



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr E Kamdem**

v

**1. Leeds Beckett University**

**2. Mr S Harper**

**3. Mrs J Hudson**

**Heard at: Leeds**

**On:**

**20 to 23 March 2018**

**Before:**

**Employment Judge Cox**

**Members:**

**Ms G M Fleming**

**Mr W Roberts**

**Representation:**

**For the Claimant:**

**In person**

**For the Respondent:**

**Ms R Thomas, counsel**

## REASONS

1. Mr Kamdem presented a claim to the Tribunal that he had been unfairly constructively dismissed by the Respondent (“the University”). He also alleged age discrimination, race discrimination and harassment related to age and race. During the course of an earlier Preliminary Hearing for case management and on the first day of the main Hearing, the Tribunal spent a substantial period of time clarifying and recording the exact allegations that Mr Kamdem was making and agreeing a finalised list of allegations with him. During the course of the Hearing, Mr Kamdem withdrew various allegations and consented to those aspects of his claim being dismissed.

### **The evidence**

2. The Tribunal heard oral evidence from Mr Kamdem and from the two individual Respondents. Mrs Julie Hudson was at the relevant time Deputy Registrar and responsible for the Tier 4 Compliance Team within which Mr Kamdem worked as an Administrator. The Team’s job is to ensure that the University complies with its obligations under its Home Office/United Kingdom Visas and Immigration (UKVI) Tier 4 sponsorship licence covering overseas students studying at the University. From December 2015 Mrs Hudson took over direct line management of the Team, which comprised Mr Kamdem and Mr Kim Chamberlin. Mr Stewart Harper was at the relevant time an Associate Registrar at the University. From August 2016 he took over line management of the Tier 4

Compliance Team. The Tribunal also heard oral evidence from Ms Jo Norry, who dealt with two grievances that Mr Kamdem raised. In addition, the Tribunal read the various documents to which it was referred by the witnesses.

3. On the basis of that evidence, the Tribunal made the following findings on Mr Kamdem's allegations.

**Age discrimination: time limits**

4. For the purposes of his two age discrimination allegations, Mr Kamdem described his age as over 60.
5. Mr Kamdem's first allegation was that in September 2015 Mr Chamberlin had said to him that he was too old to learn, that he was hopeless and that he was someone for whom Mr Chamberlin had no respect at all. Mr Kamdem alleged that that amounted to direct discrimination against him because of his age or harassment of him related to age. His second allegation was that from 1 December 2015 onwards Mrs Hudson had failed to take action in relation to Mr Chamberlin's comments. Mr Kamdem alleged that that also amounted to direct age discrimination or harassment related to his age.
6. There was a preliminary issue in relation to these allegations as to whether the Tribunal had power to deal with them. They related to events at the end of 2015 and the claim was not presented to the Tribunal until 17 August 2017. A claim of discrimination must be presented within three months of the date of the alleged discrimination or within such other period as the Tribunal thinks just and equitable (Section 123(1) of the Equality Act 2010 – the EqA). Where the allegation is that a person has discriminated by failing to do something, the time for presenting a claim runs from, at the latest, the expiry of the period in which, if the alleged discriminator was going to do the act she failed to do, she might reasonably have been expected to do it (Section 123(4)).
7. During the course of the Hearing it became clear that Mr Kamdem was in fact alleging that Mr Chamberlin made these comments at a meeting at the end of October 2015 between Mr Kamdem, Mr Chamberlin and Mrs Maclean, who was the Team's line manager at that point. The Tribunal was satisfied that, assuming (without finding) that Mr Chamberlin did in fact make the comments at a meeting in October 2015 and Mr Kamdem told Mrs Hudson about them when she took over line management responsibility for the team in December 2015, Mrs Hudson might reasonably have been expected to take action in relation to them by the end of January 2016 at the latest.
8. Mr Kamdem's claims of age discrimination were therefore presented at least 18 months outside the normal time limit. The Tribunal then considered whether the claim had been presented within such other period as the Tribunal thought just and equitable.
9. Mr Kamdem's evidence was that he had delayed in bringing these claims to the Tribunal because he was trying to resolve things internally within the University. The Tribunal did not consider that evidence credible. Elsewhere in his evidence, Mr Kamdem confirmed that in 2015 he decided he was not going to bring a formal grievance about Mr Chamberlin's comments. When he finally raised grievances, in January and February 2017, he made generalised allegations about Mrs Hudson's failure to take steps to prevent bullying and he also made

generalised allegations about Mr Chamberlin, but he did not mention the specific comments that became the subject of his Tribunal claim.

10. Mr Kamdem also said that he had not brought the claim earlier because he had been put off by the fees involved in going to a Tribunal. Again, the Tribunal found Mr Kamdem's evidence unconvincing. At the relevant time the issue fee for a claim of discrimination was £250 and the hearing fee was £950. The Tribunal accepted that for many people those were significant sums of money that might well have dissuaded them from bringing a claim to the Tribunal. The Tribunal bore in mind, however, that Mr Kamdem was earning over £20,000. He gave no evidence on his other financial commitments. The Tribunal was not satisfied that the issue fee of £250 would have been beyond his means. Further, Mr Kamdem in the event began the process of Early Conciliation as a precursor to bringing this Tribunal claim at a point when fees were still payable. He did not explain why he was prepared to meet the financial cost at that point but not earlier.
11. The Tribunal also noted that Mr Kamdem had access to trade union advice throughout. In addition, he accepted that ACAS had told him about the possibility of bringing a claim to the Tribunal and about the existence of time limits when he spoke to them in 2015.
12. Overall, the Tribunal could identify no grounds upon which it would be just and equitable to hear Mr Kamdem's claims of age discrimination. These aspects of his claim were therefore dismissed.

### **Law on race discrimination and constructive dismissal**

13. Mr Kamdem's remaining allegations were of direct race discrimination, harassment related to race, and unfair constructive dismissal.
14. Direct race discrimination is where an employer treats an employee less favourably, because of his race, than it treats or would treat an employee of a different race in the same or not materially different circumstances (Sections 13 and 23(1) EqA). Harassment related to race is where an employer engages in unwanted conduct related to race that has the purpose or effect of violating an employee's dignity or creating a hostile or offensive environment for the employee (Section 26 EqA). For the purposes of his race discrimination allegations, Mr Kamdem defined his racial group by reference to his colour, which he described as black. The issue for the Tribunal in relation to these aspects of his claim was therefore whether the acts or omissions about which he was complaining actually occurred and, if they did, whether they were committed because of or related to his colour.
15. Because Mr Kamdem resigned from his job, the success of his unfair dismissal claim depended upon him being able to establish that the circumstances of his resignation fell within section 95(1)(c) of the Employment Rights Act 1996 (the ERA). That sub-section states that an employee is to be viewed as dismissed if he terminates his contract in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
16. Applying the guidance in Omilaju v Waltham Forest London Borough Council (2005) ICR 481, the issue for the Tribunal was whether any of the University's actions that were the subject of Mr Kamdem's complaints amounted to a

repudiatory breach of Mr Kamdem's contract of employment. It is an implied term of any contract of employment that an employer will not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee. That is referred to as the implied term of trust and confidence. Any breach of that implied term will amount to a repudiation of the employee's contract of employment because it is the very essence of the implied term that it relates to conduct calculated or likely to destroy or seriously damage the relationship.

17. The test of whether there has been a breach of the implied term is an objective one. The Tribunal needed to examine the conduct that Mr Kamdem said had breached the implied term and decide whether, looked at objectively, it was likely to destroy or seriously damage the trust and confidence that he was reasonably entitled to have in the University as his employer. In Tullett Prebon plc and others v BGC Brokers LP and others [2011] IRLR 420, the Court of Appeal emphasised that in applying the test, all the circumstances are looked at objectively but from the prospective of a reasonable person in the position of the innocent party: in that person's reasonable perception, has the employer shown an intention to abandon or refuse to perform the contract?
18. In relation to Mr Kamdem's unfair constructive dismissal claim, therefore, the issue was whether the conduct of which he complained had occurred as he alleged and, if it had, whether that conduct, individually or cumulatively, amounted to a breach of trust and confidence.

