



EMPLOYMENT TRIBUNALS

Claimant: Mr D Parker

Respondent: Blackburn College

HELD AT: Manchester

ON: 21 and 22 March 2017
28 March 2017
(In Chambers)

BEFORE: Employment Judge Ross

REPRESENTATION:

Claimant: Mr P Billington, Trade Union Representative

Respondent: Mrs Rule-Mullen, Solicitor

RESERVED JUDGMENT

The judgment of the Tribunal is that the claimant's claim for unfair dismissal is not well founded and does not succeed.

REASONS

1. The claimant was employed by the respondent as a Lecturer. He had lengthy service with the respondent (the claimant said his employment started on 1st October 1989, the respondent said it started on 1st November 1993). His record was unblemished. The claimant was summarily dismissed for gross misconduct on 3rd May 2016 when he brought a claim to this Tribunal.

2. I heard from the Dismissing Officer Ms J Eastham, the Vice Principal - Financial and Corporate Services. I heard from the Appeals Officer Dr Thomas Moore, the Principal and Chief Executive. For the claimant I heard from a witness Mr Quraishi and the claimant himself.

3. At the outset of the hearing a list of issues was identified and agreed. The issues were as follows.

3.1 Can the respondent show the reason for the claimant's dismissal? The respondent relied on conduct namely intimidatory conduct towards colleagues and racial harassment.

3.2 Was the dismissal fair or unfair within the meaning of Section 98(4) ERA 1996. In particular:

- (i) did the respondent have a genuine belief based on reasonable grounds following a reasonable investigation of the claimant's conduct?
- (ii) was the dismissal procedurally fair?
- (iii) was dismissal within the band of reasonable responses of a reasonable employer?

4. If the claimant's claim succeeded the Tribunal must consider the principal of Polkey -v- A E Dayton Services Limited, contributory fault in terms of any reduction to the award and alleged failure to follow the ACAS code of practice in relation to any uplift.

The Law

5. The relevant law is at Section 95 and Section 98(4) of the Employment Rights Act 1996. The principles found in British Home Stores -v- Burchell 1980 ICR 303 are relevant. I also had regard to the principle in Salford Royal NHS Foundation Trust -v- Roldan 2010 ICR 1457 CA which reminds me that the gravity of the charges and the potential effect on the employee will be relevant when considering what is expected of a reasonable investigation. The well known case of Sainsbury's Supermarket v Hitt 2003 IRLR 23 reminds me the band of reasonable responses test applies to the respondent's investigation.

Facts

6. I found the following facts. The claimant was employed by the respondent as a Tutor in its Motor Vehicle Department. The respondent is an educational institution providing comprehensive curriculum of further education (FE), Apprenticeships and Higher Education (HE Programmes) from entry level to Masters to over 12,000 students. The college is ethnically diverse with 12.95% of employees and 27.62% of learners being of black and minority ethnicity.

7. On 11th June 2015 a lecturer in the motor vehicle department Usman Hussain sent an email to Saaika Mubeen of the respondent's HR Department informing her that there was a divide within the motor vehicle staff room and raising concerns which included racial harassment and victimisation -see page 41. I find Ms Mubeen asked Mr Hussain in an email to provide a statement which he was prepared to sign giving what was said, who said it, who was present and naming who could support

his statements, see page 40. By email of 25th June the respondent received a complaint from Mr Hussain, see page 69 to 70, Mr Ibrahim Patel also a Lecturer in the Motor Vehicle Department page 68 to 70 and from Mr Anser Yousaf at page 66 to 68.

8. As a result of concerns raised about the claimant in those statements he was suspended on the 2nd July 2015 for alleged intimidatory conduct towards colleagues and racial harassment of another employee. He was warned that if the allegation should be upheld it may result in a finding of gross misconduct.

9. The respondent then commenced an investigation which was led by Deborah Williams, Deputy Director of Resources. She held an investigatory meeting with Mr Hussain on 9th July 2015, see page 71 to 84, with Mr Yousaf on 13th July see page 85 to 91 and Mr Patel on 16th July, see pages 92 to 98. She also interviewed the claimant on the 23rd July see pages 101 to 111, Mr Ayub Moosa on 13th September 2015, pages 112 to 125, Linda O'Donnell on 22nd September 2015, pages 126 to 130 and Tracy Stuart on the 10th September 2015, pages 147 to 151.

