



# EMPLOYMENT TRIBUNALS

Claimant: Mr R Ullah

Respondent: Harrods Limited

## RESERVED JUDGMENT

Heard at: Reading On: 4 and 5 February 2019  
and in chambers on 26 June 2019

Before: Employment Judge KJ Palmer  
Members: Mr A Kapur and Mr P Miller

Appearances:

For the Claimant: In person  
For the Respondent: Ms H Davies (Counsel)

## JUDGMENT

It is the unanimous judgment of this Tribunal that:

- (1) The Claimant's claims of direct discrimination on grounds of race and/or religion or belief fail and are dismissed.
- (2) The Claimant's claim of constructive unfair dismissal fails and is dismissed.

## REASONS

- (1) The Claimant was employed by the Respondent initially as a sales consultant and then as a supervisor at the Respondent's Heathrow Airport Terminal 4 store and then moved to work in the Respondent's store at Heathrow Airport Terminal 3 in

February 2017 as a supervisor. He was employed from 6 July 2009 until termination of his employment pursuant to resignation on 22 June 2017.

(2) The Tribunal is most grateful to Employment Judge Chudleigh and the Case Management Summary produced pursuant to a preliminary hearing on 27 March 2018.

(3) In that summary were set out the issues which fall to be determined by this Tribunal in this hearing. These are as follows:

1. Section 13 of the Equality Act 2010. Direct discrimination on grounds of race and/or religion or belief.

1.1 The Claimant is Pakistani and he is a Muslim;

1.2 Whether the Respondent subjected the Claimant to the following treatment falling within Section 39 of the Equality Act 2010 namely:

1.2.1 Following the Claimant's accident on 16 March 2017, he was ignored and isolated by the Respondent and in particular by Susan Casemore, Gary Cole, Paul Rye and Kelly Robinson. There was a failure to contact him and ask about his welfare and he was left to his own devices;

1.2.2 The Respondent failed to refer the Claimant to see the company's doctor and engage the corporate health scheme despite requests to be so referred;

1.2.3 The Respondent failed to address the Claimant's concerns regarding his treatment when on sick leave after the accident;

1.2.4 Kelly Robinson refused to meet with the Claimant following his request on 4 June 2017;

1.2.5 Gary Cole lied to the Claimant saying that Kelly Robinson was in and out of the country in June 2017;

1.3 Has the Respondent treated the Claimant as alleged less favourably than it treated or would have treated an actual or hypothetical comparator?

1.4 If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

1.5 If so, what is the Respondent's explanation? Does it prove a nondiscriminatory reason for any proven treatment?

Unfair dismissal claim

- (4) Whether the Respondent constructively dismissed the Claimant within the meaning of Section 95(1)(c) of the Employment Rights Act 1996. This will require the Tribunal to determine whether the Respondent breached the implied term of trust and confidence. The Claimant relies on the matters set out above in relation to his direct discrimination claim insofar as they occurred before he resigned on 22 May 2017. It may also fall to the Tribunal to determine whether or not any breach on the part of the Respondent caused the Claimant to resign.
- (5) The Respondent confirmed at the preliminary hearing that there was no issue regarding waiver, that it was not advancing a fair reason for dismissal and that there were no issues relating to a contribution or "Polkey".
- (6) The Claimant was representing himself and the Respondent was represented by Counsel, Ms H Davies.
- (7) The Tribunal heard evidence from the Claimant and a former work colleague Mr Hussain. For the Respondent the Tribunal heard evidence from Ms A Weeks, the Respondent's HR Operations Director and from Mr Gary Cole, the Respondent's Business Manager. The hearing took place over two days on 4 and 5 February 2019. Due to illness it was not possible to arrange for the Tribunal to get together to deliberate prior to giving Judgment in this matter before 26 June 2019. That deliberation duly took place in chambers.

Findings of fact

- (8) The Claimant was employed latterly as a supervisor in the Respondent's store at Heathrow Airport Terminal 4 and then from 3 February 2017 as a supervisor in their store at Heathrow Airport Terminal 3.
- (9) The Tribunal heard evidence extensively from the Claimant who gave evidence under cross-examination throughout the whole of the first day of the Tribunal.
- (10) However it is important to remember that the Claimant's claim is confined to the issues outlined in the preliminary hearing and set out above.
- (11) Much of the evidence was by way of background and it is not appropriate for this to be set out in detail in this Judgment.