### **Mrs Hudson's failure to act**

19. The first allegation in time related to Mrs Hudson's failure to act in relation to Mr Chamberlin's comments. (Any comments made by Mr Chamberlin could not amount to a breach of trust and confidence by the University as they were said by an employee who was not a manager and could in no sense be viewed as acting as Mr Kamdem's employer.)
20. The meeting at which Mr Chamberlin made the alleged comments happened when Mrs Maclean was Mr Kamdem's line manager. In December 2015 Mrs Hudson took over line management responsibility for Mr Kamdem. She met with him to discuss his concerns and asked him to bring to her any further problems he might have with Mr Chamberlin. She spoke to Mr Chamberlin as well. After his conversation with Mrs Hudson, Mr Kamdem confirmed he would not be raising a grievance in relation to Mr Chamberlin and accepted that things could be kept under review. On Mr Kamdem's own evidence, no further similar comments were made by Mr Chamberlin and he did not raise the issue with Mrs Hudson again.
21. The Tribunal could identify nothing in what Mrs Hudson did that was likely, objectively construed, to destroy or damage Mr Kamdem's trust and confidence in the University. Further, there was no evidence at all before the Tribunal that any action that Mrs Hudson took or failed to take was because of or related to Mr Kamdem's colour.

### **Exclusion from the Banner system review**

22. Mr Kamdem's next allegation was that from November/December 2015 to 2016 Mrs Hudson excluded Mr Kamdem from a process under which the University's Banner system was reviewed. In particular Mr Kamdem said that Mr Chamberlin, who is white, was not excluded.
23. "Banner" is a student information system used within Higher Education. In August to December 2015 the University conducted a review of the system to seek the views of users and inform them of proposed changes to the system. On the evidence the Tribunal heard from Mrs Hudson, which it found clear and credible, it was satisfied that Mr Kamdem was in fact involved in the early stages of this review, when wide-ranging meetings were held covering all Banner users. At the next stage there were smaller, more focussed working groups. It was not Mrs Hudson who decided who should participate at that stage. That decision was taken by the University's technical staff, in discussion with the external system supplier. The Tribunal accepted Mrs Hudson's evidence that she had insufficient technical expertise to be capable of deciding who should be involved. The Tribunal saw no evidence that the selection of those to be involved in the working groups was based on anything but objective grounds.
24. The Tribunal concluded that Mrs Hudson did not exclude Mr Kamdem from being involved in the Banner review and his limited participation in it was not because of or related to his colour.

### **Disciplinary meeting**

25. Mr Kamdem alleged that on 25 February 2016 Mrs Hudson asked him to attend what was in effect a disciplinary meeting.
26. The Tribunal accepted Mrs Hudson's clear and cogent evidence, which was fully supported by the documentation, that what she had in fact done was to invite Mr Kamdem to a meeting to discuss two issues that she needed to speak to him about. The first issue was that she believed he had moved some files that he had been asked not move; the other was that she had been told he had been overheard saying he was unhappy at work. Initially, Mrs Hudson wanted to be accompanied at this meeting by somebody from Human Resources for their input on developing strategies for helping Mr Kamdem with whatever issues were making him unhappy. Mrs Hudson also felt that it would be helpful to have somebody else there because she believed that in the past Mr Kamdem had misunderstood or misinterpreted what she had said to him. In the event, the meeting went ahead with just Mrs Hudson and Mr Kamdem.
27. The Tribunal accepted Mrs Hudson's evidence that she did have grounds for speaking to Mr Kamdem. She had asked him to raise any work concerns he might have with her but it appeared he was speaking to other people instead and she needed to manage his work. She also genuinely believed that he had disregarded a request not to move some files. There was no evidence that anything she did was because of or related in any way by Mr Kamdem's colour. Nor was anything she did calculated or likely to destroy or seriously damage the relationship of trust and confidence between Mr Kamdem and the University.

### **Limited role in external Tier 4 audit process**

28. Mr Kamdem alleged that in May 2016 Mrs Hudson restricted his involvement in the external Tier 4 audit process to a brief presence on one day for a few minutes only whereas other colleagues including Mr Chamberlin and other white colleagues in the International Student Advice team had been allowed to participate more fully.
29. In around April 2016, the University asked Penningtons, a firm of solicitors, to carry out an audit of its Tier 4 policies and processes to ensure that the University was ready for an unannounced Home Office audit to which it anticipated it would be subjected. The Tribunal accepted Mrs Hudson's evidence that it was not her decision who should take part. The Lead Auditor in this external audit, the Senior Partner at Pennington's, decided who should be spoken to. In particular, Mrs Hudson did not choose Jenny Stageman to be the person to speak to the audit about unauthorised absence and she did not even know whether in fact Miss Stageman made that contribution. It was a Mr Didsbury who drafted the list of people whom the University suggested might be involved at each stage of the audit process and Mrs Hudson suggested that Mr Kamdem should be included in the list to talk about unauthorised absences.
30. In summary, the Tribunal found that Mrs Hudson was not the decision-maker when it came to deciding who should be involved in this process. There was no evidence that any of her actions were because of or related to Mr Kamdem's colour nor were there any grounds for the Tribunal to conclude that the actions she did take in relation to the audit breached trust and confidence in any way.

### **Exclusion from review of draft**

31. Mr Kamdem alleged that in the summer of 2016 Mrs Hudson excluded him from the meetings and fact checking on the preliminary draft of the external audit report whereas Mr Chamberlin and other white colleagues were not excluded.
32. The Tribunal accepted Mrs Hudson's evidence that in fact, as Mr Kamdem's participation in the audit had been a brief interview only, there were no facts for him to check. Mr Chamberlin, on the other hand, had been much more heavily involved in the audit and so he did need to check facts. In any event, it was not Mrs Hudson but Miss Share who distributed the draft for fact checking. The Tribunal found no evidence that anything that Mrs Hudson did in connection with this draft audit report was because of or related in any way to Mr Kamdem's colour nor does the Tribunal accept that anything she did was capable of amounting to or contributing towards a breach of trust and confidence.

### **Bi-annual audit**

33. Mr Kamdem alleged that in summer 2016 Mrs Hudson excluded him from involvement in an internal bi-annual audit of Tier 4 compliance whereas Mr Chamberlin and Miss Stageman, who are white, were allocated this role.
34. The Tribunal accepted Mrs Hudson's evidence that in this particular year there was no routine bi-annual audit. What was in fact happening at this period was a close review of student files to try to bring the University back within the

tolerance levels for visa refusal rates so that it could maintain its licence. This was not a routine audit and Mrs Hudson chose the people that she thought would have the most detailed knowledge of the students and files that were going to be reviewed and resubmitted. Mr Chamberlin, Miss Stageman and Miss Griffith were chosen because they were the people who had that more detailed knowledge. Mr Kamdem was not chosen because he did not have as detailed a knowledge of the relevant files as these other individuals did, not because of or for any reason related to his colour.

35. There was a completely rational basis for Mrs Hudson's selection decision and nothing she did was capable of amounting to or contributing towards a breach of trust and confidence.

### **Deletion of Mr Kamdem's role**

36. Mr Kamdem alleged that Mrs Hudson was party to a decision that his role should be deleted as part of a reorganisation.

37. In October 2016, the University began a review of its core business support and facility-based administrative structures. The Tribunal accepted Mrs Hudson's evidence that, although she was a member of the Review Board which was responsible for managing the method and process adopted in the reorganisation, she was not part of the group that looked at the particular part of the staffing structure into which Mr Kamdem's role fell. Although she saw the proposals of that particular working group, she did not make any representations on it in terms of Mr Kamdem's job. She did not challenge the proposal that that job should be deleted but nor did anybody else on the Review Board.

38. There was no evidence that anything Mrs Hudson said or did in the course of that process were because of or related in any way to Mr Kamdem's colour nor was there anything to indicate that what she did amounted to or contributed towards a breach of trust and confidence.

### **Personal development review**

39. The first allegation in time involving Mr Harper was that in October or November 2016 he had conducted Mr Kamdem's personal development review (PDR) in a dismissive, aggressive and intimidating manner. There were in fact two review meetings, on 2 November and 16 December. During the course of these meetings it became apparent that Mr Harper wanted to focus on the future and Mr Kamdem wanted to focus on the past. He was either not willing or not able to provide the input that Mr Harper reasonably expected into the formulation of his objectives for the forthcoming year. The Tribunal accepted that it was more likely than not that the meeting on 2 November lasted no longer than 50 minutes. It was very likely that Mr Harper, as a senior manager, had another commitment that he needed to keep. Nevertheless, if both parties had been prepared and focussed to deal with the task in hand, that 50 minutes was probably sufficient to achieve what needed to be achieved.

