



EMPLOYMENT TRIBUNALS

Claimant: Muhammed Shazad Nazieb

Respondent: Moores Furniture Group Ltd

Heard at: Leeds by CVP video link **On:** 13, 14, 15, 16 and 22 March 2023

Before: Employment Judge Shepherd

Members: Ms Brown

Mr Elwen

Appearances

For the claimant: In Person

For the respondent: Ms Kaye, counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claims of direct race and religion or belief discrimination are not well-founded and are dismissed.
2. The claims of harassment related to race and religion or belief are not well-founded and are dismissed

REASONS

1. The claimant represented himself and the respondent was represented by Ms Kaye.

2. The Tribunal heard evidence from:

Muhammad Shazad Nazeib, the claimant;
Stuart Clements, Finance Manager;
Alex Evans, Company Accountant;
Jack Askham, Trainee Accountant;
David Richardson, Finance Director;
Fiona Gardner, HR Business Partner.

3. The Tribunal had sight of a bundle of documents numbered up to page 488 The Tribunal considered those documents to which it was referred by the parties.

The issues

4. The issues were identified at a Preliminary Hearing before Employment Judge Morgan KC on 4 October 2022. The parties agreed that these were the issues for this Tribunal to determine. They were recorded as follows:

1. Time limits

- 1.1 Were the discrimination and harassment complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 1.1.2 If not, was there conduct extending over a period?
 - 1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.1.4.1 Why were the complaints not made to the Tribunal in time?
 - 1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

It was confirmed during the course of the hearing that there were no time issues taken in this case. The Tribunal is satisfied that the claimant was presented within time. The ACAS early conciliation notification date was 8 April 2022 and the Early Conciliation certificate was dated 19 May 2022 claim was presented on 4 June 2022

2. Direct discrimination (Equality Act 2010 section 13) Religion or Belief

- 2.1 The Claimant is a Muslim.
- 2.2 Did the respondent do the following things:
 - 2.2.1 On 27 January 2022 and 31 January 2022 the Claimant received less support from Mr Clement and Ms Evans on his role and tasks;
 - 2.2.2 During 17 January – 1 February 2022, the Claimant felt segregated from others during working hours and was sat separately to the rest of

the team in the office and felt detached from the team's social conversations;

- 2.2.3 The Claimant's request to leave work early on a Friday afternoon to attend Friday prayers being an ongoing topic of conversation;
- 2.2.4 On 28 January 2022 the Claimant was told by Mr Clement that the team was not happy with him leaving work early;
- 2.2.5 On 1 February 2022 the Claimant was belittled by Mr Clement as he was falsely accused of distorting a finance file and belittled;
- 2.2.6 On 25 January 2022 the Claimant received a hostile response from Mr Clement and refusal of his request to take annual leave for religious reasons.

2.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

The claimant says he was treated worse than Jack Ashkam or Luke East and/or a hypothetical comparator.

2.3 If so, was it because of the Claimant's religion or belief?

2.4 Did the respondent's treatment amount to a detriment?

3 **Harassment related to Religion or Belief (Equality Act 2010 section 26)**

3.2 Did the respondent do the following things:

- 3.2.1 On 17 January 2022, when provided with a meeting room to use for prayers, Mr Clement compared this to a disabled toilet;
- 3.2.2 On 25 January 2022 Mr Clement made a comment in relation to the Claimant's new baby, specifically "*What, Baby number six?*"
- 3.2.3 On 25 January 2022 Mr Clement openly discussed the Claimant's holiday request in front of the wider team, asking the Claimant to explain why he needed three weeks off;
- 3.2.4 On 27 January 2022 Ms Evans belittled the Claimant during training, which prompted the Claimant to walk out of the office;
- 3.2.5 On 28 January 2022 the Claimant was told the team was not happy with him leaving work early, specifically Mr Clements said "*the rest of the team is not happy with you leaving on Fridays and it's not fair on them*"

3.2.6 On 1 February 2022 Mr Clement accused the Claimant of distorting a finance file without conducting sufficient investigation and asked the Claimant a rhetorical question of why he even left his role at One Nation, belittled and accused the Claimant of lacking in accounting knowledge and reminded the Claimant that he had not even completed his professional accreditation with ACCA;

3.2.7 On 1 February 2022 Mr Clement raised the Claimant's practice of Friday prayer, the fact it was not mentioned in at the interview stage and added that he "*doesn't do the God thing*"

3.3 Did it relate to Religion or belief

3.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

3.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4 Direct discrimination (Equality Act 2010 section 13) Race

4.2 The Claimant identifies as British Pakistani.

4.3 Did the respondent do the following things:

4.3.1 During 17 January – 1 February 2022, the Claimant felt segregated from others during working hours and was sat separately to the rest of the team in the office and felt detached from the team's social conversations;

4.3.2 On 27 January 2022 being harassed and bullied during a training session by a senior member of the team

4.3.3 On 27 January 2022 and 31 January 202 Mr Clement failed to take the Claimant's concerns about Ms Evans and Mr Richardson seriously;

The claimant accepted that he had no concerns about Mr Richardson and this issue had been made in error.

