to this conversation. I consider a steam stripper a suitable piece of equipment to complete the job you had been given. Due to that consideration I do feel that the sequence of conversation that you allege took place doesn't make sense when you have presented yourself with a suitable piece of equipment for the job. Without other witnesses I find this very difficult to analyse …

3. Lee Bateman had an attitude towards you at a property on Kashmir Gardens

…Unpicking this evidence is difficult here and the fact that you haven't worked together before means that you are not aware of how you both operate and your styles of communication. Whilst I recognise that the use of pleasantries may be important to you not saying hello is not in itself discriminatory. My opinion is that LB probably was very direct about the job you were doing rather than pleasantries first and I believe LH's 2nd interview confirms that some times LB does go straight into work mode rather than pleasantries first and that could illustrates a pattern of behaviour from LB. LB hadn't assigned this work to you so I think that would explain why LB was questioning the work you were doing I don't believe based on this evidence this was racially motivated.

Whilst there may be some learning for LB I don't consider this breach of policy or racially motivated.

4. Andy Jones ignored you at 9 Station Road and other comments.

…From your interview it comes across that polite pleasantries between people is really important to you. I think that on occasions this may not have happened due to people being busy, having tight deadlines to achieve and just focusing on the work that needs doing…

…I have reflected carefully on whether the evidence collected as part of my investigation is evidence of isolated events of racism or even a pattern of racist behaviour. Overall I believe the evidence suggest that there are times when the way LB communicated with you could be improved. Every employee should be spoken to professionally and respectfully. However, I do not believe the evidence supports your view that you have been singled out because of your race. I consider the explanation for the events to be robust. I have interviewed all relevant witnesses and considered carefully the context the events happened in. The evidence suggest that it was not uncommon for other colleagues to

> experience issues. This is important learning that we will take forwards with Lee and I thank you for agreeing this to our attention..."

13. Emma Shipley also sent an outcome of an investigation into Lee Bateman's behaviour. She concluded that,

> "…whilst I did not find evidence to suggest that the incidents were racially motivated, I did find consistent patterns of behaviour when speaking to staff members but does not meet our SYHA Behaviours policy, this was in relation to how you speak to staff members and the tone of voice you use. Whilst I do not consider that you singled Imran out in a racially motivated way, there have been other operatives reporting that they have experienced similar behaviour."

14. It was concluded that informal action needed to be taken and his line manager would work with Lee Bateman to look at learning outcomes and it was recommended that he attend a refresher of crucial conversations training.

15. The claimant appealed against the grievance outcome. The appeal hearing was before Adam, Collin, Head of IT. The appeal hearing took place on 13 April 2023.

16. The outcome of the appeal was sent to the claimant on 23 May 2023. Further interviews had been carried out with Lee Bateman, Kevin Scott, Nathan Paxton, Andy Keyes and Lee Herrington. This was a detailed letter setting out the findings in respect of the appeal. The decision was, on each ground, the appeal was not upheld.
It was stated in that appeal outcome letter:

> "…I have reviewed all accounts carefully and do not believe you were singled out by Lee Bateman. Whilst some accounts support your position that you were spoken to directly and others were not addressed, Lee Bateman believes that he did first give an indirect instruction to the group, and you were the only person who did not follow this instruction. You were then given a direct instruction by the supervisor which you did not follow (in your own account you stated that you did not take this instruction seriously as you took it as a joke) and continued to drink tea. You were then given a second direct instruction which you then acted on…"

17. Following the ACAS early conciliation process, the claimant had presented his claim to the Employment Tribunal on 7 December 2022. He made a claim of race discrimination.

The law

Direct discrimination

18 Section 13 of the Equality Act 2010 states:

(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.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

Victimisation

19. Section 27 of the Equality Act provides as follows:-

(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.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

20. In a victimisation claim there is no need for a comparator. The Act requires the tribunal to determine whether the claimant had been subject to a detriment because of

doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830**:-

> "The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so".

21. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof.

22. To get protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the Tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says "Detriment does not ... include conduct which amounts to harassment". The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** is applicable.

23. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi EAT0269/09**. Once the Tribunal has been able to identify the existence of the protected act and the detriment the Tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent's state of mind. Guidance can be obtained from the cases of **Nagarajan v London Regional Transport** [1999] IRLR 572, **Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830**, and **St Helen's Metropolitan Borough Council v Derbyshire [2007] IRLR 540**. In this latter case the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see **R (on the application of E) v Governing Body of JFS and Others [2010] IRLR 136**. In **Martin v Devonshires Solicitors EAT0086/10** the EAT said that:

> "There would in principle be cases where an employer had dismissed an employee in response to a protected act but could say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable."

24**.** In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, **Nagarajan**. In **Owen and Briggs v James [1982] IRLR 502** Knox J said:-

> "Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination."

25. In **O' Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615** the Court of Appeal said that, if there was more than one motive, it is sufficient that there is a motive that is a discriminatory reason, as long as this has sufficient weight. Conscious motivation is not a prerequisite for a finding of discrimination. It is therefore immaterial whether a discriminator did not consciously realise they were prejudiced against the complainant because the latter had done a protected act. An employer can be liable for discrimination or victimisation even if its motives for the detrimental treatment are benign.

Burden of Proof

26. Section 136 of the Equality Act 2010 states:

> "(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 sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.
>
> (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.
>
> (5) This Section does not apply to proceedings for an offence under this Act.
>
> (6) A reference to the court includes a reference to –
>
> (a) An Employment Tribunal."

27. Guidance has been given to Tribunals in a number of cases. In Igen v Wong [2005] IRLR 258 and approved again in **Madarassy v Normura International plc [2007] EWCA 33.**

28. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against her. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the

respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

29. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR 36** the House of Lords held that mere unreasonable treatment by the employer "casts no light whatsoever" to the question of whether he has treated the employee "unfavourably".

30. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that

> "all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour … Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way … The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable."

31. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

32. Mr Barron provided written submissions on behalf of the respondent and Mrs Khan provided oral submissions (with the assistance of Ms Malik, the interpreter) on behalf of the claimant. These submissions are not set out in detail but both parties can be assured that the Tribunal has considered all the points made and any authorities referred to even where no specific reference is made to them.

Conclusions

33. The Tribunal heard that Lee Bateman was no longer employed by the respondent and did not wish to take part in this hearing.

34. The claimant said, after the evidence had been concluded, that he was concerned that none of the eyewitnesses to the events on 1 November 2022 were called by the respondent to give evidence.

35.The respondent made it clear why they did not call Lee Bateman to give evidence and the claimant did have the opportunity to cross-examine Ella Shipley and Adam Collin with regard to the evidence that had been given to them in the internal investigation and appeal. They had gone back and asked for further information from these witnesses before concluding the internal process.

36. There was had been a thorough internal investigation and evidence was taken from everyone involved apart from the claimant's companion on 8 November 2022.

37. There were no substantive grounds for appeal provided to the respondent however, Adam Collin carried out a thorough and detailed reinvestigation.

38. The claimant said that he had emails from colleagues that would establish that they believed it was race discrimination. However, he was unable to provide any of those emails and there was no evidence to show that anyone else present thought there had been discrimination.

39. The claimant said, during the investigation, that Lee Herrington, who was a Trade Union representative (although not the claimant's), had said to him that it was racist.

40. Andrew Collin then carried out a further interview with Lee Herrington who said that the claimant had told him that he had been to speak to Kevin Scott to complain about Lee Bateman and the way he has spoken to the claimant. Lee Herrington said he thought that this was a bit strange as it would be like him ringing someone and saying that Lee Bateman had called him out for having a cup of tea. Lee Herrington said that it would be embarrassing and he would not do it.

41. He had not said to the claimant that it was racist, he said he thought it was strange reaction from the claimant and asked the claimant whether he thought it was racist.

42. The claimant just shrugged his shoulders. He did not say yes. If the claimant had said yes, Lee Harrington said that he would have done something.

43. The evidence gathered in the investigation established that Lee Bateman had said to everyone present in the kitchen that they should stop drinking tea and get back to work. The claimant was the only one who was still holding a cup of tea and was smirking or laughing.

44. Lee Bateman then told the claimant that he was serious and that the clamant must get back to work. There was a non-discriminatory reason provided and the claimant has not proved facts from which the Tribunal could conclude that there was discrimination.

45. In her submissions on behalf of the claimant Mrs Khan referred to an email within the hearing bundle in which an unidentified colleague had sent to the claimant in which he had referred to "The part of the Association we work for is horrible towards the guys that work there… Their bullying and disrespecting behaviour has become normal…"

46. This provides no evidence of race discrimination.

47. It has been made clear by the appellate courts that, in order to reverse the burden of proof, there must be more than a difference in status and a difference in treatment.

48. Something more is required to show discrimination.

49. This Tribunal has to follow these cases and the statutory requirements.

50. To reiterate, the Tribunal has to consider the guidance given by the authorities that all acts of race discrimination are unreasonable but not all unreasonable behaviour is discrimination. A suspicion that there might be some discrimination behind the treatment is not sufficient.

51. In the case of **Madarassy ,** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination:

> "They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

52. In the case of **Strathclyde Regional Council v Zafar** the House of Lords held that mere unreasonable treatment by the employer "casts no light whatsoever" to the question of whether he has treated the employee "unfavourably".

53. In **Law Society and others v Bahl** the Employment Appeal Tribunal stated that mere unreasonableness is not enough. Elias J stated that :

> "All unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour … Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way … The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable."

54. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

55. There was a clear non-discriminatory reason provided for the treatment by Lee Bateman. This was that the claimant was the only worker or employee present on 1 November 2022 who was still holding a cup and that he was smirking or laughing. There was no evidence from which the Tribunal could conclude that the reason why Lee Bateman acted as he did towards the claimant was because of race discrimination.

56. The Tribunal had sight of evidence that had been provided during the course of the investigation that Lee Bateman had exhibited similar behaviour to other employees in the past. It was contended that the claimant was not singled out and treated less favourably than the others present or a hypothetical comparator.

57. It was established during the investigation that Lee Bateman had been aggressive and had acted inappropriately but there was nothing to show that was by reason of race discrimination.

58. This aggressive or inappropriate behaviour could be seen as unreasonable but it was not shown to be less favourable treatment than someone of a different race.

59. The Tribunal is not satisfied that the claimant has proven facts from which the Tribunal could conclude that the claimant was treated less favourably than someone in the same material circumstances, but of a different race was or would have been treated.

60. The Tribunal finds that burden of proof has not shifted to the respondent and, had it done so, the Tribunal is satisfied that the treatment of the claimant was shown to be because the supervisor perceived that the claimant was the only member of the team still holding a cup of tea and that he was smirking.

61. With regard to victimisation, Andrew Jones was unaware that there had been any allegation of race discrimination at the time of the alleged treatment. It was also not established that he had failed to acknowledge or greet the claimant on 8 or 9 November 2022.

62. The claimant confirmed that he had not himself initially greeted Andrew Jones and, if Andrew Jones had failed to acknowledge or greet the claimant, the Tribunal is not satisfied this was a detriment.

63. Having considered all the evidence, the Tribunal finds that the respondent was not made aware of a claim of race discrimination by the claimant before he presented his claim to the Tribunal on 7 December 2022.

64. There was no evidence of any discrimination because the claimant had carried out a protected act.

65.In all circumstances, the unanimous judgment of the Tribunal is that the claims of direct race discrimination and victimisation are not well-founded and are dismissed.

Employment Judge Shepherd
Date: 28th February 2024

Sent to the parties on:

Date 28th February 2024

For the Tribunal Office:

……..……..