10. The claimant was invited to a disciplinary hearing by letter of 5th November, see pages 158 to 159. The claimant was sent with that letter a copy of the respondent's disciplinary procedures together with copies of the notes of the investigatory meetings referred to above.

11. Meanwhile the claimant had been referred to occupational health. A copy of the report is at page 153 to 157. The disciplinary hearing was postponed at the claimant's request following a letter from the claimant's counsellor dated 25th November 2015, page 164 to 165. The respondent delayed the disciplinary meeting until early 2016. On 27th January 2016 the claimant was referred again to occupational health and a report received dated 4th March 2016 confirmed Mr Parker was well enough to attend a disciplinary hearing, see pages 171 to 172. Accordingly by letter dated 7th March 2016 the claimant was invited to attend a hearing on 16th March 2016.

12. The claimant presented a grievance on 10th March 2016 alleging a wider pattern of bullying and victimisation of himself as a trade union representative, page 175. The respondent informed him by letter of 15th March 2016 that it would not suspend the disciplinary process but to run the grievance and the disciplinary process concurrently. The disciplinary hearing arranged for 16th March 2016 did not proceed because of an issue in relation to a note taker. (There was a note taker provided by the college but the claimant's representative due to a disability was unable to take notes and requested another person to attend on behalf of the claimant who could also take notes in addition to the presence of his trade union representative. This request was declined).

13. Further, an invitation to a disciplinary hearing was issued 21st March and a request was received to re-arrange it.

14. A final invitation to attend a disciplinary hearing on 26th April was issued on 4th April, see pages 182 to 183.

15. The disciplinary hearing took place over two days, 26th and 27th April 2016. The minutes of the meeting are at page 184 to 213. I find the disciplinary officer had before her the disciplinary investigation report at page 58 to 65 which had been sent to the claimant with his first invitation to the disciplinary hearing together with the appendices being the three statements of complaint from Mr Yousef, Mr Hussain and Mr Patel, the investigatory meeting notes for Mr Yousef, Mr Hussain and Mr Patel, the claimant's suspension meeting, the notes of the investigation meeting with Mr Parker, Mr Moosa, Ms O'Donnell, Ms Stuart and a disciplinary procedure for staff.

16. I find that the claimant was represented at the disciplinary hearing by John Murphy, a trade union representative; the hearing was conducted by Ms Easton supported by Ms Cram from HR. The investigatory officer Ms Williams was in attendance with Ms Calcutt(HR support). Ms Mubeen was present as HR support to the investigating officer on 27th April. A note taker Ferheen Karbhari was also present. The disciplinary officer also considered the claimant's formal statement to appeal at page 214.

17. The claimant had an opportunity to call witnesses. He called Dave Oates, Mick Rutter, Wendy Holliday and Mohammed Quraishi.

18. The outcome of the disciplinary hearing was that the claimant was dismissed for gross misconduct. The dismissing officer found he had through his actions and language behaved inappropriately towards colleagues and this behaviour was deemed to constitute intimidatory conduct towards colleagues and racial harassment of another employee. She found that the claimant had acted in an intimidatory manner when discussing possible reduction of hours with staff namely Usman Hussain and Ibrahim Patel.

19. In terms of racial harassment she found that Mr Yousef had been offended by a comment "I couldn't believe he had a tan line, I didn't think black people could be blacker than they are". She found the claimant had said to Mr Hussain during Ramadan in June 2015 "tell you what mate this fasting is killing you you look like shit, just look at your eyes". The claimant then suggested Mr Hussain could hide food in his beard to eat on the sly.

20. On a separate occasion she found the claimant had joked with Mr Hussain as to whether fasting would do any good and had said something along the lines "you'll be all right won't you mate you could hide a sandwich box in there" referring to Mr Hussain's beard.

21. Where there was a factual dispute the dismissing officer preferred the evidence of other witnesses to the claimant with regard to the specific allegations. The dismissal letter is at page 215 to 220.

22. The claimant appealed on 9th May 2016 by letter (see page 221 to 225). An appeal hearing was heard on the 28th June 2016 (two previous dates were re-arranged due to unavailability of a trade union representative). The claimant was represented by a full time official of the UNITE union.

23. I find the College Principal Mr Moore had the documents listed at page 240 which were the documents available to the original disciplinary hearing plus new information submitted by the claimant, namely two blogs in relation to "black girls tan and "black people do tan" and also a reference from Mr Quraishi. The minutes of the appeal hearing are at pages 241 to 7. His appeal was rejected, see letter page 252 to 257.

