FAIR EMPLOYMENT TRIBUNAL

CASE REFS: 16/20FET
589/20FET

CLAIMANT: **Conrad Davidson**

RESPONDENT: **Mallaghan Engineering Limited**

JUDGMENT

The Tribunal has unanimously concluded that:

1. The respondent did not treat the claimant less favourably on the grounds of perceived religious persuasion or political opinion. His claim in that regard is therefore dismissed in its entirety.

2. The respondent did not victimise the claimant. His claim in that regard is dismissed in its entirety.

3. The respondent did not discriminate against the claimant on the grounds of perceived religious persuasion or political opinion by dismissing him. His claim in that regard is therefore dismissed in its entirety.

CONSTITUTION OF TRIBUNAL

Employment Judge: **Employment Judge Browne**

Members: **Mrs D Adams**
Mr M McKeown

APPEARANCES:

The claimant represented himself.

The respondent was represented by Mr J Rafferty, Barrister-at-Law, instructed by Walker McDonald, Solicitors.

EVIDENCE AND FACTS FOUND

1. The claimant, a Protestant, then aged 50, started his employment as a welder with the respondent on 1 April 2019. The respondent is a large firm, based in Northern Ireland, producing airport ground support equipment, such as aircraft passenger access steps. It also has a number of offices throughout the world. At its manufacturing base in and around Dungannon in County Tyrone, it employs some

three hundred people, of whom some 14% were Protestant and some 86% were Roman Catholic at the material time.

2. On 3 April 2019, the claimant attended an induction meeting for new staff, which included being supplied with its policy documents, and being specifically informed as to the respondent's dress code, in that the respondent's staff are not permitted to wear sports kit, such as football, GAA, and rugby shirts when at work. The respondent's evidence was that staff have been sent home for breaching that prohibition, although no detail was provided.

3. The respondent's case was that such prohibition is in place to prevent religious or political conversations, and to avoid rival fans of opposing teams having arguments at work. There was specific reference to this rule in the slides said by the respondent to have been shown to new staff at the induction meeting.

4. The claimant expressed the view to the Tribunal that those were not the slides shown to him, and that the slides produced by the respondent to the Tribunal had either been falsified, or post-dated those shown at his induction meeting. The claimant referred specifically to disparities in his recollection of what he was shown and the contents of the slides presented in evidence regarding: the grievance procedure slides; the hours and breaks slide; and the sick pay scheme. He did not include the dress code slide produced as being at odds with what he was shown.

5. The respondent's written grievance procedure was supplied to the claimant a few days after his induction, but it was the respondent's case that staff were told at induction that, if they felt bullied, harassed or intimidated, they should immediately inform their line manager; or a member of the respondent's HR staff, whose office is on the premises. It was the claimant's case that he did not know where the HR office was situated; nor did he have any telephone contact numbers.

6. The primary allegations grounding the claimant's complaints to the Tribunal might conveniently be set out as:

(i) **<u>The Glasgow Celtic badge</u>**

7. On the second day of his employment, the claimant returned to his vehicle, a camper van, parked in one of the respondent's main site's car parks. As he approached the vehicle from the rear, he noticed that a small cloth embroidered Celtic football club badge had been glued to the number plate. It was the claimant's case that this had to be professionally removed, causing damage, although no documentary proof was produced by the claimant to show who removed it, or how much it cost.

8. The claimant gave evidence that that he was upset by this, and took photographs on his mobile phone, but never made any complaint to the respondent until bringing these proceedings, because he did not want to be thought of as a troublemaker. The photographs produced by the claimant in evidence could not be verified as to when or where they were taken, and none was taken after the removal of the badge, to show whatever damage was caused.

9. The claimant's perception was that his vehicle had been targeted because someone had found out that he was a Protestant. He stated in evidence that, as far as he knew, nobody there knew him or his religion, or his vehicle, prior to starting work the previous day.

10. It was his assumption that the monitoring form he had filled in a few days previously had been mislaid en route to the HR office, and that someone had found it. It was the respondent's case that the form had not been mislaid; and that, in any event, the form did not contain any information as to the claimant's vehicle.

11. It was the claimant's case that this incident "… was the first of many on-going actions against me that constitute harassment, discrimination and victimisation and ultimately led to my departure from the company". It therefore appeared to be his view that that incident was the first of a deliberate campaign against him on the grounds of his religious persuasion or political opinion.