40. The Tribunal accepted that Mr Harper displayed some degree of frustration with Mr Kamdem's contributions to those meetings and his perception that Mr Kamdem was lacking clarity and focus on the task in hand. The Tribunal did not

accept, however, that that tipped over into any form of aggression. In reaching that conclusion the Tribunal took into account the fact that when Mr Harper drafted the PDR document, which was never agreed by Mr Kamdem, the reviewer's comments that he made were fair and could arguably have been more critical than they were, on the basis of the progress that Mr Kamdem had made against his previous year's objectives. The draft also made clear that although Mr Harper wanted to try and start focussing on future objectives he did nevertheless discuss with Mr Kamdem his work over the past year.

41. Mr Harper's own file notes of that meeting supported his evidence, which the Tribunal accepted, that he himself raised the relationship between Mr Kamdem and Mr Chamberlin. The Tribunal did not accept that Mr Harper's attitude towards Mr Kamdem and his concerns could fairly be described as being a dismissive. Further, in his evidence to the Tribunal Mr Harper came across as somebody who may be focussed, clear and firm but is unlikely to be aggressive in his dealings with his staff.
42. The Tribunal accepted that Mr Kamdem perceived Mr Harper's conduct as aggressive but the Tribunal's own assessment, which was objective, was that there was nothing that Mr Harper did during the course of the PDR process that was because of or related to Mr Kamdem's colour or that was capable of amounting to or contributing towards a breach of trust and confidence.

#### **Exclusion from UKVI minutes**

43. Mr Kamdem alleged that in November/December 2016 Mr Harper excluded him from receiving minutes of the Academic Registrar's Council Group meetings relating to UKVI issues. The evidence the Tribunal heard established that the minutes of these meetings were distributed according to the distribution list of the convener of the meeting, an individual who was external to the University. The minutes were sent to those who attended the meetings and that was Mr Chamberlin. It was not Mr Harper who was in control of who received the initial distribution of these minutes.
44. Mr Harper could not recall that Mr Chamberlin produced any notes of the meeting for sharing with his colleagues at the University. The Tribunal accepted that it was possible that Mr Chamberlin did informally brief Mr Harper on the contents of the meeting. The meeting was in mid December, making it likely, taking into account the Christmas and New Year holiday, that discussion was unlikely to have taken place before mid-January 2017, by which time Mr Kamdem was off on sick leave.
45. In summary, there was no evidence before the Tribunal that Mr Harper was in any way responsible for Mr Kamdem not receiving the minutes of the meeting, nor that anything he did was because of or related to Mr Kamdem's colour or was capable of amounting to or contributing towards a breach of trust and confidence.

#### **Exclusion from Sheffield meeting**

46. Mr Kamdem alleged that in December 2016 Mr Harper excluded him from meetings with Home Office staff in Sheffield. From the evidence the Tribunal heard it became apparent that this allegation referred to a meeting on 8



December 2016. Mr Chamberlin was due to attend this meeting but in the event was not available on the date that it was fixed. In his evidence, Mr Kamdem admitted that he never asked Mr Harper if he could attend.

47. The Tribunal concluded that there was no basis for concluding that Mr Harper excluded Mr Kamdem from this meeting when Mr Kamdem had never even asked if he could attend.

### **Redundancy and offer of new role**

48. The Tribunal considered Mr Kamdem's next two allegations together as they were linked.
49. Mr Kamdem alleged that in March 2017 Mr Harper made his role redundant and offered him a more junior role on a reduced rate and responsibilities. Mr Kamdem contrasted that with white colleagues who he said were given enhanced roles and duties.
50. The Tribunal accepts that Mr Harper was involved in examining, as part of the wider organisational review process, the area of the University within which Mr Kamdem's role fell. Mr Harper was leading a group that had been tasked with identifying the tasks that needed to be done and moving from that to draw up job descriptions. The resulting jobs were then evaluated not by Mr Harper or any group of which he formed part, but by an evaluation team sited within the Human Resources department of the University. There was no evidence before the Tribunal that Mr Harper based his conclusions about what new jobs were needed in order to get rid of Mr Kamdem (as Mr Kamdem alleged), nor was there any evidence that his decision-making was in any way because of or related to Mr Kamdem's colour.
51. As a result of its work, the group identified that there was a role, evaluated at Grade 2, that was needed. Mr Kamdem's previous job, which was at Grade 3 was no longer needed. Under the University's redundancy process, Mr Kamdem was entitled to be slotted into the Grade 2 role because he was already in a Grade 3 post. He could have applied for a Grade 4 post if he wanted to, but in the event he did not do so. The Tribunal accepted that there was another member of staff, Miss Griffith, whose role was also initially identified as no longer being needed, who was slotted into a new post at a lower grade. She made representations about the valuation of that job and it was moved up a grade. There was nothing in the evidence the Tribunal heard to indicate that Mr Kamdem's colour affected this decision-making process in any way.
52. The Tribunal considered whether Mr Kamdem had been in any way forced to take the Grade 2 role he was offered. On the basis of the contemporaneous documentary evidence, the Tribunal was satisfied that it was made clear to Mr Kamdem that he did not have to take the Grade 2 role; he had the option of applying for another post. If he was not successful in any application he made then he would be entitled to a redundancy payment, or, in his own record of a meeting he had with HR in March 2017, possibly early retirement terms. In any event, at the point when the posts were being offered Mr Kamdem was not at work. There was also the possibility that the process could be affected by the outcome of Mr Kamdem's grievance appeal.

53. Looking at the matter overall the Tribunal saw no evidence that any of Mr Harper's actions were because of or related to Mr Kamdem's race and nor did the Tribunal accept that Mr Harper or anybody else involved in the process breached trust and confidence in the way that they approached it.

### **Handling of sickness absence**

54. The next set of allegations made by Mr Kamdem related to Mr Harper's handling of his sickness absence.

55. Mr Kamdem alleged that on 31 March 2017 Mr Harper conducted a sickness absence meeting with him in an unreasonable manner. The Tribunal was not provided with any evidence-in-chief from Mr Kamdem about this meeting. During the course of cross-examination, he agreed that Mr Harper had reasonable grounds to invite him to the meeting. The letter Mr Harper wrote to Mr Kamdem on 10 April 2017 summarising what was said at the meeting provided no indication that anything said or done at it was in any way affected by Mr Kamdem's colour or amounted to or contributed towards a breach of trust and confidence.

56. Mr Kamdem alleged that on 2 May 2017 Mr Harper failed to make reasonable adjustments for Mr Kamdem to enable him to return to work. Mr Kamdem said that two other employees, Miss Broughton and Miss Buttress, who had also been absent from work due to stress and are white, had been provided with a separate space to work in.

57. The Tribunal accepted that Mr Harper did not agree to all the adjustments that Mr Kamdem asked for, but he did consider them all. In the letter Mr Harper wrote to Mr Kamdem on 26 May 2017 (which Mr Kamdem alleged was the last straw that caused him to resign) he made clear that he was still open to the possibility of offering Mr Kamdem a new office space but he would need to wait until staff relocations had been sorted out from the restructure process before he was able to identify whether any space would be available. The other adjustments that Mr Kamdem asked for he did not consider to be practical or reasonable: he did not think it was possible for Mr Kamdem to carry on being an effective member of the team if he was not prepared to have any face to face contact with the other members in the team, all communications were to be via email through Mr Harper and he was not going to be attending team meetings. The Tribunal accepted that that was a reasonable conclusion for Mr Harper to come to which could not, objectively assessed, have in any way contributed towards or amounted to a breach of trust and confidence.

58. Mr Kamdem also requested that he be redeployed to another role. Mr Harper's position was that Mr Kamdem could be redeployed if he successfully applied for another role. The Tribunal considered whether that position might constitute or contribute towards a breach of trust and confidence, given that Mr Kamdem was telling Mr Harper that he was in distress and did not feel able to go back and work with the team. On reflection, however, the Tribunal was satisfied that an employee in Mr Kamdem's position making a reasonable assessment of the situation would not have viewed Mr Harper's position as a breach of trust and confidence. Mr Kamdem's grievance in relation to his managers and Mr Chamberlin had been considered and not upheld for reasons that were objectively justified. If Mr Kamdem had been moved to another vacant post that

had been agreed within the team, that would have involved a promotion, and there was no evidence to indicate that Mr Kamdem would necessarily been able to successfully complete that job. Further, it would still have required effective communication with others within the team.