24. I turn to apply the law to the facts. I turn to the first issue can the respondent show that conduct was potentially the reason for dismissal.

25. I find that the respondent had received an allegation of racial harassment from Mr Hussain. He complained that on Friday 19th June "I was walking through the workshop when I was told by Doug Parker that this fasting business is killing me, because of this there is something seriously wrong with my eyes, I need to get myself checked out. His exact words to his opinion towards fasting were "how can that possibly be good for you. He then suggested I could hide food in my beard and maybe nibble on it on the sly". Page 69 to 70. Mr Hussain reiterated the complaint in his investigatory meeting, see page 78. Mr Hussain told the investigating officer he found the comment disrespectful. He said in answer to how the claimant had said it "it wasn't in a banter way". His account was supported by Mr Yousef, see page 89.

26. Mr Yousef also made a complaint of racial harassment in relation to a comment Mr Parker had made about one of his(the claimant's) friends who was African, Mr Parker had said to Mr Yousef "I couldn't believe he had a tan line I didn't think black people could be blacker than they are". Mr Yousef said the comment was made in close proximity to the students and he didn't think it was appropriate. He said he had challenged Mr Parker and said to him "you can't come out with comments like that". He said he had been offended by the comment and wasn't sure if Mr Parker was trying to relate it to him.

27. The respondent has a disciplinary policy see page 419 to 434. The examples of gross misconduct are listed at page 432 and the examples include "sexual, racial or other harassment of another employee, student or visitor". The respondent has a single equality policy, see 462 to 471 and a bullying and harassment procedure and policy, 449 to 455. The harassment procedure makes it clear that disciplinary action can be taken against the subject of a complaint and "any disciplinary action taken at an outcome of the disciplinary hearing will reflect the severity of the offence and may include dismissal". Page 452.

28. So far as the allegations of intimidatory conduct are concerned the respondent had received complaints from three complainants about the claimant's behaviour, in particular in relation to reduction of hours. The hours within the motor vehicle department were an issue. The respondent has information from Mr Hussain, see page 74 paragraph 36 that although during public meetings Mr Parker would appear to support him but outside of those meetings he would regularly mention his hours and question as to why they had both been given those hours when Mr Parker's hours had been reduced.

29. The respondent relied on an allegation from Mr Yousef that he had heard Mr Parker say to Mr Moosa "you are giving your mates the hours".

30. The respondent had an investigation report which identified at paragraphs 4.18 to 4.27 that Mr Parker had displayed intimidatory conduct towards staff.

31. Page 432 "intimidatory conduct" is given as an example of gross misconduct the respondent's disciplinary procedure.

32. Accordingly the respondent has shown that the claimant's behaviour potentially amounted to conduct.

33. I turn to the next issue. Did the respondent have a genuine belief based on reasonable grounds following a reasonable investigation to sustain its belief in the claimant's conduct.

34. I find that the respondent has shown that they had a genuine belief that the claimant's behaviour had amounted to intimidatory conduct towards colleagues and racial harassment of another employee.

35. The respondent conducted a detailed investigation. After receiving an initial complaint from Mr Hussain see page 421, the respondent via Ms Mubeen acted as a reasonable employer in asking Mr Hussain for a written statement which he was prepared to sign giving full information, see page 40. The information was provided by Mr Hussain and also by Mr Yousef and Mr Patel (see page 66 to 70).

36. I find that these letters of complaints were followed up by investigatory meetings with Mr Hussain, Mr Patel and Mr Yousef.

37. The respondent satisfied me that the statements of these three complainants following the investigatory meetings were emailed to them, in the final comments see page 48 to 50 page 57.

38. I find that the respondent also interviewed other witnesses namely Mr Moosa who was the claimant's manager p112-124, and Miss O'Donnell (curriculum area manager) p126-130 and Miss Stuart, Vice Principal –Curriculum and quality p147-151. I find that the claimant had an opportunity to respond to the allegations made against him at the investigatory meeting see page 101 to 111 and at the disciplinary hearing by which time he had received the respondent's investigation report and copies of all the minutes of the investigatory meetings with the witnesses.

39. The claimant objected to the fact that the complainants were not called to attend the disciplinary hearing. I remind myself it is not for me to substitute my own view as to what I would have done. It is whether a reasonable employer of this size and undertaking might have conducted a disciplinary hearing without requiring the complainants to attend. I find using my industrial experience that it is not usual in a case where there has been a complaint amounting to bullying and harassment for the complainants to attend the disciplinary hearing of the alleged protagonist particularly where there is a written copy of the original complaint and copies of the investigatory meeting minutes held with witnesses which have been sent to the

claimant. In addition the claimant had the opportunity to call witnesses of his own to the disciplinary hearing and question them.