(ii) **The conversation with Brian Thompson**

12. The claimant stated that after three or four weeks working for the respondent, he had a conversation with Brian Thompson as they walked out to the car park after work.

13. On the claimant's version of events, sent by him to the respondent's solicitor in an email of 1 November 2020, Mr Thompson said to him that a named Protestant welder, who, despite being persuaded by a Roman Catholic employee to return to the respondent, was a "bitter Prod who hated Catholics".

14. The claimant also said in the email that Mr Thompson told him that he and the other workers were trying to make sure the Protestant welder was "sent to Coventry" by everyone, and that the claimant would do the same.

15. The claimant, in his witness statement dated 28 January 2021, said that Mr Thompson referred to the Protestant welder as being a particularly "bitter bastard", and that "we" all needed to watch themselves around him. He made no reference to any conversation about everyone including the claimant should unite to ensure that the Protestant welder would be sent to Coventry.

16. The claimant stated that he presumed Mr Thompson spoke to him in this way because he presumed the claimant also was a nationalist Roman Catholic; or that he was trying to gauge the claimant's reaction, to ascertain his religion, which sat uncomfortably with his earlier complaint regarding the Celtic badge, namely, that his vehicle was targeted because he was known to be a Protestant.

17. The claimant stated that he quickly spoke to that other welder, to warn him, and that the other welder very soon afterwards was moved to a different work station, which the claimant took to be connected to the matter which he reported.

18. The claimant said that at around the same time, he spoke to Declan Hackett, his supervisor, to warn him, but that he was never asked to provide a statement as part of any investigation.

19. Mr Hackett was adamant in his evidence that the claimant had never mentioned the conversation with Mr Thompson, and that the first he heard of it was from the claimant's correspondence during the Tribunal process. It was the respondent's contention that that fact also explained the lack of any investigation. It was also stated by the respondent that the other welder had moved department at his own request, to gain more experience.

20. The claimant queried why neither Mr Thompson nor the Protestant welder had been called by the respondent to give evidence at the Tribunal hearing. It was notable however that, despite concluding his witness statement by stating that he intended to witness summons the welder (who still works for the respondent) and Mr Thompson, he did not do so.

21. He claimed in evidence that he had not summonsed the welder because an Employment Judge during the case management process had advised him not to summons someone still employed by the respondent. The record of proceedings of a Preliminary Hearing conducted on 12 March 2021 appears to be the hearing in question.

22. That record, the accuracy of which was not challenged by the claimant when sent to him, or since, states that the claimant told the Employment Judge that he intended to seek witness summonses for three witnesses. The claimant is recorded as confirming at that hearing that he had spoken to one (unspecified) witness who was prepared to give evidence, but, as he still worked for the respondent, the claimant would need a witness summons.

23. The claimant was recorded as being advised by the Employment Judge that he should write to the Tribunal, setting out the name and address of the witness, the subject matter of the evidence that person could give, to show the extent to which it was relevant, with confirmation that the person had been asked to attend, but was unwilling to attend voluntarily.

24. There was therefore no mention recorded of the assertion the claimant made in evidence about being advised by the Employment Judge not to call a witness still employed by the respondent. Such a statement from the Employment Judge in any event seemed to the Tribunal to be inherently unlikely, as well as being wholly contradicted by the contents of the unchallenged record.

25. The claimant did not assert at the hearing that he had complied with any of the Employment Judge's clear directions to secure the reluctant witness's attendance; nor that of the other two witnesses he previously said he was going to call.

26. It further was of note that in neither of his ET1 forms did the claimant assert that the conversation with Mr Thompson had taken place at all. The only possible reference was to other Protestant workers being pointed out to him, in "shop floor remarks about Protestants… probably in the belief that I wasn't of the Protestant belief". That assertion contained no information as to by whom or when those remarks were made, and the claimant's assertion was not repeated or clarified in his evidence.

27. When challenged in cross examination as to any shortfall in detail as to his complaints, the claimant stated that there was a time limit when filling in each

section in the online Tribunal form, and he thought that there would be another section later in the form where he could supply additional information.

28. It was noted however that he filled in two ET1 forms, so that he would know when completing the second form that there would be no such section. The claimant also accepted that he in the course of his previous employment elsewhere had filled in other ET1 forms.