4.3.4. On 25 January 2022 Mr Clement made a comment in relation to the Claimant's new baby, specifically "*What, Baby number six?*"

4.3.5. On 1 February 2022 Mr Clement accused the Claimant of distorting a finance file without conducting sufficient investigation and asked the Claimant a rhetorical question of why he even left his role at One Nation, belittled and accused the Claimant of lacking in accounting knowledge and reminded the Claimant that he had not even completed his professional accreditation with ACCA;

4.3.6. On 1 February 2022, Mr Richardson failed to take action in respect of the Claimant's concerns.

The claimant withdrew the allegation against Mr Richardson. In any event, he had asked David Richardson not to take any action??

4.4 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

The claimant says he was treated worse than Jack Ashkam or Luke East and/or an hypothetical comparator.

4.5 If so, was it because of the Claimant's race?

4.6 Did the respondent's treatment amount to a detriment?

5 Harassment related to Race (Equality Act 2010 section 26)

5.2 Did the respondent do the following things:

5.2.1 During 17 January – 1 February 2022, the Claimant felt segregated from others during working hours and was sat separately to the rest of the team in the office and felt detached from the team's social conversations;

5.2.2 On 27 January 2022 being harassed and bullied during a training session by a senior member of the team.

5.2.3 On 27 January 2022 and 31 January 2022 Mr Clements failed to take the Claimant's concerns about Ms Evans and Mr Richardson seriously;

5.2.4 On 25 January 2022 Mr Clement made a comment in relation to the Claimant's new baby, specifically "*What, Baby number six?*"

5.2.5 On 1 February 2022 Mr Clement accused the Claimant of distorting a finance file without conducting sufficient investigation and asked the Claimant a rhetorical question of why he even left his role at One Nation, belittled and accused the Claimant of lacking in accounting knowledge and reminded the Claimant that he had not even completed his professional accreditation with ACCA; and

5.3 If so, was that unwanted conduct?

5.4 Did it relate to Race

5.5 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.6 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

6 Remedy for discrimination or harassment

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

6.3 What financial losses has the discrimination caused the claimant?

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

6.5 If not, for what period of loss should the claimant be compensated?

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

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

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

6.9 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

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

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

6.12 By what proportion, up to 25%?

6.13 Should interest be awarded? How much?

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

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

7. The Claimant commenced employment as a Management Accountant with the Respondent on 17 January 2022. The Claimant is an Asian man. He identifies as British Pakistani. He is also a Muslim.

8. The Finance Team consisted of Stuart Clements, Finance Manager and the claimant's line manager, Alex Evans, Management Accountant, Jordan Jonas (who was working his notice and left the respondent on 26 January 2022), Jack Askham, Trainee Accountant and Luke East, Trainee Accountant.

9. The claimant was a partially qualified accountant. He had an accountancy degree and was undertaking the Association of Chartered Certified Accountants qualifications, was close to qualification, with three exams remaining. He had worked as an accountant at a registered charity before his employment with the respondent. He had worked there for five years and had been in charge of all the finances.

10. The claimant underwent an induction process. It was acknowledged by the respondent that the induction process in the finance team had room for improvement. However, it appeared to be a similar induction to that of Jack Askham and Luke East. The majority of training was through being shown how to carry out the work.

11. On the first day of his employment with the respondent the claimant told Stuart Clements that he needed somewhere in the office to pray. He informed the claimant that there was a small meeting room that he could use. He showed the claimant the meeting room and it was agreed that the claimant would use that room. When showing the claimant this room Stuart Clements referred to a previous security guard who had used the disabled toilet to pray during the nightshift. Stuart Clements said that he mentioned this in order to explain that they wanted to find a more suitable place for the claimant to use for his prayers. The claimant said that he felt that Stuart Clements was mocking the security guard and his religion.