40. I therefore find that based on the evidence of the complainants the respondent had a genuine belief based on reasonable grounds following a reasonable investigation of the claimant's conduct.

41. I find that in relation to the racial harassment allegation the dismissing officer relied on three grounds. Firstly she relied on the evidence of Mr Yousef in his statement that in the context of conversation outside in close proximity to the students Mr Parker informed him about a friend who was African and had a tan line on his arm where his watch had been. He said he "couldn't believe he had a tan line" and "I didn't think black people could be blacker than they are". I find she relied on the evidence of Mr Yousef at paragraph 36 of his statement (page 88 to 89). I find she relied on his evidence that the comment was made in close proximity to students, that Mr Yousef challenged the claimant and that Mr Yousef found the comment inappropriate.

42. I find she took into account at paragraph 49 page 107 of the claimant's investigatory interview where he agreed he had had a conversation around this issue but his explanation was that he had been talking about when he was in Germany around the age of ten and that he had been talking about being a young lad and that his brother at the time had a friend who was African American and as a young boy he hadn't realised someone with a dark skin could get a sun tan.

43. At the disciplinary hearing the comment was discussed. The representative explained, see paragraph 89 that "they had a discussion about a childhood friend who had a tan line and nothing else was meant by this". The representative said "there were no learners around to be offended".

44. I find the disciplinary officer has shown that she found that the comment had been made. I find she preferred the evidence of Mr Yousef and found it to be inappropriate and offensive remark regardless of whether there were learners present or not.

45. In relation to the alleged remark to Usman Hussain during Ramadan in June 2015 I find the dismissing officer relied on the evidence of Mr Hussain in his investigatory interview that the claimant said "tell you what mate this fasting is killing you you look like shit just look at your eyes". She also found the claimant suggested he could hide food in his beard to eat on the sly and that Mr Hussain found this disrespectful.

46. She considered the claimant's evidence that there were two separate incidents. "You stated you made a genuine enquiry to Mr Hussain about his health as he looked dark under the eyes and denied saying you look like shit or its killing you. You stated in the investigatory meeting that you recalled saying something like "you'll be all right won't you mate you could hide a sandwich box" (in there) and that Usman had laughed see page 106. You said the reference to "sandwich box in there" was a reference to Usman's beard."

47. At the disciplinary hearing the claimant said there were two separate incidents, one which took place in the corridor when he opened the door for Usman and asked how he was feeling as he was fasting and didn't look well. The second incident the claimant said happened when he said to Usman he could hide a butty box in his beard in the staff room, see page 195 paragraph 71.

48. I find the dismissing officer preferred the evidence of Mr Hussain. She also relied on the evidence of Mr Yousef who supported his account. I find the dismissing officer took into account that Mr Quraishi attended the hearing as a witness however she found his evidence did not assist because he made no reference with regard to specifically what occurred in relation to the offensive remarks.

49. I am therefore satisfied that the dismissing officer has shown that she had genuine belief based on reasonable grounds following a reasonable investigation of the allegations of racial harassment.

50. I turn to the allegation of intimidatory conduct towards colleagues. I find the respondent had a genuine belief based on reasonable grounds following a reasonable investigation of this conduct. I find Ms Easton relied on conversations which took place within the motor vehicle department. I find she accepted the evidence of Mr Hussain and Mr Patel in their investigatory statements that , in public meetings it appeared he was supporting them but outside of those meetings he would regularly mention their hours and question them as to why they had both been given hours when the claimant's hours and the hours of Dave Oates had been reduced. See page 74 paragraph 36. Paragraph 39, page 75, paragraph 74, page 77 and Mr Patel page 94 paragraph 19, page 95 and paragraph 32.

51. I find the dismissing officer relied on a conversation in the staff room when Mr Parker and Mr Oates were challenging Mr Moosa the manager with regard to hours which had been allocated to Mr Hussain and Mr Patel. She relied on the evidence of Mr Yousef that he heard Mr Parker saying "you're giving your mates the hours". See page 91, paragraph 59. Mr Yousef's statement corroborated by Mr Moosa at page 117, paragraph 31. She preferred their evidence to the claimant's evidence where he denied asking Mr Moosa "why are you giving your mates the hours".

