EMPLOYMENT TRIBUNALS

Claimant:	**Mr A Farrell**
Respondent:	**South Yorkshire Police Authority**
Heard at:	**Sheffield**
On:	**7, 8 and 9 September 2011**
Before:	**Employment Judge Little**
Members:	**Mr G Harker** **Mr T Smith**

Representation:

Claimant:	Mr I Crane (Lay Representative)
Respondent:	Mr D Jones of Counsel

REASONS

JUDGMENT having been sent to the parties on 23 September 2011 and reasons having been requested in accordance with Rule 30(5) of the Rules of Procedure 2004,

1. These reasons were requested by the Claimant in his e-mail of 20 September 2011.

2. The Complaint

In a Claim Form presented on 22 December 2010, Mr Farrell complained of unfair dismissal and that he had been discriminated against on the grounds of his religion or belief. At a Pre-Hearing Review ('PHR') conducted by Employment Judge Rostant in May 2011 and by a Reserved Judgment by that Judge issued on 16 June 2011, the Judge struck out the discrimination complaint. That was because he had found that the Claimant's belief did not satisfy the statutory definition of belief. It follows that the only complaint considered by this Tribunal at this Hearing has been that of unfair dismissal.

3. The Facts

3.1 The Claimant had been employed by the Respondent authority for some sixteen years; latterly, as its Principal Intelligence Analyst. The employment had not only been unblemished, but, in the words of Mr Jones for the Respondent had been exemplary. As Mr Jones explained, the Claimant had made an enormous contribution to the work of the Force.

3.2 On or about 1 July 2010 and, as a result it seems in part of home study and internet research, the Claimant came to what he describes as a terrible realisation. This was that there existed what he, and it seems others, believe is a "New World Order" – a satanic movement. As part of this revelation, the Claimant now believed that the destruction of the twin towers in America – the 9/11 incident – and the 7 July London bombings were not terrorist activities, but instead were what he describes as 'false flag operations' or "inside jobs". In other words, they had been perpetrated by the US and UK Governments on their own people and they were not, as what the Claimant describes as the mainstream media, had reported, the acts of al-Qaeda or other Islamic terrorists.

3.3 That revelation and the radical change in the Claimant's world view that resulted led him to a crisis on conscience, as he was imminently required to produce, as part of his work for the Respondent, a Strategic Threat & Risk Assessment. That was to assist the Respondent and South Yorkshire Police ('SYP') in deciding on their priorities for policing and how their budget should be allocated.

3.4 In the event the crisis of conscience to which we have referred resulted in the Claimant producing what has been described as a false document which he says he did for shock purposes. This document gave an assessment of "0%" strategic threat to all miscellaneous crimes, ranging from making off without payment to burglary, but assessed a strategic overall threat of "101%" in respect of "Terrorism Internal" and "Other Terrorism External" (see page 80 in the trial bundle).

3.5 On 6 July 2010, the Claimant presented a document headed "Just the Tip of the Iceberg? 9/11 - Inside job' (page 77) to DS Teague, the Director of Intelligence of South Yorkshire Police. That document provided various internet links on 9/11 and connected themes.

3.6 On 8 July 2010, the Claimant delivered a report, again to DS Teague. It was entitled "Report to the Director of Intelligence, DS Adrian Teague. A Rich Picture of an Ignoble Lie or Enabling the One Truth" (pages 83 to 86). There were various slides attached to that document. In it, the Claimant had set out in some detail his newly discovered world

view and, among other things, he wrote:-

"My hope of employment with SYP rests in a burning desire to heighten public awareness of Government corruption, see Police complicity minimised and see the emergence of authentic not bogus threat assessments'.

3.7 The Respondents had concerns about the Claimant's welfare and suggested that he should attend Occupational Health, which eventually he did. Dr Walsh of Occupational Health considered that the Claimant had no ongoing underlying medical condition. A copy of his report is at pages 122 to 123 in the bundle.

3.8 However, the Respondent remained concerned about the Claimant and his failure to produce an assessment in the conventional form. Consideration was given to the Claimant's continued employment and a management statement of case was prepared (pages 65 to 70) with various appendices.