59. In summary, the Tribunal found that Mr Harper's conclusions about the adjustments that Mr Kamdem was seeking were neither related or because of Mr Kamdem's colour nor a breach of trust and confidence.

### **Request for fit note**

60. Mr Kamdem alleged that on 2 May 2017 Mr Harper had asked him to provide a further fit note from his GP at a point when his previous fit note had expired so he was technically fit for work. The Tribunal accepted that Mr Harper did ask Mr Kamdem to provide another fit note. That was not, however, because of or related to Mr Kamdem's colour, but because Mr Harper needed confirmation from Mr Kamdem's GP as to whether he agreed that the adjustments Mr Kamdem was seeking were necessary for him if he was going to be fit to return to work. In those circumstances, the Tribunal did not accept that Mr Harper asking Mr Kamdem for another fit note amounted to or contributed towards a breach of trust and confidence.

### **Letter of May 2017**

61. Mr Kamdem alleged that at the end of May 2017 Mr Harper wrote to him and effectively refused to meet him to discuss adjustments for his return to work but re-offered the Grade 2 role. For the reasons set out above, the Tribunal concluded that Mr Harper's position on adjustments and the offer of a Grade 2 role were not direct race discrimination, harassment related to race or a breach of trust and confidence. The Tribunal was satisfied that Mr Harper's restatement of his position on these issues did not amount to discrimination or breach of trust and confidence.

### **Dealing with grievances**

62. Mr Kamdem also alleged that Ms Norry's conduct breached trust and confidence. (He withdrew an allegation of race discrimination against her.) He said that between February and April 2017 she failed to investigate his grievances of 29 January and 20 February 2017 adequately or deal with them appropriately.
63. Having heard oral evidence from Ms Norry on the way in which she conducted her grievance investigations and the conclusions she came to, the Tribunal could find no fault with them. There was a thorough and reasonable investigation, the conclusions she reached were based on the evidence she had heard and were entirely justified by that evidence. The Tribunal could identify no way in which the way in which she dealt with the grievances could amount to or contribute towards a breach of trust confidence.
64. When the Tribunal asked Mr Kamdem exactly what it was that was inadequate about Ms Norry's investigation, he said she should have spoken to two trade union representatives who had spoken to Mrs Maclean about the meeting that

she had been at with Mr Kamdem and Mr Chamberlin when Mr Chamberlin made his age discriminatory comments. Mr Kamdem appeared to be saying that these trade union representatives could have given their own accounts of what Mrs Maclean told them she had heard in the meeting, which might differ from the account Mrs Maclean had given Ms Norry. Even if this was theoretically possible, the Tribunal considered it unlikely that that evidence would be capable of playing any material part in Ms Norry's decision-making. The Tribunal does not consider that Ms Norry's failure to interview these two individuals amounted to a breach of trust and confidence when her overall approach to the investigation of Mr Kamdem's grievance was so thorough and professional.

### **Collusion between Mrs Hudson and Mr Harper**

65. The final allegation was that Mrs Hudson and Mr Harper had acted together, colluding with each other to treat Mr Kamdem less favourably because he is black and/or to try to force him to resign. The Tribunal heard no evidence of any collusion at all, on any basis, between Mr Harper and Mrs Hudson, let alone that they were colluding to discriminate against him because of or for reasons related to his colour and/or in order to try to get him to resign.

### **Summary of conclusions**

66. As the Tribunal was satisfied that the alleged conduct either did not happen at all or was not because of or related to Mr Kamdem's colour, the Tribunal dismissed his claims of direct discrimination and harassment.
67. As the Tribunal was satisfied that the University had not been guilty of any conduct that entitled Mr Kamdem to resign without notice, he had not established that he was dismissed within the meaning of that term in Section 95(2)(b) ERA and his unfair dismissal claim also failed.

**Employment Judge Cox**

**Date: 1 June 2018**