52. She relied on the claimant's evidence at the investigatory interview that you said to Mr Patel that "you needed to keep your irons in the fire" as part of the conduct which was intimidatory.

53. I am therefore satisfied that the respondent has shown it had a genuine belief based on reasonable grounds following a reasonable investigation of the allegations of intimidatory conduct.

54. We turn to the next issue. Was the dismissal procedurally fair. I remind myself that it is not what I would have done which counts. It is whether a reasonable employer of this size and undertaking could have conducted the disciplinary procedure in the way that they did.

55. The claimant made a number of complaints about the procedure. He objected on the basis that he was a trade union representative of the University College Union (UCU) and the respondent was in breach of the ACAS code of practice with reference to disciplinary and grievance procedures because paragraph 29 states "where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances however it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement". There is no dispute that there was no discussion with an official of the union at an early stage. I find this was because although the claimant stated that he was a lay trade union representative for UCU, the respondent was never informed that the claimant was a trade union representative at the relevant time. The claimant did not raise the issue at the disciplinary hearing. When he raised the issue at appeal it was properly considered by the appeals officer and dismissed, see page 253. I remind myself that the code is advisory only.

56. In any event even if there had been any procedural irregularity I find that the claimant was represented at the disciplinary hearing by a trade union official and by a full time trade union official at the appeal hearing. I find that his dismissal was based on the facts found by the dismissing officer. The claimant did not allege that his dismissal was connected to his trade union activity. There is no claim before the Employment Tribunal that the claimant was dismissed because he was a trade union representative or that he suffered detriment because he was a trade union representative.

57. The claimant alleged that the respondent failed to deal properly with his suspension. He relied on paragraph 5.5 of the disciplinary procedure (page 138 "the duration of the suspension will vary according to the situation but timescales will be as short as reasonably possible and reviewed on a regular basis. Regular contact will be made with the employee during any point of suspension and an individual manager will be identified as a contact point").

58. I find that there was regular contact made with the claimant during the period of suspension as set out in the fact finding and the named HR individual on the bottom of the suspension letter is sufficient to fulfil the requirement "an individual manager will be identified as a contact point". The claimant alleged that the suspension was not reviewed.

59. It is clear from the documentary evidence that the matter remained under review, the claimant was referred to occupational health and whilst requests for postponements of the disciplinary hearing were dealt with by HR.

60. The claimant alleged that redaction of the witness statements from the investigation was wrong therefore the dismissal was unfair. The Tribunal finds that the respondent was acting as a reasonable employer and was entitled to redact the statements where they gave detailed evidence of allegations relating to other employees who were not the complainant. The Tribunal accepts the evidence of Ms Eastham who was a clear and articulate witness that although she had dealt with disciplinary hearings for two other individuals she had dealt with them at different

points in time and had returned all the information to HR once those disciplinary hearings were concluded. The claimant was unable to identify precisely how redaction of allegations relating to other employees put him at a disadvantage. I find a reasonable employer was entitled to redact the statements in the way that they did.

61. The claimant alleged that his suspension was prolonged. He agreed in cross examination that a large part of the delay was due to his own ill health when he was not well enough to attend a hearing and due to the diary commitments of the full time trade union official in relation to the appeal hearing.

62. I find that there was a delay from the claimant being suspended on 2nd July 2015 (see page 99 to 100) until the first invitation to a disciplinary hearing on 5th November 2015. However I find that part of that delay was due to arranging occupational health appointment on 26th September 2016 (see page 152) which was a proper course of action to take in the circumstances given the claimant was absent with a stress related illness. I find the letter at page 152 is likely to contain a typographical error because it refers to appointment made on 19th August and the report is dated 21st August.

63. I find there was no significant delay in relation to the investigation. The respondent acted promptly in relation to the complaints made by Mr Hussain in June 2016 with investigatory meetings being carried out in July 2016. I accept the evidence of the respondent that during the summer holiday period it was difficult to interview all witnesses and some witnesses were not interviewed until September. I was satisfied that the time taken by the respondent was that of a reasonable respondent of this size and undertaking.

64. The claimant complained that the dismissal was procedurally unfair because the complainants were not required to attend disciplinary hearings. I find that it is reasonable where the respondent has an original written complaint and detailed minutes of investigatory interviews with complainants not to require them to attend a disciplinary hearing, particularly where there is an allegation of harassment and intimidatory behaviour. The claimant also alleged that the disciplinary hearing was unfair because Mr Quraishi was not interviewed at the investigatory stage. I find that the claimant was entitled to call witnesses which he did to the disciplinary hearing and he had the opportunity to call Mr Quraishi at that stage, which he did.

