



Courts and
Tribunals Judiciary

5 February 2024

Claimant: Dr David Miller

Respondent: University of Bristol

JUDGMENT SUMMARY

Important note for press and public: this summary forms no part of the Employment Tribunal's decision. It is provided so as to assist the press and the public to understand what the Employment Tribunal decided.

The claimant was employed by the respondent from 1 September 2018 until 1 October 2021 as Professor of Political Sociology. He contends that, since at least March 2019, he was subject to an organised campaign by groups and individuals opposed to his anti-Zionist beliefs, which, he says, was aimed at securing his dismissal.

The respondent denied the allegations and contended that the claimant was fairly dismissed because of gross misconduct in relation to statements and comments he made in February 2021. It also denied that the claimant's beliefs, as defined by him, qualified for protection under the Equality Act.

Complaints were first made in 2019 about, among other things, what was said to be antisemitic language used by the claimant. As part of the internal complaints procedure the University appointed an independent barrister to investigate. The overall conclusion of the resulting report, delivered on 4 December 2020, was that there was no formal case to answer in connection with any of the matters investigated.

Then, in February 2021, the claimant made a number of further statements which resulted in the University receiving a significant volume of correspondence. Those further comments are set out in the judgment at paragraph 97. Much of that correspondence called for the University take urgent disciplinary action.

The respondent commenced further disciplinary proceedings against the claimant relating to these additional comments made in February 2021. As part of the second disciplinary process the University instructed the same independent barrister to consider whether the statements made by the claimant in February 2021 exceeded the boundaries of acceptable speech taking account of all relevant University policies as well as, among other things, the Equality Act 2010. The barrister was also asked to

consider the International Holocaust Remembrance Alliance working definition of antisemitism, which was adopted by the University in late 2019.

The overall conclusion of the second report, dated 28 May 2021, was there was no formal case to answer against the claimant in connection with any of the statements made by or attributed to him on the basis that these statements had exceeded the boundaries of unacceptable speech and/or that they breached the Equality Act 2010. However, it was also concluded that, although the statements made in February 2021 were not antisemitic, some would have been offensive to many. The barrister also concluded that, in such circumstances, members of staff could nevertheless be subject to disciplinary action by reason of the limitations permitted by Article 10(2) relating to the right to freedom of expression.

The University then proceeded with the disciplinary hearing and dismissed the claimant for gross misconduct.

The claimant brought proceedings alleging his dismissal was unfair pursuant to section 98 Employment Rights Act 1996 and also that he was dismissed because of manifestations of his philosophical beliefs, which was said to amount to direct discrimination contrary to section 13 Equality Act 2010.

The Employment Tribunal determined that the claimant's anti-Zionist beliefs did qualify as protected beliefs pursuant to section 10 Equality Act 2010. In doing so, the Tribunal applied what are known as the **Grainger** criteria: (i) The belief must be genuinely held (ii) It must be a belief and not an opinion or viewpoint based on the present state of information available (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour (iv) It must attain a certain level of cogency, seriousness, cohesion and importance, and (v) It must be worthy of respect in a democratic society.

The tribunal determined that the claimant was dismissed because he manifested his anti-Zionist beliefs.

The Tribunal then went on to consider the limitations or restrictions on Article 9 (freedom of belief) and Article 10 (freedom of expression) rights. The tribunal concluded that, taking into account, among other things, the content and tone of the statements, the extent and nature of the intrusion on the rights of others, and any consequential impact on the employer's ability to run its business, overall, the dismissal was disproportionate. The Tribunal also considered that the University, as an academic institution, ought to be prepared to face and to weather criticism and reputational damage which flows from the exercise by its academics of their rights to speak and think freely and lawfully on areas within or connected to their research and expertise. Also relevant to content, tone and extent of manifestation was the fact that the claimant is an academic, and his dismissal occurred after what could be described as a campaign which included complaints about his teaching and comments made by him which reflected and/or were informed by his academic expertise and research. The Tribunal were also careful to recognise the "essential" and "foundational nature" of the claimant's Article 9 and 10 rights. Some of the comments for which he was dismissed relate to matters which are within the scope of his academic research and expertise.

Thus, the tribunal concluded that the dismissal of the claimant and the failure to uphold

his appeal against dismissal were discriminatory. The claimant also succeeded in his claim of unfair dismissal.

However, the Tribunal also concluded that what the claimant said and wrote about students and the University's student societies contributed to and played a material part in his dismissal. This was determined to be culpable and blameworthy because, among other things, the Tribunal found it is not appropriate for Professors publicly to aim aggressive discourse at students or student groups. Because of this the losses attributable to the unfair dismissal element of the claim were reduced by 50%.

After his dismissal the claimant posted comments on social media in August 2023 saying that "Jews are not discriminated against", they are "overrepresented" and that "Judeophobia barely exists these days". Because of this the tribunal further found that, had the claimant still been employed at this time, there is a 30% chance that he would have been dismissed shortly after these further comments. This affects the level of damages occasioned by the unfair dismissal and discrimination claims.

Other claims brought by the claimant for direct discrimination and harassment relating to matters such as failing to publish the first internal complaint report, making adverse public comments, failing to defend the claimant and subjecting him to disciplinary proceedings did not succeed and were dismissed.