12. On the second day of his employment, 18 January 2022 the claimant raised the fact that there was no mosque in Wetherby. It was agreed that he could leave early on Friday afternoon in order to attend a mosque near his home. It was agreed with Stuart Clements that the claimant would make up the time on the other days' work and that, once he had completed his six months' probation period, the claimant would be able to work from home on Fridays.

13. The claimant said that he had little interaction with the finance team and that he was seated separately from the rest of the team. Stuart Clements said that the claimant was seated at a spare desk closest to Stuart Clements and Alex Evans to ensure that he could ask them questions. There was evidence from the respondent's witnesses that the claimant engaged in a number of conversations with the finance team and was not isolated.

14. The team then moved offices at the end of the claimant's first week. They moved to a small office which was another temporary measure. The Tribunal had sight of photographs of the second office. The respondent's witnesses said that they had seated the claimant closest to Alex Evans as would be mostly working with her.

15. Concerns were raised about the claimant's performance by Jordan Jonas and Alex Evans. Stuart Clements discussed these concerns with David Richardson, Finance Director, and he said that they should focus on the quality of the claimant's work and note of any concerns.

16. On 25 January 2022 the claimant submitted a request to Stuart Clements for three weeks holiday in April 2022 through the electronic holiday booking system. He was told that 3 weeks in one block was too much. The claimant said that was because of Ramadan and Eid. He also said that his wife was due to give birth in this period. The claimant said that Stuart Clements responded by saying "What, baby number 6?" and added that meant that the claimant would benefit from paternity leave. Stuart Clements said that he may have said "Wow, another child" or "Blimey".

17. Stuart Clements explained to the claimant that any request for over two weeks needed to be approved by HR and he was to check this but before he had found out and gone back to the claimant he had indicated that he only wished to take two weeks holiday in April 2022.

18. On 27 and 28 January 2022 Stuart Clements and Alex Evans exchanged messages indicating concerns about the quality of the claimant's work. Alex Evans was under the impression that the claimant was a qualified accountant but she was concerned that he seemed to lack understanding of basic accounting principles. It was also indicated that the claimant had only done 35 hours that week.

19. On 27 January 2022 the claimant said that he spoke to Stuart Clements in a private room and told him that he felt like he was being bullied by Alex Evans. Stuart Clements said that during this meeting, the claimant did raise with him that he felt Alex wasn't being very patient and was showing signs of frustration.

20. On 28 January 2022 Stuart Clements had a meeting with the claimant to discuss his progress and to set expectations. It was agreed they would meet up again on the following Friday, 4 February 2022 to discuss the claimant's progress. Stuart Clements said the claimant did indicate that he felt Alex Evans was not being very patient and showing signs of frustration but he did not say he was being bullied.

21. On 30 January 2022 Stuart Clements sent an email to the claimant in which he referred to the fixed assets and accrual/prepayments spreadsheet which should be passed to complete and:

"... I would like you to try and spend a bit of time working on these in order to build up your confidence and knowledge with a view to being able to run these yourself..."

22. On 31 January 2022 the claimant called in to David Richardson's office for a discussion. He indicated that he was concerned that Stuart Clements and Alex Evans had concerns about his level of competence. David Richardson told the claimant that, if he was unsure about anything, he should not be afraid to ask questions. The claimant did not suggest that he was being treated badly or harassed and there was no mention of his race or religion having anything to do the concerns he raised

23. On 1 February 2022 Stuart Clements had a conversation with the claimant about a mistake that had been made on a bank reconciliation that the claimant had worked on. The claimant said that Stuart Clements was angry and aggressive. Stuart Clements said that he was frustrated during the conversation but not filled with rage. He would expect mistakes to be made by the claimant. He did indicate that he expected someone of the claimant's level of experience to be able to undertake basic accounting tasks. This was not an issue that required investigation. There was no evidence that this was unwanted conduct related to race or religion.

24. The claimant asked for a private meeting with Stuart Clements. He said that he had been struggling with his mental health and would not be able to work the rest of the day and he had to leave.

25. On 2 February 2022 the claimant sent an email to Fiona Gardner, HR Business Manager, indicating that he was not in the best of health as a result of joining the respondent:

"I hope to recover and communicate my concerns in writing in due course as this will also keep a paper trail and will help my case in in ends up at the employment tribunal."

26. On 2 February 2022 the claimant sent a further email to Stuart Clements in which he referred to a toxic environment and being treated unfairly and in an unprofessional manner. He also referred to Stuart Clements' manner the previous day that he said was:

"... filled with rage, which resulted in you accusing with of actions to which you have not fully investigated which further led to personal attacks about my time at One Nation, why I left, the fact that I am not qualified, am cant even manage my own paperwork, belittled the so much no the extent I should know see myself as an Accountant... "

27. On 23 February 2022 the claimant raised a grievance making complaints of discrimination on grounds of race and religion during his employment with the respondent.

28. Adrian Cookman, Head of Commercial, was appointed as the grievance manager. Investigations were carried out and the claimant attended a grievance hearing. On 23 March 2022 the claimant was provided with a Grievance outcome. This was a detailed letter setting out the investigation and covering all of the claimant's complaints. It was concluded that there was no evidence to suggest that the claimant had been the victim of discrimination as a result of his race or religious belief and the grievance was not upheld. Recommendations were made in respect of a structured training programme, confidentiality in respect of discussions with team members. Feedback and coaching to be provided to Alex Evans around effective training and for Stuart Clements around performance management and how to provide effective feedback.

29. The claimant appealed against the grievance outcome. A grievance appeal hearing was held before Julie Holiday, Head of Marketing. Investigations had been carried out and the claimant's grievance appeal was not upheld. The grievance appeal outcome was detailed and covered all the points that had been raised.

30. The claimant provided a statement from a former employee, Sana Ahmed to the respondent for the grievance appeal. In that statement Sana Ahmed referred to being the “only Pakistani girl in the team who wore a hijab” and that she did not get a promotion because of racial discrimination. This was referred to in the grievance appeal outcome letter. It was stated that:

“Whilst Sana did not want to speak with us to investigate further, she did confirm authentication that this statement was her own.

During investigation, it is found that there was a conversation regarding Sana which was instigated by Jack who was interested as to why he had secured the role. It has been found that Sana was be considered for the role and had been interviewed by Stuart and Alex. However, she was unsuccessful in securing the position as there was a strong candidate. They have both confidentially provided detailed reasons for offering another employee the role. ”

31. The statement from Sana Ahmed provided by the claimant at the time of the grievance appeal was undated and not signed. The claimant said he had never met Sana Ahmed.

32. The Tribunal also had sight of an email from Hayley Hodge dated 14 December 2021 in which she referred to an exit interview with Sana Ahmed in which she had referred to an unpleasant working environment, fighting in the team, favouritism displayed. It was stated that Stuart doesn't listen to any concerns and that one long serving team member created tension but nothing was ever done about it. It was stated that Sana wanted promotion, and had an interview for the position of Finance Assistant, but the role was offered to a new starter she was responsible for training. It was unclear why this decision had been taken. There was no mention of discrimination.

33. The Tribunal also had sight of an email from Sara Ahmed dated 17 December 2021 entitled “thank you and farewell” in which it was stated that it was her last working day at the respondent. She had accepted the position at another company but it was not an easy decision to make as she said:

“I truly enjoyed working with all of you here at Moores

I would like to take this opportunity to express my sincere appreciation to my colleagues. Thank you for the support, encouragement and experience you have provided me during my time here. It's been a great pleasure working with each of you thought of leaving is very bittersweet. I will genuinely miss working with each of you”

34. Following the ACAS early conciliation procedure the claimant presented a claim to the Tribunal on 4 June 2022. He brought claims of race and religion or belief discrimination.

The law

Direct discrimination

35. Section 13 of the Equality Act 2010 states:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

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

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

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

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

Burden of Proof

36. Section 136 of the Equality Act 2010 states:

“(1) This Section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

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

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.

(5) This Section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to –

(a) An Employment Tribunal.”

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

38. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against her. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: “They are not, without more, sufficient material from which a tribunal ‘could conclude’ that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination”.
39. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR 36** the House of Lords held that mere unreasonable treatment by the employer “casts no light whatsoever” to the question of whether he has treated the employee “unfavourably”.
40. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that
- “all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour ... Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way ... The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable.”
41. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

Harassment

42. Section 26 of the Equality Act provides

- (1) A person (A) harasses another (B) if--
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of--
 - (i) violating B's dignity, or

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

- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account--
- (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.

43. The test is part objective and part subjective. It requires that the Tribunal takes an objective consideration of the claimant's subjective perception. was reasonable for the claimant to have considered her dignity to be violated or that it created an intimidating, hostile, degrading, humiliating or offensive environment.