65. I find that some of the concerns faced by the claimant namely redaction of allegations and failure to require minutes to attend hearing were properly investigated and considered by the appeals officer at the appeals hearing.

66. The claimant alleged there was collusion between the witnesses. He relied on typographical errors at page 68 and 69 and elsewhere in the bundle whereby his name Doug appeared as Dough. I am not satisfied that the claimant raised this issue at the relevant time either before the dismissal officer or the appeals officer. In any event I accept the evidence of the dismissing officer that she found no evidence of collusion and considers it likely that "Dough" is an auto correct on a Qwerty keyboard.

67. I am not satisfied that there were procedural irregularities.

68. I turn to the final issue which is the heart of the case. Did dismissal fall within the band of reasonable responses of a reasonable employer.

69. I remind myself that it is not what I would have done which counts. It is not for me to substitute my own view. Could a reasonable employer of this size and undertaking have dismissed this claimant having regard to equity and the substantial merits of the case.

70. The respondent took into account that the claimant had lengthy service of well over twenty years. They were required to have regard to the fact that the consequences for the claimant to lose his job as a lecturer for gross misconduct after such lengthy service would be very serious indeed. (The principle espoused in Salford Royal NHS Foundation Trust v Roldan 2010 EWCA Civ 522) The respondent was also obliged to take into account the claimant had an unblemished record.

71. I am satisfied by the evidence of the dismissing officer that she did take these matters into account. I find she also took into account the fact that Blackburn College is ethnically diverse both with regard to staff and employees. It is relevant that within the engineering and manufacturing motor vehicle department within which Mr Parker was employed 18.52% of employees and 47.4% of learners were of black and minority ethnicity. Pages 315 to 316 and 301 to 302. I accept the evidence of Ms Eastham that the college is a part of the community which it serves and it is important to the college that they are an inclusive establishment. She took into account that the College is rated as outstanding by OFSTED and one of the findings of the inspection was that they were rated outstanding for equality of opportunity page 329 to 342.

72. For these reasons she found it was particularly important that lecturers conduct themselves appropriately. Mr Parker did not dispute that he taught predominantly learners on entry level and Level 1 study programmes. There is no dispute that study programmes at that level were designed to focus upon work experience or on activities that provided learners with life skills and that the role of the tutor was therefore crucial in providing the learners with the clear understandings of acceptable behaviours. Mr Parker accepted in cross examination that as a tutor he was a role model for the students.

73. Mr Parker did not dispute that he had undertaken equality and diversity training on 19th August 2014 (page 308 to 311) and that he undertook this type of training on a number of occasions during his employment, see the document at page 328 which confirms his attendance in 2011, 2013 and 2014. He did not dispute that the type of training undertaken is as shown in the slide presentation at 408 to 418 and includes an explanation of harassment.

74. When considering the appropriate penalty I find that Ms Eastham was entitled to take these factors into account. I find she was also entitled to take into account the fact that the claimant did not dispute the essence of the remarks made in relation to comments to Asian colleagues about fasting or a comment about a tan line. In

relation to the fasting comments it was his belief that the comments amounted to no more than "banter". He relied on the fact that one of the conversations on his case had arisen out of a context where a comment had been made about his own "girth". I find Ms Eastham was entitled to consider that even if Mr Parker intended his comments as "banter" if the individuals involved were offended by those comments and this conduct related to their race and was unwanted then allegations of racial harassment should be upheld. I find Ms Eastham was concerned that at the disciplinary hearing both Mr Murphy and Mr Parker had misunderstood the definition of harassment and that Mr Parker showed no remorse in causing his colleagues offence.

75. I find she took into account his unblemished service and his length of service but the length of his service concerned her in that Mr Parker did not consider his remarks (some of which he accepted he had made) inappropriate. In these circumstances given the ethnically diverse nature of the respondent she considered that a lesser sanction would not be appropriate and dismissal was the appropriate response.

76. I am satisfied that a reasonable employer of this size and undertaking relying on the factors which Ms Eastham did was entitled to dismiss the claimant for racial harassment and intimidatory contact.

77. Accordingly, the claimant's claim fails.

Employment Judge Ross

Date 19 April 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

21 April 2017

FOR THE TRIBUNAL OFFICE