(iii) **The 12th of July Holiday**

29. The claimant also asserted that, a few weeks before the 12th of July holiday, he was asked by his supervisor, Declan Hackett, if he wanted to work on the bank holiday of the traditional week's shutdown, as the respondent's work always continued. When the claimant declined the offer, he claimed that Mr Hackett "taunted" him, asking him if he didn't want to appear to be "a wee fenian lover".

30. The claimant did not report this conversation to anyone, stating in evidence that he could not think of anyone he could speak to, and that in any event, he still would have to work with Mr Hackett.

31. Mr Hackett was clear in his evidence that he annually asks all welders in his team, to see if they are available to work that week, but there is no obligation or expectation on them to do so. Mr Hackett took particular exception to the claimant's version of events regarding the alleged "fenian lover" comment, stating that he was "shocked and disappointed" to be accused of using such language.

32. It seemed apparent to the Tribunal that Mr Hackett thought highly of the claimant as a person, and that the quality his work was of great benefit to the respondent. That aspect was reinforced by the fact that the claimant was given an accelerated pay rise, compared to other new welding staff.

33. It seems reasonable to assume that Mr Hackett's favourable reports would have played a material part in that decision. It therefore raises the question as to why Mr Hackett would simultaneously humiliate and antagonise the claimant in the manner alleged.

(iv) **Graffiti**

34. The claimant complained to Mr Tommy Bloomer, the production manager of the respondent's fabrication department, about graffiti in the men's toilets. The claimant in his first ET1 stated that there were political comments written in the toilets "throughout" his employment.

35. In his second ET1, he repeated that assertion, but then added that he reported it to Mr Bloomer around 19 August 2019.

36. In his email to the respondent's solicitor of 6 December 2020, the claimant asserted that the relevant conversation with Mr Bloomer, witnessed but not overheard by Mr Lee Pinkerton, "probably" took place the week of 24 June 2019.

37. Mr Pinkerton, whom the claimant had persuaded to join the respondent's workforce, did not attend to give evidence, despite the claimant's earlier statement that he intended to call him as a witness. There was no assertion by the claimant that he had asked Mr Pinkerton to attend, and he made no application for a witness summons.

38. It therefore was unclear from the claimant's versions of events when he reported the graffiti to Mr Bloomer. Mr Bloomer's recollection was that the claimant reported to him the presence of "inappropriate" graffiti before the claimant left his employment on 17 October 2019, having been off on sick leave since 5 September 2019 until 17 October.

39. The likely timeframe was also narrowed by the claimant's assertion that the conversation with Mr Bloomer was witnessed by Lee Pinkerton. Mr Pinkerton joined the respondent's workforce because the claimant encouraged him to.

40. The claimant was therefore eligible, under the respondent's "refer a friend" scheme, to receive a bonus of £250 after four weeks of Mr Pinkerton starting work, with a further payment of £250 after completing his six months' probationary period.

41. There was a delay in payment of the first instalment because Mr Pinkerton did not supply the claimant's name, but the six-month probation was due to end on 22 January 2020, which would place Mr Pinkerton's start date at no earlier than around 22 July 2019. That date, on the claimant's evidence, post-dated the alleged conversations with Mr Thompson and with Mr Hackett.

42. The claimant responded in his evidence to any questions around the accuracy of this and other dates by stating that he did not keep a diary, although that had not deterred him from repeatedly providing dates with some certainty, only to provide different dates at other points during the process.

43. The Tribunal concluded that the most likely time the weight of evidence would suggest that he reported it was around the time the claimant referred to in his initial estimation of around 19 August 2019. He soon thereafter was absent on sick leave from 5 September 2019 until 17 October, certified in his sick note by his GP as being a viral infection. The claimant resigned on the same day as he returned to work.

44. On Mr Bloomer's account, he had no prior knowledge of the graffiti, as he did not use those toilets, and nobody else had drawn it to his attention.

45. The claimant however stated that, when he first mentioned it to Mr Bloomer, he had stated that he already knew about it. The implication of this was that, despite knowing, he did nothing about it, possibly since the claimant started work in April; or since June; or since July or August, depending upon which, if any, of the claimant's stated dates was correct.