44. In the case of **Grant v HM Land Registry [2011] IRLR 748** the Court of Appeal said that:

“Tribunals must not cheapen the significance of the words “intimidating, hostile, degrading, humiliating or offensive environment”. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

45. In the case of **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT stated

“We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

46. Ms Kaye provided a skeleton argument and oral submissions on behalf of the respondent and the claimant provided oral submissions and. These submissions are not set out in detail but both parties can be assured that the Tribunal has considered all the points made and any authorities referred to even where no specific reference is made to them.

Conclusions

47. The Tribunal has considered all the evidence and submissions and has reached a unanimous judgment in respect of the claims brought by the Claimant.

48. The claims cover the treatment of the claimant from 17 January 2022 to 2 February 2022. The ACAS Early Conciliation notification was dated 8 April 2022 and the Early Conciliation Certificate was dated 19 May 2022. The claim was presented on 4 June 2022. It was in time and no time issues were raised by the respondent.

49. The respondent's case was that claimant's induction had been the same as that provided to Jack Askham and Luke East. They who were not appropriate comparators as they were trainee accountants and not in the same material circumstances as the claimant. It was conceded that the induction into the finance team left room for improvement. There was no evidence that the claimant was treated less favourably in respect of his induction or that he received less support from Stuart Clements or Alex Evans.

50. Jack Askham and Luke East were trainee accountants working towards Associated Accounting Technician qualifications. Alex Evans believed that the claimant had completed his ACCA qualification which would have meant that he was fully qualified. Alex Evans spent a lot more time with the claimant than with Jack or Luke during the claimant's short period of employment.

51. There was no credible evidence that that the claimant was treated less favourably than Jack Askham or Luke East. In any event, they were not suitable comparators being at a totally different stage in their qualifications. There was also no evidence that the claimant was treated less favourably than a hypothetical comparator with his experience and qualifications.

52. The claimant's allegations about being segregated and isolated appear to be genuine and have caused the claimant some distress. The Tribunal prefers the respondent's evidence in relation to the seating arrangements. In the first office the claimant was given the only available desk and there were still Covid restrictions in place at the time. There were Perspex screens in place and there were narrow ledges on which there were computers or printers. The respondent was of the view that they were not suitable desks. The team moved to another temporary office on the Friday of the claimant's first week.

53. In the second office the claimant was placed nearest to Alex Evans who was most involved in training him. He was also given what appeared to be a more spacious area befitting his seniority rather than on a desk combined with those of the trainee accountants. He was the second highest paid and qualified in the team. The Tribunal is not satisfied that there were facts from which it could be concluded that there was conscious or unconscious discrimination

54. The respondent provided a designated meeting room for the claimant's daily prayers and accommodated his request to leave early on Fridays to attend prayers at a mosque. It was indicated to him that, once he had completed his six months' probationary period he would be allowed to work from home on Fridays.

55. Stuart Clements did make reference to a security guard who had been employed as or by a contractor on night shifts, who used the disabled toilet as a prayer room. This reference was made to the claimant on the basis that Stuart Clements had concerns and did not approve of the use of the disabled toilet as a prayer room. This

was not evidence of treatment which have the purpose of violating the claimant dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Taking into account the claimant's perception and all the circumstances of the case, it was not reasonable for the conduct to have that effect. The claimant had no complaint about the room that was provided to him for prayers.

56. It was not established that Stuart Clements informed the claimant that the team was not happy with him leaving early on Fridays. He said that he might have told the claimant that he thought some of the team may be concerned. Stuart Clements was concerned about how it would look if the claimant did not put his 39 hours in. There was no evidence that it had been put to the team and Jack Askham said that if it was for religious reasons then it was "fair enough". The messages exchanged between Stuart Clements and Alex Evans showed that there was a concern that the claimant was not making up his required hours.

57. The claimant requested three weeks annual leave. It is provided in the respondent's holiday policy that no more than two weeks' of annual holiday could normally be taken and, if an employee wished to exceed this limit, they had to make a request to management at least three months in advance. The claimant reduced his request to two weeks holiday before Stuart Clements could discuss it with HR.

58. The Tribunal is satisfied that the claimant's requests in respect of religious observances and his holiday request were accommodated and although this was discussed in front of the team there was no evidence of this being by reason of or related to his race or religion. It was a small team in a small office and the holidays taken by each member of the team were relevant to each other. Jack Ashurst said that the process for booking holidays was that the holidays were usually discussed between all the team. The claimant said that he was open and discussed his religion with the team. The Tribunal is not satisfied that it was shown there were facts from which it could conclude that the claimant had been treated less favourably because of his race or religion .

59. With regard to the remark in respect of the claimant's wife expecting a sixth child. The claimant said it was offensive to refer to the expected child as a number. Stuart Clements said he was already aware that the claimant was expecting another child. He said that he may have said something like " number six – blimey!" The claimant's evidence was that it was race or religious stereotyping as Asian/Muslim families tended to have more children. The Tribunal is not satisfied that this remark was in any way because of or related to the claimant's race or religion. It was a perfectly natural response to anyone indicating that they were expecting a sixth child. The reference to an unborn child as a number is entirely inoffensive.

60 There was clear evidence there were concerns about the claimant's performance and the hours that he had completed. These were genuine concerns and not because of the claimant's race and religion. The Tribunal accepts the clear evidence of Stuart Clements that he had concerns around the claimant's performance and his competency not marrying up with his level of qualification. Alex Evans accepted that she may have shown some frustration but it was nothing to do with the claimant's race or religion. She would have shown such frustration towards anyone she was training if it had been taking up the same amount of time. It is understandable that someone with

the claimant's experience and qualifications would have difficulty accepting that the criticisms were valid and would look for some other reason.

61. The claimant accepted that he had no concerns about David Richardson.

62. Stuart Clements had spoken to Alex Evans on 27 January 2022 and suggested to that she should show more patience with the claimant. Following this the claimant accepted that things had changed and Alex Evans was like a different woman. He said there was a 100% change in her.

63. Stuart Clements was concerned about a bank reconciliation error that appeared to have been made on a file on which claimant had worked. He said he would expect mistakes to be made. He believed that a mistake had been made was concerned and expressed his concern that someone of the claimant's level of experience should be able to undertake basic accounting tasks. There was no credible evidence that any of the discussion with the claimant and the concerns expressed were by reason of or related to the claimant's race or religion.

64. Stuart Clements denied referring to the claimant having not mentioned his Friday prayer practice at interview and stating that he "doesn't do the God thing". He had promptly allowed the claimant to have a designated prayer room and accommodated the need for Friday prayers. The evidence of Stuart Clements was clear and credible. He had been entirely supportive with regard to the adjustments to accommodate the claimant's religious observances and it was not established, on the balance of probabilities, that he had made these comments.

65. The Tribunal has considered all the evidence and is not satisfied that facts had been established that could raise an inference of conscious or unconscious discrimination because of the claimant's race or religion.

66. Sana Ahmed did not appear before the grievance appeal panel. She did not mention anything about discrimination in the summary of her exit interview. She was in the Purchase Ledger team. The team leader was interviewed as part of the grievance appeal investigation. He said that she was caught in the middle of friction between two other members of the team. Her farewell email to the team was extremely complimentary and contradicts the written statement provided by the claimant. Sana Ahmed did not appear before the Tribunal to give oral evidence and the Tribunal cannot accord a great deal of weight to it. However, the Tribunal has considered the written evidence together with all the other evidence in respect of claimant's allegations.

67. No decision had been made with regard to the performance of the claimant. A further review had been arranged on the Friday following the claimant going off sick, 4th February 2022, he was also subject to a six-month probationary period.

68. The claimant was the only Asian Muslim in the finance team during his employment with the respondent. He was only there a short time. His performance was criticised at an early stage in his employment. There was no credible evidence that this could have been on grounds of the claimant's race or religion. The expectation of the respondent in the claimant was high based on the claimant's past

record, qualifications and performance at interview. The claimant was first interviewed by Stuart Clements and again in the second interview with David Richardson and Stuart Clements. They were happy and keen for him to be employed and there was no indication of race or religion discrimination.

69. The claimant has not established that he was subject to different or unreasonable treatment and, even if this was the case, as held by the Court of Appeal in the case of Madderassy, a difference in status and a difference in treatment of the claimant only indicated a possibility of discrimination and without something more there is not sufficient material from which the Tribunal could conclude, on the balance of probabilities, that the respondent had committed an unlawful act of discrimination. The burden of proof has not shifted to the respondent. If it had done so they the respondent has shown non-discriminatory reasons which explain its conduct.

70. The claimant is still employed by the respondent but remains on long-term sickness. He now has a new manager. Fiona Gardner, HR Business Partner, gave clear and unchallenged evidence that they would consider any adjustments the claimant felt would help and it was hoped and expected that he would return to work for the respondent.

71. In all the circumstances, the unanimous judgment of the Tribunal is that the entirety of claims of discrimination because of the claimant's race and religion and harassment related to race and religion are not well-founded and are dismissed

Employment Judge Shepherd

30 March 2023