3.9 In turn, that led to a disciplinary hearing before Mr Nigel Hiller, the Respondent's Finance Director, on 2 September 2010. The minutes, which are a transcription of a tape of that meeting, appear at pages 125 to 152 in the bundle. During the course of that hearing, the Claimant presented his own written case (pages 153 to 162), in which he expanded upon his beliefs and appeared to acknowledge that there was now incompatibility (his word) between those beliefs and the ethos of his employer (page 158). Candidly, the Claimant wrote:-

"Deep down I know I have given you reasons to sack me."

At that stage, it appeared that the Claimant was resigned to that fate, but put his newly discovered views and his conscience above his personal and economic wellbeing.

3.10 The outcome of the 2 September meeting was dismissal. Mr Hiller on behalf of the Respondent felt that the Claimant's priorities were now about Global and National perspectives which he believed were out of balance with the priorities of the community which SYP served. He did not consider it appropriate for the Respondent to give the Claimant the opportunity within the employment to further research his theories or belief. The Claimant was dismissed because, in Mr Hiller's words:-

"Your continuing employment with the Force as Principal Analyst is untenable".

3.11 The dismissal was confirmed in the Respondent's letter to the Claimant of 7 September 2010 (pages 54 to 55). The Claimant launched an appeal against that decision, but the appeal was unsuccessful.

4. The Claimant's Case

4.1 Against that backdrop, why does the Claimant say his dismissal was unfair? The answer is set out primarily in paragraph 36 of the detailed particulars of claim which he prepared for these proceedings; indeed prepared with the assistance of Solicitors and learned Counsel. It should be noted that those advisors have, it seems, recently ceased to act for the Claimant, or at least to be on record. There are two additional matters that do not appear in paragraph 36; one of those is in the Claimant's witness statement where he suggests that his dismissal had been pre-determined that is before it ever got to Mr Hiller's consideration. A further matter, which we will deal with later on, is the suggestion made, it seems for the first time during the course of closing submissions this morning, that there was an error or fault in the Respondent's investigation.

4.2 Of the matters which were set out in the claim itself, the first of these is the contention that the Respondent has not shown a potentially fair reason to dismiss.

Secondly, there was a contention that the Claimant's suspension had been unfair.

Thirdly, that he had been denied legal representation at the appeal and that this was said to be of particular significance because of the then religious and belief element of his case.

Fourthly, that inadequate reasons were provided for the appeal decision.

Fifthly, that the sanction of dismissal was not a reasonable response.

Sixthly, that the Respondent should have redeployed him to a role that would not have involved terrorist threat analysis.

As we have mentioned, there is also the suggestion in the witness statement that, as a result of case conferences in July 2010, that there had a pre-determination of the Claimant's dismissal.

5. The Tribunal's Conclusions

5.1 Was there a potentially fair reason to dismiss?

The potentially fair reasons are set out in Sections 98(1) and 98(2) of the Employment Rights Act 1996 ('ERA'). The Respondent cites conduct, capability and some other substantial reason, but it is clear that the principal reason sought to be shown is the latter which, to give it its full description, is "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the

employee held". That is to be found in Section 98(1)(b) and is usually referred to as "Some Other Substantial Reason" ('SOSR'). Bearing in mind there is a difference between showing a potentially fair reason and assessing whether or not the reason was actually fair, the enquiry of the Tribunal at this stage is limited. It amounts to not much more than recognising that the Respondent had put forward one of the permissible reasons as the starting point in the exercise of seeking to persuade the Tribunal that the dismissal was fair. Viewed in that light, we find that the Respondent has shown the potentially – and we stress potentially - fair reason of SOSR – that is the Respondent's decision that the Claimant's continued employment was untenable as his beliefs were incompatible with the ethos of the Respondent and the proper discharge of the Claimant's duties.

5.2 Was the potentially fair reason actually fair?

Here, the consideration is governed by the relevant statutory provision found in Section 98(4) ERA which reads:-

> 'Where the employer has fulfilled the requirements of subsection (1) (*that is showing a potentially fair reason*), the determination of the question whether the dismissal is fair or unfair, having regard to the reason shown by the employer –
>
> (a) depends on whether in the circumstances, (including the size and administrative resources of the employer's undertaking), the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
> (b) shall be determined in accordance with equity and the substantial merits of the case.'