46. Mr Bloomer's evidence was that, as soon as the claimant drew it to his attention, he directed some of his staff to clean off the graffiti with industrial wipes. This was not however successful, so he used the services of a specialist independent cleaner.

47. The claimant however stated that nothing was done about it, and that he consequently took photographs.

48. The photographs taken by the claimant clearly show the walls of one cubicle in the men's toilets covered in lengthy confrontational political arguments from both sides of the sectarian divide in Northern Ireland.

49. The Tribunal concluded that this "conversation" was probably conducted by just two persons, although it was of note that it could not be identified as to who they were, or, importantly, which of them had initiated the topic. It was clear however that each protagonist had been as culpable as the other in continuing and escalating the mutually hostile tenor of their exchanges.

50. Notwithstanding the appearance in this communal area of increasingly bitter exchanges, there was no allegation by the claimant that any of his colleagues had then said anything adverse to him about the anti-nationalist sentiment being expressed, or suggested that he might be responsible.

(v) **GAA Sportswear**

51. The respondent's policy that employees were not permitted to wear any form of sportswear was quite clear, and was deemed important enough by the respondent to be included in the staff induction talks.

52. The claimant cited a number of examples of breaches of that policy in the workplace, claiming that it was "a very intimidating place to work". Such a view was completely at odds with the evidence of Mr Rodney Condy, a Protestant. He had worked for the respondent for twenty years, a fact celebrated by him and the respondent on its social media profile.

53. The claimant took issue with how Mr Condy had been selected as a possible witness, but Mr Condy made no such complaint, and readily attended to give evidence as to his happy years working for the respondent, without experiencing any religious or political friction, or awareness of any. Mr Condy accepted that his happy experience might not be the same as that of the claimant.

54. The claimant described how his sense of intimidation was daily, from arriving at work and seeing GAA paraphernalia on workers' cars in the car park; then standing waiting to clock out of work while surrounded by workers wearing GAA tracksuits and coats. The claimant included in this intimidating atmosphere the nature of the graffiti he observed in the toilets.

55. It is of note that the examples cited by the claimant refer only to items in or on employees' private vehicles in the car park, which appear to fall outside the scope of the policy. The only clothing mentioned by the claimant in the arrival and departure areas related to outerwear items worn by staff only upon arrival at and departure from the premises.

56. The claimant used examples of members of staff whose photographs appeared on the respondent's Facebook page. His complaint was that they could be seen inside the premises either wearing GAA sports kit; or promoting, for example, the GAA

team representing the respondent at an inter-firms sporting event organised by another large business. The endorsement for that event in fact was posted the day after the claimant resigned. Photographs provided by the claimant in evidence also showed images of members of staff wearing what appeared to be GAA sportswear at work, although those photographs included images posted after the claimant left his employment, and were not within his allegations from personal experience. There was no evidence from the claimant that anyone had ever spoken to him, or within his earshot, about GAA sports.

57. The respondent accepted that persons in those photographs were wearing GAA sportswear, but countered it by saying that, had they been aware of it, they would have been told to remove it.

58. The claimant cited the Fair Employment Code of Practice, which states that it is the duty of an employer to "promote a good and harmonious working environment and atmosphere in which no worker feels under threat or intimidated because of his or her religious belief or political opinion, prohibits the display or flags, emblems, posters, graffiti, or the circulation of materials, or the deliberate articulation of slogans or songs which are likely to give offence or cause apprehension among particular groups of employees".

59. It was the claimant's case that "the respondent failed to ensure that the concept of a neutral working environment was embedded in the workforce. This meant I suffered sectarian harassment, discrimination and victimisation from 2 April 2019 which ultimately led to my departure from the company on 17 October 2019".

60. Despite on his version of events running this daily gauntlet of intimidation, the claimant at no stage complained about any perceived breaches of the respondent's dress code to the respondent's management or HR.

61. His explanation for this was a fear that, if he complained, some of those who would deal with the complaint had, for example, themselves endorsed the respondent's GAA team's participation in the inter-firms sporting event. That explanation sat uncomfortably with the fact that the contentious entry was posted after the claimant had resigned.

62. The claimant also pointed out that the respondent posted messages on its Facebook page, sending greetings on St Patrick's Day; Ramadan; US Thanksgiving Day; Easter, and other such occasions, but no such messages to mark solely what might be perceived as British or Northern Irish occasions.

