

Opinion and request for additional information law employment essay

[Law](#)



**ASSIGN
BUSTER**

Name: Professor: Course Code: Date of Submission: LEGAL ADVICE: IN THE MATTER OF: JOSEPHAndSARAH:Advice on Behalf of Whites Merchants Bank Plc: I have been contracted to write an advice on behalf of White Merchants Bank regarding the conflict between Joseph and Sarah. In this case, Joseph seeks information from Sarah in order to bring legal challenges against Mark, the IT manager, and the Bank for unfair dismissal. Sarah on the other denotes that she is right in dismissing Joseph from his position of work.

THE FACTS:

Joseph is an employee of the bank, and began working in 2008. Sarah is the director of the customer's services of the bank, and she is the line manager for Joseph. Joseph claimed that in 2010, the company pressured him to set up an IT system, and it was against his contractual agreement with the bank. Sarah on the other hand claims that he asked Joseph to create an IT system in 2010. This is because Joseph denoted in his CV that he has an A level qualification in Information Technology. Joseph denotes that Mark, the new IT manager used discriminative words against him. For instance, Mark told him to go back to his mud hut. Referring to his African origin. Sarah on the other hand denotes that Mark complained to him on numerous occasions concerning the inefficiency of Joseph in his work. Sarah further states that she noticed differences emerging between Joseph and Mark. Joseph claims that Sarah called her to a meeting, and accused him of being responsible for the loss of the organizations customers. He claims that Sarah relied on the information from Mark. Joseph further claims that when he wanted to take an action against Mark, Sarah told him that he was late, and sent him to a probation period of one month. Sarah on the other hand claims that because

of the inefficiencies of Joseph, the bank lost customers. She therefore claims that she is justified in sacking Joseph.

THE LAW:

In this case, the bank should consider the following laws and cases.

Equalities Act 2010
Burton vs. De Vere (1996).
Evans vs. Elemeta Holdings (1982)
Laws vs. London Chronicle (1959).
Limpus vs. London General Omnibus Ltd (1862).
Employment Rights Act 1996
The 1999 case of Nagarajan vs. London Regional Transport Company.
Botham vs. Ministry of Defense (2012)
Joseph is an employee of the banking organization. An employee of an organization is a person who works under a contract of employment. This contract can either be implied, or in writing. This definition is contained in the 1996 employment rights act, s 230 (1)[1]. Joseph passed through racial abuses from Mark, and this is against the law. The bank should carefully analyze 13 of the 2010 Equalities act[2]. This section directly prohibits an individual from being discriminated in any organization because of his race, or sexual orientation. Section 19 (1) also speaks against discrimination[3]. In the 1996 case of Burton vs. De Vere, the court gave a ruling that an employer is liable by the racial behavior of a third party who is within his or her control[4]. On this basis, the employer must pay for any actions that emanate from the behavior of his third party employee[5]. Mark is a third party in this case, and he is under the control of the management of the bank. His racial behavior will most definitely make the banking organization liable for his actions[6]. The Bank should look into allegations that Joseph was given a role that was not as per his contractual agreement with the bank. The law that regulates contracts is the 1996 Employment

rights Act[7]. S1 (3) of the act denotes that an employer will provide an employee with a written statement that describes the nature of the work he is supposed to do[8]. Joseph accused Mark of victimization, and the banking organization should investigate whether these allegations are true. The organization should refer to s 26 and 27 of the 2010 equal rights act[9]. Section 26 (1 b) of the act denotes that harassment occurs when an individual is subjected to a treatment that undermines his or her dignity[10]. Section 27 of the act also protects against victimization[11]. If Mark really victimized Joseph, then the organization is also liable for his actions under the doctrine of vicarious liability. This position is taken in the courts decision involving *Limpus vs. London General Omnibus Ltd (1862)*[12]. In this case, the court gave a ruling that an organization is liable for the actions of its employees in the course of their duties. In *Nagarajan vs. London Transportation company*, the courts was of the opinion that any measure an employer takes against an employee aimed at treating in a humiliating manner amounts to discrimination[13]. The court gave a ruling that employee of an organization can also subject their colleagues to victimization. This makes an employer liable for his actions[14]. The court was also of the opinion that racial discrimination is an example of victimization[15]. The bank also has a right to dismiss without notice in case of an employee's breach of contract[16]. The case involving *Laws vs. London Chronicles* supports this fact[17]. One of the reasons that constitute a fair dismissal is based on the capability and qualifications of an employee[18]. In our case above, Joseph was incapable of efficiently carrying out the duties that the line manager assigned to him. This is despite having an A level

qualification in Information Technology. On this basis, he breached the provisions of his contract, and therefore the bank was fair in dismissing him. The decision of the court in *Laws vs. London Chronicles* supports this fact[19]. The Bank also provided a written statement highlighting their intention. On this basis, satisfying the procedures contained in s 92 (1) of the 1996 employment rights act[20].

OPINION AND REQUEST FOR ADDITIONAL INFORMATION:

In this case, Joseph can sue Mark, and the Bank for victimization. The bank is liable for the actions of Mark. This is because under the doctrine of vicarious liability, an employer is directly responsible for unlawful actions of his employees while they are carrying out the functions of the organization. This principle was set up in the case involving *Lister vs. Hesley Hall Ltd* (2001) [21]. In this case, the house of the lords gave a ruling that when an employee infringes upon the rights of another individual in the course of his duties, then the employer is liable for his action. The bank is fair in dismissing Joseph because of his incapability in conducting his work. Joseph cannot successfully bring a case against the institution on the grounds of contract variation. This is because in *Evans vs. Elemeta Holdings* (1982) the court gave a ruling that an employer has the authority to vary a contract, as long as the provisions are reasonable[22]. In this case, the provisions are reasonable because Joseph himself said that he is computer literate, and has an A level qualification in computers. Basing on these arguments, the dismissal was fair, because there was a fair reason to dismiss Joseph. The procedure of dismissing him was also fair, that is he was provided with a

written statement, as per s 92 (1) of the employment rights act[23]. The bank also acted in a reasonable manner. In case Joseph still wants to bring a case against the Bank, even though the bank is fair in dismissing him, the law allows him to do so. He is not limited to the changes of employment laws that took effect on the 6th of April 2012. According to these laws, an employee can institute a claim on unlawful dismissal after 2 years. Joseph was employed before 2012. In my own opinion, the bank should suspend Mark, and carry out investigations pertaining to the allegations of Joseph. If they are true, then the bank should sack Mark on the grounds of misconduct. The 1996 Employment Rights s 98 (2) supports this opinion[24]. It is also important to suspend the dismissal of Joseph and investigate whether he is incompetent, and thereafter, the bank can apply the provisions of the 1996 Employment rights act, s 98(2).

Conclusion:

In my own opinion, the bank must deal with any instances of a breach of law. It is also the duty of the college to initiate measures that will protect its staff from racialism. This will shield the banking organization from civil suits emanating from its inability to protect its employees and customers against such behaviors. The banking organization should retain Joseph in case he is found innocent, and measures must be in place to protect him against victimization.