Findings of fact as to the issues before this Tribunal

- (12) The Claimant's first complaint relates to his treatment by the Respondent pursuant to an accident that happened to him at work on 16 March 2017. He says he was ignored and isolated by the Respondent and in particular by Susan

Casemore, Gary Cole, Paul Rye and Kelly Robinson. He says there was a failure to contact him and ask about his welfare and he was left to his own devices.

- (13) The injury consisted of a shelf falling on to the Claimant's toe and fracturing it. At the time this happened his line manager was Jayesh Patel, who was a retail manager. Retail Managers are responsible for individual stores and report to Business Managers. Each Business Manager is responsible for several stores. Mr Cole from who we heard evidence is a Business Manager. Susan Casemore is also a Business Manager. Kelly Robinson is the Airport's General Manager. She is responsible for all of the Respondent's international stores and the 242 employees. The international stores are Harrods shops which sell a small range of Harrods products. Paul Rye was training as a Business Manager in March 2017.
- (14) We heard evidence from Mr Cole that at various times in the Claimant's employment at Terminal 3 Mr Cole was the most senior staff member of the Respondent on site at Heathrow Airport. He was the Business Manager in the Airport which direct reports in Terminals 2 and 4. At different times he has been in charge of different terminals. Generally Retail Managers report to a specific Business Manager. However when Mr Cole was the only manager on site he was asked to get involved in management issues relating to employees. Business Managers share responsibilities as things crop up.
- (15) Mr Patel left the Respondent's employment on 5 May 2017 and Adele Alwinapper became the Retail Manager and the Claimant's direct line manager on 6 May 2017.
- (16) Pursuant to the Respondent's sick pay policy it was an employee's responsibility to notify his department of his sickness during the first day of absence. Where the sickness absence was more than seven calendar days in length the employee was obliged to advise his line manager of his absence on at least a weekly basis and to provide a doctor's fit note to explain his sickness absence which must be sent to the Respondent on a weekly basis or an expiry of each medical certificate. The policy allows for the possibility that the Respondent may ask the employee to attend an appointment with the Corporate Health Department whilst he is off sick or immediately upon the employee's return.
- (17) There is no specific obligation upon the Respondent to make contact with sick employees. In practice the usual course of action is for the employee's immediate line manager to contact them once during each period of absence to keep up-to-date with their condition and the likely date of their return. There is never any obligation in the sickness policy for the Respondent to ask employees to attend an appointment with the Corporate Health Department. This is managed on a case by case basis where it is deemed to be advisable or necessary.
- (18) The injury to the Claimant occurred when he was assembling shelves onto a fixture when a loose glass shelf slipped and hit one of the toes on his right foot.

The Claimant's line manager Jayesh Patel gave the Claimant an ice pack and completed an accident report form at the time.

- (19) The following the accident the Claimant went on sick leave and his sick notes stated that he had a fractured toe.
- (20) On 20 March one of the Respondent's health and wellbeing coordinators, Lucy Faulkner emailed Mr Patel outlining the usual procedure following an employee accident including information that he should contact the Claimant to enquire about his health and to advise him to see his GP if symptoms continued. Mr Patel responded the same day stating that he was keeping in touch with the Claimant and had told him to consult with his GP if symptoms continued. He noted that the Claimant had suffered a minor fracture and swelling.
- (21) The Tribunal had before it in the bundle marked R1 the various communications in question. In particular the email from the Claimant's line manager of 20 March to Lucy Faulkner states that he has kept in touch with the Claimant since the accident and gives a brief report advising of the nature of the medication the Claimant is taking. He goes on to say that the matter will be referred to the work health management team.
- (22) On 10 April Jayesh Patel sent an email to Paul Rye explaining that he spoke with the Claimant over the telephone on 9 April and he was given the impression that the Claimant would remain off work until beyond 26 May. In cross-examination the Claimant said that he could not remember speaking to Mr Patel but it seems plain from the documentary evidence before us that Mr Patel was fulfilling his obligations entirely by keeping in touch with the Claimant and keeping on top of the likely prognosis for his return. It appears also that Mr Patel spoke to the Claimant again thereafter prior to Mr Patel's leaving the Respondent's employment on 5 May. Thereafter the Claimant's immediate line manager Adele Alwinapper took over the process and liaised with the Claimant. She did this and a combination of Ms Alwinapper and Mr Rye had caused matters to be referred to the Respondent's HR team as a result of the fact that the Claimant had been off work for an eight week period.
- (23) On 18 May Rosie Cunningham sent an email to Paul Rye and Adele Alwinapper advising that whoever was in touch with the Claimant should keep in touch with him on a regular basis. She went on to say that depending upon how bad the fracture to his toe was it may be necessary to refer him to Corporate Health Services ("CHS") to see if it is appropriate for him to undertake restricted duties upon his return. She said that Adele should seek an update from the Claimant next Wednesday (24 May) and that thereafter a decision would be made as to whether a referral was appropriate and necessary at that time.
- (24) It is the Tribunal's view that the Respondent behaved entirely in accordance with the sickness policy. It was wholly appropriate for the Claimant's line manager to liaise with him throughout his sickness and this is precisely what happened. It

would not be appropriate or usual for Business Managers such as Ms Casemore, Mr Cole and Mr Rye to fulfil this role. It would certainly not be usual for Kelly Robinson, the Airport's General Manager to contact individual employees about their sickness.

- (25) The Claimant's evidence on this point followed much of the evidence he gave before this Tribunal namely that there was a conspiracy against him in which Paul Rye, Gary Cole, Susan Casemore and Kelly Robinson were all involved and all a party to. He said they conspired against him due to his race and/or religion. His memory of the contact he had from his line manager was sketchy and where he claims not to have received telephone calls we prefer the documentary evidence before us. The Claimant's ire seems to be centred around the fact that he feels that he should in some way have received special treatment due to the fact that his fractured toe occurred whilst he was at work. There is nothing to suggest that this should have been the case. He says it was part of the conspiracy in which he indicated that he felt Adele Alwinapper was also involved that the Respondent in the shape of Kelly Robinson, Gary Cole, Susan Casemore, Paul Rye and Adele Alwinapper did not want him to return to work.
- (26) He cited the case of certain other employees being sent flowers when they had suffered a bereavement. This was a quite different scenario.
- (27) We are bound to say that throughout the giving of his evidence the Claimant was given to throwing out wild accusations without any evidential support. The most bizarre of which centred around the disappearance of an expensive wallet containing £1,000 which a customer had left in the store where the Claimant worked. He was the one who found it and ultimately put it in the safe. Sadly the wallet with the money inside disappeared and all of those in that store were spoken to about how they had managed the process and questions were raised as to whether they had adequately checked the safe often enough to make sure that the wallet and the cash remained in the safe. There was no suggestion on behalf of the Respondent that the Claimant had been responsible for the disappearance just that he was part of a team who perhaps could have checked more assiduously. During the course of this background evidence the Claimant alleged that the wallet and the £1,000 had actually been stolen by Gary Cole, Paul Rye and Kelly Robinson. The Tribunal finds that possibility extraordinarily unlikely.
- (28) Much of the Claimant's evidence was given in the same vein, wild accusations of discrimination against him and all Asians working at the Respondent without evidence to support it. These allegations went back many years but were not supported by any evidence other than the Claimant's bold assertions. He said that Paul Rye, Gary Cole, Ms Casemore and Kelly Robinson were all acting in conspiracy against Asian people working at the Respondent whom they did not like. We find that there is absolutely no evidence to support that assertion. On the contrary evidence was before us that there was a very high percentage of people working in these stores who had an Asian background, some 37.73%. It seemed to the Tribunal to be highly unlikely that senior managers in charge of

this operation could effectively run that part of the Respondent's business if they were all involved in the nature of the conspiracy set out by the Claimant.

- (29) We are therefore bound to say that we found the Claimant's evidence on many occasions to be exaggerated and unreliable. The Claimant resigned by an email dated 22 May and in cross-examination confirmed that this was because he felt that the Business Managers: Kelly Robinson, Sue Casemore, Paul Rye and Gary Cole should have contacted him during his absence with his injured toe. Pursuant to this resignation he served his four weeks' notice leaving on 22 June 2017. For the reasons outline above, the Tribunal makes a finding of fact that the Claimant was not ignored and isolated by the Respondent pursuant to his accident on 16 March 2017. Certainly he was not contacted directly by Susan Casemore, Gary Cole, Paul Rye or Kelly Robinson but there was absolutely no need or obligation upon the Respondent to cause these individuals to contact him. He was regularly contacted by his line manager, initially by Mr Patel and then by Ms Alwinapper entirely in accordance with the company's policy. There was no failure to contact him and ask about his welfare and he was not left to his own devices.
- (30) As for the allegation that the Respondent failed to refer the Claimant to see the company doctors Corporate Health Department despite requests to be so referred the Tribunal makes a finding of fact that there was no requirement for him to be so referred. However it was very much under consideration at the time that the Claimant chose to resign. It was entirely proper and appropriate for the Respondent to wait to see when the Claimant was likely to be fit to return to work before making such a referral. The purpose of a referral would be to ascertain whether there needed to be any requirement to consider restricted duties upon his return. There was absolutely no point in seeking a referral prior to that.
- (31) The Tribunal finds that the Respondent did not fail to address the Claimant's concerns regarding his treatment when on sick leave after the accident. We heard evidence that it was occasionally the case that flowers were sent to employees when they had suffered a bereavement. However, there were certainly no obligation upon the Respondent to do this in the Claimant's case and it would have been most unusual for them to have sent him flowers as a result of him having suffered a minor fracture to his toe.
- (32) One of the Claimant's claims is that Kelly Robinson refused to meet with him following a request on 4 June 2017. This arose pursuant to the Claimant's resignation by email on 22 May. Gary Cole attempted to contact the Claimant on a number of occasions and there were email exchanges. The Claimant made it plain that he was not prepared to discuss anything with Gary Cole and would only speak to Kelly Robinson. He raised this in an email dated 4 June. Gary Cole responded on 8 June explaining that Kelly Robinson was in and out of the country on buying trips with another colleague Gary Wilson and he said therefore that she was unavailable but suggested that the Claimant speak to people support and Pippa Ridgeway. The Claimant was very unhappy with this response. However the Claimant was offered the opportunity to have a telephone conversation with

Kelly Robinson when she was back in the UK and available. The Claimant declined this. He accepted in cross-examination that this had been the case.

- (33) The Tribunal finds that Kelly Robinson was unable to meet with the Claimant due to her responsibilities. She was a very senior employee, was in and out of the country on a buying trip and therefore it was entirely reasonable that she could not meet with him. However, it was very reasonable of her to agree to speak to him over the telephone and in fact it was the Claimant who refused the offer of this communication.
- (34) We also find that Gary Cole did not lie to the Claimant about Kelly Robinson being in and out of the country. It seems that she was, she was very busy and both Mr Cole and Ms Robinson dealt with the Claimant's request entirely appropriately.
- (35) The Claimant considered this too to be evidence of discrimination. Subsequently the Claimant went on to have communications with Pippa Ridgeway, who in evidence the Claimant said he also considered was part of the conspiracy against him. He also criticised very senior directors, Sarah Andrews and Raj Assanand, who the Claimant copied in to his subsequent emails and exchanges post his resignation for not replying.
- (36) It was about this time that the Claimant first complained that he had been discriminated against. Eventually Abi Weeks from whom we heard evidence became involved. She is the Respondent's HR Operations Director. She treated the Claimant's emails as a formal complaint against Susan Casemore, Paul Rye and Gary Cole. It is worth remembering that at that time the Claimant had not raised a complaint against Kelly Robinson, albeit he has done so during the course of these proceedings.
- (37) The Tribunal does not propose to go into the detail of the subsequent grievance which was undertaken by Abi Weeks save to say we have heard her evidence and entirely accept it. She asked the Claimant to reconsider his resignation and behaved entirely appropriately throughout the course the investigation. In summary therefore we find none of the treatment alleged by the Claimant and set out as the issues in the Case Management Summary to have any basis in fact save for the fact that it is true that the Respondent had not at the time of the Claimant's resignation referred him to the company's CHS and that Kelly Robinson had through Gary Cole made it plain that she could not meet the Claimant. Moreover Gary Cole, Susan Casemore, Paul Rye and Kelly Robinson did not contact the Claimant during his absence but this was entirely normal.
- (38) However we find these actions on behalf of the Respondent to be entirely appropriate and reasonable.
- (39) The Tribunal heard evidence very briefly from a Mr Hussain a former employee of the Respondent and work colleague of the Claimant. He gave evidence that Mr Cole and Mr Rye had laughed at CCTV footage of the Claimant's accident, a

fact denied by Mr Cole. We make no particular finding on this evidence save to say where there is a dispute we are inclined to believe Mr Cole. However this is not pertinent to the issues before us. We also had two brief witness statements from Yamika Nanni who was a former colleague of the Claimant. She did not attend to be tested on her evidence and we accord little or no weight to it.

### Submissions

- (40) We heard submissions both from the Respondent's Counsel and from the Claimant. From the Claimant these were particularly impassioned and it is impossible not to feel a degree of sympathy with the Claimant who albeit entirely without factual justification considers that he has been poorly treated by the Respondent.
- (41) The Respondent chose not to bring Paul Rye and Kelly Robinson to the Tribunal to give evidence. Ms Davies pointed out that in fact, in this original complaint, the Claimant had not cited them but had expanded his team of conspirators as his matter had progressed. She said the evidence we had heard was adequate and appropriate and proportional.

### The law

- (42) The Claimant's claims in discrimination fall under Sections 13 and 39 of the Equality Act 2010. Section 13 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."
- (43) Section 136 of the Equality Act tells us that in respect of the burden of proof 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 (in this case Section 13) the Court must hold that the contravention occurred unless (A) shows that it did not contravene the provision.
- (44) In essence this means that if there are primary facts which suggest that discrimination occurred it is for the Respondent to show that it did not. It is often known as the "reversal of the burden of proof."
- (45) It is important to remember that the actions complained of as being the acts of discrimination that is the different treatment must be because of the protected characteristic. It is not sufficient that there is evidence of different treatment if it cannot in any way be connected to the protected characteristic relied upon.

### Constructive unfair dismissal

- (46) The Claimant pursues an unfair dismissal claim on the basis of Section 95 of the Employment Rights Act 1996. This states as follows:
- "(1) For the purposes of this Part an employee is dismissed by his employer if:
- (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."
- (47) The circumstances envisaged in the Section above which entitle the employee to terminate the contract by reason of the employer's conduct are indicated in authorities.
- (48) The Claimant must show that the Respondent was guilty of a repudiatory breach of contract going to the root of the contract thus entitling the Claimant to treat himself as discharged from the contract. The leading case remains *Western Excavating v Sharp* [1978] ICR 221.
- (49) The Claimant must show that he resigned as a result of that repudiatory breach and that he did so timeously.

**Conclusions – discrimination claims**

- (50) The Claimant pursues claims in discrimination under Section 13, direct discrimination, on the basis of the protected characteristic of race and/or religion or belief. The Claimant is a Pakistani man and he is a Muslim.
- (51) Based on the findings of fact we have made it is the case that the Claimant was not contacted during his period of illness by Susan Casemore, Gary Cole, Paul Rye or Kelly Robinson. It is the case that Kelly Robinson indicated that she would not meet or could not meet with the Claimant following his request on 4 June 2017 and it is the case that the Respondent failed to refer the Claimant to see the company doctors CHS.
- (52) However, all of those actions in the circumstances of this case as we have analysed were entirely reasonable. Not one of those findings of fact could in any way be deemed to constitute different treatment. At all times the Respondent complied with the company's sick policy and treated the Claimant reasonably and fairly during his sickness period. There are no findings which constitute different treatment. Therefore it is unnecessary for the Tribunal to go to consider whether any different treatment between the Claimant and a hypothetical comparator was because of protected characteristics claimed because there was no different treatment between the Claimant and a hypothetical comparator.
- (53) The Claimant has pursued his claim on the basis of a considerable conspiracy involving much of the top management of the company for whom he worked and there is no simply basis on the evidence we have heard to indicate that there is even a scintilla of justification for that belief.

(54) The Claimant's claims therefore must fail and are dismissed.

Constructive dismissal

(55) Similarly there are no actions of the Respondent that could constitute even a minor breach of the Claimant's contract of employment let alone a repudiatory breach such as that the Claimant was entitled to treat himself as constructively dismissed.

(56) On the findings we have made the Respondent behaved entirely appropriately in respect of the Claimant during his period of sickness and nothing which the Respondent did could constitute the necessary repudiatory breach.

(57) For that reason the Claimant's claim for constructive unfair dismissal must fail and is dismissed.

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Employment Judge KJ Palmer

Date: 28 June 2019

Sent to the parties on:

11/07/2019

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For the Tribunal:

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