63. The respondent countered this by pointing to the fact that the material on Facebook was in support of community charity work by its staff, with no hint of partiality as to religion or politics in the causes it supported. There was also one Facebook post in support of the British and Irish Lions rugby team, with the team boarding a British Airways jet, the tail of which, painted in a union jack flag, was prominent in two photographs.

64. It is of note that, despite what he describes as a pervading daily intimidating atmosphere from the outset by staff and management, he was not deterred from

persuading his (Protestant) friend Lee Pinkerton to come there to work, for which the claimant additionally was rewarded by the respondent by being paid £500.

65. The claimant paid particular attention in his complaint to an incident in August 2019. He was at work when Mr Bloomer arrived on the work-floor with his son, who, according to the claimant, was dressed "head to toe" in GAA kit. Whilst Mr Bloomer could not specifically remember what his son was wearing, he confirmed that he was probably wearing a GAA shirt. His son was four years old at the time, and was with Mr Bloomer, who called in to work to monitor the progress of a work project, despite being off on annual leave. Again, the claimant did not allege that either Mr Bloomer or his son had initiated any contact with him during their short visit.

66. Apart from his observation of Mr Bloomer's son, the claimant did not make any specific allegation that anyone had ever spoken to him about GAA sport, or made any sort of potentially offensive, triumphalist or confrontational comment to him or in his presence about sport. Notably, apart from his alleged conversation with Mr Hackett on 12 July, the claimant made no allegation that anyone had ever discussed politics or religion with him, or even within earshot of him.

(vi) **<u>Health and Safety</u>**

67. In March 2021, the claimant was refused permission by the Tribunal to amend his claims to include a Health and Safety aspect. The grounds for the refusal were primarily based upon the late application, which in itself arose from the fact that the claimant had nowhere mentioned such issue in either of his ET1 complaints.

68. Whilst the Tribunal therefore had no jurisdiction to deal with aspect, the claimant continued to cite the nature of work allocated to him as supporting his complaint that he was being unfairly singled out to complete certain tasks because of his religion and or his perceived political opinion.

69. It was his case that, in addition to the intimidating atmosphere endured by him as a result of the matters detailed above, the respondent, in allocating such tasks, was "an escalation of the discrimination and victimisation", on the protected grounds of religion and political opinion.

70. He complained that this was made worse by being directed to work on jobs which he felt were injurious to his health after a period of six weeks off work caused by unsafe work practices. The claimant stated that his absence had been due to lung issues directly attributable to such unsafe practices.

71. The only medical evidence in that regard was from the claimant's GP, who simply diagnosed "viral infection" and "respiratory tract infection" when writing his sick notes. He made no mention of issues in any way attributable to the health and safety matters later raised by the claimant after his resignation.

72. It was also the claimant's case that he was only asked to work on those jobs because of his religion or political opinion, and that he was the only welder to be directed to do so.

73. The respondent completely rejected those assertions, and the claimant was unable to identify any independent evidence or any comparator in support of his claims.

LAW AND CONCLUSIONS

74. The Fair Employment and Treatment (Northern Ireland) Order 1998 ("the 1998 Order") states, where relevant:

Fair Employment and Treatment (Northern Ireland) Order 1998

"Discrimination" and "unlawful discrimination"

3.— (1) In this Order "discrimination" means—

(a) discrimination on the ground of religious belief or political opinion; or

(b) discrimination by way of victimisation; and "discriminate" shall be construed accordingly.

(2) A person discriminates against another person on the ground of religious belief or political opinion in any circumstances relevant for the purposes of a provision of this Order, other than a provision to which paragraph (2A) applies, if—

(a) on either of those grounds he treats that other less favourably than he treats or would treat other persons;

…

(3) A comparison of the cases of persons of different religious belief or political opinion under paragraph (2) or (2A) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(4) A person ("A") discriminates by way of victimisation against another person ("B") in any circumstances relevant for the purposes of this Order if—

(a) he treats B less favourably than he treats or would treat other persons in those circumstances; and

(b) he does so for a reason mentioned in paragraph (5).

(5) The reasons are that—

(a) B has …

(iii) alleged that A or any other person has (whether or not the allegation so states) contravened this Order; or

(iv) otherwise done anything under or by reference to this Order in relation to A or any other person; or

(b) A knows that B intends to do any of those things or suspects that B has done, or intends to do, any of those things.