In the context of that statutory provision, we then go on to consider the specific areas where the Claimant says unfair treatment – and therefore an unfair dismissal – occurred.

5.3 Suspension

The first issue which we thought we were dealing with, at least at the beginning of the hearing and for most of it, was the question of the allegedly unfair suspension. It has to be said that it was never made clear precisely what that complaint was about. There was nothing, for instance, in the Claimant's very lengthy witness statement, and in fact during the course of cross-examination, the Claimant has withdrawn that allegation, so we need not consider it further.

5.4 Legal Representation

Mr Crane in his closing submissions to us this morning did not refer to

this issue until prompted by myself. However, he then appeared to be abandoning that part of the case; one which the Tribunal had spent some time considering and, indeed we are aware that there are many references to it in the Claimant's witness statement. As the Tribunal were somewhat concerned by the apparently rather casual abandonment of what we believed to be part of the Claimant's case, we have decided to deal with it anyway. The usual position is that legal representation is not allowed in the internal or domestic disciplinary process of an employer. Whilst it can clearly be appreciated that anyone would prefer, at least if they could afford it, skilled legal representation whenever they have a dispute with their employer, that is not the same thing as saying that the absence of legal representation will necessarily make the dismissal unfair. There are exceptional cases and we have been referred to two authorities Kulkarni –v- Milton Keynes Hospital NHS Trust [2003] IRLR 829 and R Con the application of G –v- Governors of X School [2011] IRLR 756. They are cases which deal respectively with the medical profession and the teaching profession; although, obviously, other professions may be covered as well. The question in those cases was whether a fair domestic hearing and the individual's right to a fair trial could only be achieved with legal representation, because the possible determinative effect a dismissal on the employee's ability to pursue his profession. However, we consider that this is not, in fact, the Claimant's case. Whilst he can, in one sense, be described as a professional, it has to be said, and he acknowledges, that he is not a member of a professional body. In fact, it seems there is no professional body and, in those circumstances, no professional or governing body in terms of fitness to practice. Moreover, as the Claimant readily admitted in cross-examination, there were many other areas in which he could apply his skills and qualifications post dismissal, albeit that working for a Police Authority again would be unlikely. Therefore, insofar as the legal representation point is still before us, we do not accept that its denial made the dismissal unfair.

5.5 The Reasons for the Appeal

The Tribunal accept that the minuted reason (page 44) were brief, especially after what appears to have been a lengthy meeting. There was a letter notifying the outcome (page 43) and this did explain the essence of the reason. However over and above this, the Claimant had been told by Mr Hiller, at the 2 September meeting, of the reason for the decision to dismiss (pages 151 to 152 of the minutes) and reasons were set out in the letter of dismissal, which we have already referred to, on 2 September. The Tribunal accept that those reasons satisfied the legal obligation on the Respondent having regard to the regime set out in Section 92 ERA and the ACAS Code on Discipline & Grievance at Work (2009). Whilst the appeal reasons could have been more fulsome, we do not accept that their actual format created unfairness. The Claimant knew why he had been dismissed and that

reason had not changed. We do not accept Mr Littleboy's reference to the Claimant's views as being "outlandish" – that is to say, during the course of his evidence to us, but not at the time – puts the Respondent's case for dismissal on a different basis. The Tribunal's understanding of the dictionary meaning of 'outlandish' includes bizarre and "bizarre" or "outlandish" is not, in our view, the same thing as saying that a belief was not genuinely held.

5.6 Was Dismissal the Appropriate Sanction?

The essence of the Respondent's case is that, as of the Claimant's espousal of what we will refer to as the 'new world order theory; his desire to openly express that to his employer, and his refusal – or, at the very least, his expressed overwhelming reluctance, to carry out a key part of his role –there was clearly something which of reasonable employer would be entitled to regard as an incompatibility between the Claimant's belief and the ethos of the employer. As of the 2 September 2010 meeting the Claimant was prepared to readily accept, in fact to volunteer, that conclusion himself. It was the Respondent's conclusion also. We consider that it was well within the band of reasonable decisions for this employer to dismiss.

This is a case with unusual features, but Parliament provided the 'SOSR' for employers faced with situations which were outside the norm of industrial relations matters. We agree that the Claimant's suggestion that he should simply have been warned is fanciful. There had been a radical change in the Claimant's outlook. He had a zeal to pursue his beliefs and persuade others that his outlook was correct and something should be done about it by the Respondent. We ask ourselves, rhetorically, how could the Claimant sensibly be warned not to have, or not to express, views which he vigorously and firmly held and holds to his day? In this regard Mr Jones has referred us to the case of Retarded Children's Aid Society Limited –v- Day [1978] IRLR 128 on the worth of a warning to an employee "who was determined to go his own way".

5.7 Redeployment

Again, this is a matter that we were not addressed upon by Mr Crane. In any event, the Tribunal accepts that a reasonable employer in these circumstances was entitled to take the view that trust and confidence had been destroyed, with the result that it would not be appropriate to redeploy the Claimant within the Authority.

5.8 Was Dismissal Pre-ordained or Pre-determined?

The Tribunal find no evidence of this. We have given careful consideration to the case conference notes which appear at pages 274 to 275 in the bundle. Indeed there are duplicates in the appendices to

the Claimant's witness statement. We consider that it is not surprising that the Claimant's Line Managers had concern and felt that something must be done. However, there is no suggestion that Mr Hiller had contact with those managers so as to influence his decision, or so as to remove his independence.

5.9 The Lack of Investigation

This really, on analysis, was the main thrust of Mr Crane's written submissions to us this morning. That is somewhat surprising as it had not been raised as an issue, at least in terms, within these proceedings. In any event, it is a misconceived argument. A fair employer will usually be required to investigate. For example in a "conduct" case there will need to be an investigation as to whether the prospective reason for dismissal has occurred. There will be less investigation required where there is little or no factual dispute. In Mr Farrell's case, there was no dispute that, as of about 1 July 2010, he began to hold a particular belief or world view. Nor is it in dispute that he expressed that and the wish to "evangelise" that belief within the workplace. Nor is it in dispute that this meant that he felt unable to carry out his full duties. It was not we find, in those circumstances, necessary for the Respondent to do very much investigation in any event. However in any event a detailed management case was prepared.

We understand that Mr Crane really means that the employer should have investigated the "inside job" theory.

This very late suggestion that the Respondent was obliged to investigate the truth of the Claimant's world view - is, in our Judgment, misconceived and must be rejected.

It follows that the Tribunals' unanimous Judgment is that the Claimant's dismissal was fair. There was a substantial reason to dismiss and the procedure was fair.

6. **Respondent's Costs Application**

The Application is made both under Rules 40 and 47. It is for a contribution of £700 of the Employment Tribunal Rules of Practice 2004. In terms of the application under Rule 47 we have at this stage of the hearing considered the views expressed by Employment Judge Rostant at the Pre-Hearing Review - his reasons for concluding that the Claimant's case had little reasonable prospect of success on unfair dismissal – hence, the deposit. We observe that his reasons were substantially the same as the reasons which, earlier today, we have delivered as being the reasons for finding that, in fact, that claim had no prospect of success and that it failed. The Tribunal have given consideration to the Claimant's ability to pay. We also consider that the Order which we do make today should be limited to an Order made under Rule 47 as opposed to an Order under Rule 40. If follows that as we are looking at

Rule 47 that can only apply to the costs claimed which arise after the PHR at which the deposit was ordered. Having considered the Claimant's means we consider that it would not be appropriate for him to pay the whole of the costs sought post-PHR and instead we consider that an appropriate figure would be the sum of £1,500, of which £500 is already in the Tribunal's funds account and which will now be paid out to the Respondent. In terms of the payment of the balance of £1,000, that will be payable by the Claimant to the Respondent no later than 30 September 2011.

Employment Judge Little 17 October 2011

WRITTEN REASONS SENT TO THE PARTIES ON

20th October 2011

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS