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Brighton hospital's race equality champion wins employment tribunal

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By : Frank le Duc

The race equality champion at a Brighton hospital suffered discrimination and victimisation at work, an employment tribunal has ruled.

Problems arose after compassionate leave was taken by Vivienne Lyfar-Cissé, who chaired the hospital trust's BME Network, representing BME (black and minority ethnic) staff.

She was working as a principal chemical biochemist at the Royal Sussex County Hospital when she took compassionate leave because her father had died suddenly.

A longstanding colleague, Donald Ndebele, was on annual leave at the time – and a member of staff raised concerns that vital tests might be delayed because both were absent.

But Ms Lyfar-Cissé and Mr Ndebele had liaised with each other and he cut short his holiday and returned to work to process a number of test results.

They were all handled on time but the initial panic, prompted by a midwife, had led to emails being circulated which gave rise to a grievance.

The emails were from consultant obstetrician and gynaecologist Robert Bradley and from Chris Wardle in the Biomedical Sciences Department.

The pair apologised although it later emerged that human resources director Graham White had secretly suggested that they say sorry and even wrote apologies on behalf of the pair.

An internal investigation by Adrian Twyning, associate director of operations, said that Mr Bradley and Mr Wardle should face disciplinary action.

But in a case that has taken more than six years and five sets of judicial hearings to reach a final verdict, one employment tribunal judge said that the pair had done nothing wrong.

However, the final tribunal judgment was critical of the way that Mr White had intervened – in breach of the hospital trust's own rules – and had gone behind Ms Lyfar-Cissé's back.

And the tribunal, which sat in Southampton, upheld Ms Lyfar-Cissé's claim against Mr White and Brighton and Sussex University Hospitals NHS Trust. BSUH runs the Royal Sussex.



Vivienne Lyfar-Cissé

A senior judge, Dame Ingrid Simler, president of the Employment Appeal Tribunal, said: “Mr White urged both of them to apologise in writing to the claimant in relation to certain aspects of their emails.

“They were both concerned that their emails could inadvertently have caused distress to the claimant and, for that reason, while not accepting that they had done anything wrong, they were both prepared to write emails of apology.

“Mr White drafted those apologies himself on behalf of Mr Bradley and Mr Wardle.

“But the impression given to the claimant, who was not told about Mr White’s involvement, was that the apologies had come spontaneously from Mr Bradley and Mr Wardle whereas in fact they had not.”

Judge Simler, since promoted to Mrs Justice Simler, said that a non-executive director at BSUH, Craig Jones, “was highly critical of Mr White’s intervention in the claimant’s grievance”.

It was, the judge said, “in direct contravention of the (hospital trust’s) policies and procedures, and (Mr Jones) recommended that the chief executive should consider disciplinary action against him (Mr White).”

Despite Mr Twynning’s finding and Mr Jones’s findings, no action was taken against Mr Bradley, Mr Wardle or Mr White.



Dame Ingrid Simler, also known as Mrs Justice Simler, president of the Employment Appeal Tribunal

In the latest judgment, Employment Judge Max Craft cited another earlier judgment which said that Mr White had tried to “nip the problem in the bud”.

This was because the trust had previously had to compensate Ms Lyfar-Cissé for race discrimination.

The judgment added: “One of the reasons that it was felt that the matter could escalate was because the claimant had acquired not only a reputation for robust action in response to any alleged or perceived discriminatory behaviour against any employees to whom she gave support but had also successfully pursued a discrimination claim through the employment tribunal which had resulted in a substantial financial payment to her.”

There was no explanation for Mr White’s approach – no matter how well meaning – nor the trust’s actions which did not amount to discrimination, Employment Judge Craft said.



Graham White

Vivienne Lyfar-Cissé said: “It has taken me six long years to get some justice.”

She said that BSUH and Mr White had tried to protect the members of staff who were white while victimising her – as the tribunal had found.

She said: “As reported, the outcome of the internal processes was that Mr Bradley, Mr Wardle and Mr White had a case to answer and should face disciplinary proceedings.

“They never did ... in complete contrast to BSUH’s action against me and my BME colleagues.

“The racial discrimination that I have been subjected to by way of victimisation, because I have chosen to raise my head above the parapet to expose the institutional racism at BSUH, has continued unabated, culminating in my unfair dismissal last year and my claim in this regard will be heard by the Employment Tribunal later this year.”

The trust said: “We believe all our staff are entitled to be treated with dignity and respect.

“We are disappointed by the Employment Tribunal’s judgment.”

A remedy hearing took place yesterday (Monday 5 February). Judgment was reserved – so the details of any compensation will be published at a later date.