(6) Paragraph (4) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.

…'

"Harassment" and "unlawful harassment"

'3A.— (1) A person ("A") subjects another person ("B") to harassment in any circumstances relevant for the purposes of any provision referred to in Article 3(2B) where, on the ground of religious belief or political opinion, A engages in unwanted conduct which has the purpose or effect of—

(a) violating B's dignity, or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in sub-paragraphs (a) and (b) of paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should reasonably be considered as having that effect.

(3) For the purposes of this Order a person subjects another to unlawful harassment if he engages in conduct in relation to that other which is unlawful by virtue of any provision mentioned in Article 3(2B)…'

Burden of proof: Tribunal

'38A. Where, on the hearing of a complaint under Article 38, the complainant proves facts from which the Tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—

(a) has committed an act of unlawful discrimination or unlawful harassment against the complainant, or

(b) is by virtue of Article 35 or 36 to be treated as having committed such an act of discrimination or harassment against the complainant, the Tribunal shall uphold the

> *complaint unless the respondent* proves *that he did not commit or, as the case may be, is not to be treated as having committed, that act…"*

75. The Tribunal examined the evidence on the above incidents and reached its conclusions on the balance of probabilities.

Incident (i)

76. It appeared to the Tribunal to be unlikely that the monitoring form had been lost, and, in any event, it contained no means of anyone identifying the claimant's vehicle.

77. It seemed to the Tribunal in any event to be unlikely that any other member of staff would have had time, even if they were minded to seek out a Protestant target, to correctly identify the claimant's vehicle in such a short space of time.

78. The Tribunal also found that the evidence as to when the badge might have been attached was also very unclear. The claimant only noticed that the badge was there upon his return to his vehicle after work. The possibility that it had been attached prior to his arrival at work could not be ruled out, and there was no evidence before the Tribunal that the claimant had looked at the area to which it was stuck before he arrived at work.

79. The Tribunal concluded that the evidence on this was not sufficiently cogent to establish, even on the balance of probabilities, that this incident occurred as alleged by the claimant.

Incident (ii)

80. In the absence of evidence from the claimant that there were other separate incidents, this part of the claimant's complaint involved a direct conflict between the claimant's own versions of events, and as between those versions and that provided in reply by the respondent.

81. In his first ET1 complaint to the Tribunal, the claimant stated that "there were shop floor remarks about Protestants and at one stage the Protestants in the shed were pointed out" to him, which in itself, if accepted as true, was inherently sinister conduct. No names were provided by the claimant as to who had said what about Protestants; nor as to who had named which Protestants who worked for the respondent. That version was not repeated by the claimant.

82. In another version, he claimed that, as they walked to the car park, he named Mr Thompson as having only referred to one (named) Protestant welder. In one written version of that event, the claimant stated that Mr Thompson had confined his comments to the welder as being a particularly "bitter Prod", and that" he and other colleagues were trying to send the other welder "to Coventry", and that they wanted to ensure that the claimant did, too.

83. In his witness statement, the claimant, without repeating his previous allegation about Mr Thompson's comments, stated that Mr Thompson only referred to the

welder as “a bitter bastard” being a particularly bitter Protestant and that “we all needed to watch ourselves round him”.

84. It was of note that in neither of the second and third written versions was there any mention of other Protestants being pointed out on the shop floor.

85. There also was an assumption by the claimant, without evidence, that the other welder had promptly been moved, which he put forward as being connected to the warnings he raised with management and to the welder. Such a move for that reason, if established in evidence, would clearly have lent substantial credence to the claimant’s version of events as to the conversation with Mr Thompson.

86. The respondent denied that any report had been received from the claimant, so no investigation was ever carried out. It further provided the explanation for that move as being at the welder’s request, to widen his skills. It was also not disputed that the welder in question remained in the respondent’s employment.

87. The claimant, in furtherance of his argument that the respondent had done nothing, apart from moving the welder to another department, queried why the welder had not been called by the respondent to give evidence.

88. The welder’s evidence had every potential to support the claimant’s version of events as to being warned by the claimant of what was afoot, and to refute the respondent’s case that his move had only been at his own request, to gain more experience.

89. Despite that obvious potential, the claimant did not call the witness, or apply for a witness summons to secure his attendance, the process for which was clearly explained to him during the Case Management process.

90. The claimant stated under cross examination that he had planned to call the Protestant welder as a witness, but was advised by an Employment Judge during the Case Management process not to, because that welder was still working for the respondent.

91. The Tribunal unanimously concluded that the claimant had failed to satisfy it that any such discussion or comments occurred. The claimant’s versions either omitted or contradicted his other allegations on the same topic.

92. Whilst there is always scope for innocent mistakes or omissions to be made, the Tribunal found that the claimant’s assertion about what he claimed to have been told by the Employment Judge on 12 March was demonstrably incorrect.

93. In the absence of any explanation from the claimant that he had perhaps misinterpreted what he had been told, the Tribunal concluded that his version of events as to the witness was untrue.

94. Such a finding forms a poor basis for reliance upon the evidence of a witness, unless it is accompanied by supportive objective evidence.

Incident (iii)

95. This complaint set the credibility and accuracy of the claimant against that of Mr Hackett, who emphatically denied that he had spoken to the claimant in the manner alleged.

96. The Tribunal found that there was an irreconcilable tension between what the claimant alleged Mr Hackett had said and why Mr Hackett would speak to a valued employee in such a way, not least when the quality of his work had been rewarded by the respondent in the recent past by enhancing his salary.

97. The Tribunal accepted as truthful Mr Hackett's evidence that he was affronted at such an accusation. It was an annual necessity for him to ask his staff if they might be willing to work on the bank holiday, with no pressure for them to do so. The potential for serious disciplinary action against him under the respondent's clear policies was high, especially as he had no way of gauging how the claimant might have reacted.

98. The Tribunal therefore concluded that the likelihood of that complaint being true was low, with no independent evidence in support of it, and no complaint being made by the claimant. The Tribunal therefore concluded that it could not be satisfied on the balance of probabilities that this incident had taken place.

Incident (iv)

99. It was common case that there was offensive graffiti on the walls of the men's toilets. Part of the claimant's complaint against the respondent was that, despite reporting it to Mr Bloomer, and that nothing had been done about it, thereby causing him to feel harassed, in that the respondent did not care about inflammatory political language being used.

100. It was the Tribunal's conclusion that there was no way to determine which side of the political argument was expressed first, when, or by whom. Whilst the subject matter was clearly inappropriate for the workplace, there was no evidence available from which the Tribunal properly could conclude that the claimant or someone with opposing political views might be said reasonably to feel that they were suffering a detriment.

101. There was significant dispute between the parties as to when the claimant had drawn it to Mr Bloomer's attention.

102. The Tribunal concluded that the permutations of the client's own evidence as to when he reported the matter fell some way short of being sufficient to establish any degree of certainty.

103. A recurring response by the claimant to any shortfall in dates and other information was that he did not keep a diary. Such detailed records are not required, but it must be borne in mind that these are serious allegations, the nature of which the claimant claimed he became aware as early as his second day of employment.

104. In those circumstances, especially when the claimant elected not to report matters which he claimed adversely affected him personally and in his work from the outset, such absence was a significant impediment to the Tribunal in its examination of the quality of the evidence.

105. That was particularly so because the import of the claimant's case was that the respondent, and named members of its staff, were publicly being accused of deliberate acts of discrimination, including harassment and victimisation. As such, the Tribunal was being invited to reach firm conclusions based upon widely differing and internally contradictory accounts by the claimant.

Incident (v)

106. The Tribunal found that there were instances of employees who breached the respondent's dress code, by wearing GAA branded sportswear at work.

107. Whilst by doing so, they were in breach of that code, the claimant's case was that the respondent's lack of action to prevent it was indicative of an attitude which was at least indifferent to such breaches, and in some cases actively encouraged it. On the claimant's case, he therefore felt marginalised and intimidated because of a deep seated and triumphalist culture of superiority of GAA sports and ethos, actively encouraged by the respondent.

108. The Tribunal found that the examples cited by the claimant were very sporadic and trivial, and that the respondent had a genuine priority in its dress code, to promote a neutral and supportive atmosphere at work. That code formed part of the claimant's induction, which supported the notion that the respondent was sincere in its aims.

109. The Tribunal concluded that Mr Condy's positive experience of the atmosphere in the workplace was an accurate reflection of the true situation.

110. Again, the claimant had made no complaint, even on an informal basis, about any infraction of the dress code. The only photographic examples were gleaned by him after his resignation, which event was the first point at which he had made any reference to it as an issue.

111. The Tribunal concluded that the photographs were indicative of the respondent wishing to be perceived as supporting a very wide and diverse range of community and charitable events and causes. On one view, this provided a good public relations shop window for the respondent, and included references to their products and branding visible in the photographs.

112. As such, however, the Tribunal concluded that this was much less likely to be used as a platform upon which the respondent would allow itself to be exposed to accusations of blatant sectarian partisanship. The respondent has a global business profile, requiring a spotless reputation to secure contracts, which in the view of the Tribunal greatly reduced the likelihood of it jeopardising its name by deliberately denigrating or permitting one section of its own workforce to be marginalised in favour of another.

113. The only verified example of the wearing of GAA clothing at which the claimant was actually present was in August 2019, when Mr Bloomer brought his four-year-old son to work, while he was off on annual leave. That brief visit was to monitor the progress of a piece of ongoing work. The claimant did not assert that he had any interaction with Mr Bloomer or with his son.

114. In weighing the merits of the claimant's case, the Tribunal was required also to put that incident in to the scales, to assess what its effect it could be said to have within the scope of the Article 3A of the 1998 Order.

115. The Tribunal concluded that it was not satisfied that the claimant was subjected to any harassment or other detriment as a consequence of anyone wearing GAA sports kit.

116. Whilst the respondent's dress code prohibited such apparel, the purpose of it was to prevent situations arising where there could be conflict. There was no evidence that anyone wearing such apparel accompanied it by any behaviour consistent with the "purpose and effect" requirement of the legislation. The Tribunal therefore concluded from the evidence that the actions of individuals was therefore merely as a personal expression in GAA sport, with no thought of causing offence of the type required to satisfy the legislation.

117. The Tribunal further was not satisfied that the claimant at the material time was distressed by it in a way in which it reasonably could be considered that his dignity was violated, or that the wearing of such clothing amounted, individually or collectively, to an environment which was intimidating, or hostile, or degrading, or offensive.

118. In reaching that conclusion, the Tribunal considered the perception of the claimant to these breaches of the dress code. The Tribunal found it difficult to accept that the claimant, a mature man of obviously high intelligence, would have failed to address the situation with his employers if it was adversely affecting him in the way he later claimed.

119. His explanation about his reluctance to do so was on the ground that HR staff who would deal with any complaint, themselves had "liked" the message about attending the staff team inter-business GAA match. That explanation however did not withstand scrutiny, because the claimant had already resigned. There therefore was no explanation from the claimant as to why he had failed to complain long before that point.

120. The respondent had a clear grievance procedure, which any member of its HR staff would struggle to explain why any such complaint was not addressed.

121. The Tribunal further was satisfied that any public support by it of GAA events sat comfortably within the extensive and wide-ranging community support it gave to other events. That included clear photographs featuring union jack flags on a British Airways plane carrying the British and Irish Lions rugby squad.

122. The primary specific example of an identified individual wearing GAA kit in the claimant's presence was the infant son of Mr Bloomer. The Tribunal concluded that

such an event fell well short of the type of conduct which might reasonably be captured by the legislation.

123. The Tribunal found that the experience of Mr Condy, whilst personal, was a much more truthful and accurate picture of the atmosphere in the claimant's workplace.

Incident (vi)

124. The Tribunal, whilst not determining any health and safety complaints, had regard to the possibility that the claimant might have been singled out to perform unpleasant tasks, on the ground of his religion or political opinion, or because he had complained about the graffiti, or refused to work on the 12th July.

125. The Tribunal found that the claimant had produced no evidence that either other non-Protestant welders, or welders who had not complained, were not asked to do such work.

126. The Tribunal therefore found that the claimant had failed to satisfy it that any such conduct by the respondent had occurred.

127. In the absence of any of the claimant's complaints being upheld as in fact occurring, either at all, or to the point where the Tribunal in the absence of an explanation from the respondent could find that there had been discrimination, the claimant's case is dismissed in its entirety.

Employment Judge:

Date and place of hearing: **14 & 15 September 2021, Belfast.**

This judgment was entered in the register and issued to the parties on: