Case Number: 3200012/2016

RM

EMPLOYMENT TRIBUNALS

Claimant: **Mr R Sarsembaye**

Respondents: **(1) KKMR Group Limited**
(2) Timur Kim

Heard at: **East London Hearing Centre**

On: **7 February 2017**

Before: **Employment Judge Brown**

Members: **Ms M Long**
Mrs GA Everett

Representation

Claimant: Mr A Mahmood (Lay Representative)
Respondents: Did not attend

JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

1. **The First Respondent is liable to the acts of the Second Respondent under *s109 Equality Act 2010* in relation to the Claimant's complaints of race discrimination and race harassment.**

2. **The First Respondent subjected the Claimant to race discrimination.**

3. **The First Respondent subjected the Claimant to race harassment.**

4. **The First Respondent automatically unfairly constructively dismissed the Claimant on 3 August 2015.**

5. **The First Respondent failed to provide the Claimant with itemised payslips.**

6. **The First Respondent made unlawful deductions from the Claimant's wages when it failed to pay him, at all, during his employment.**

7. The Claimant did not bring claims for breach of contract or holiday pay.

8. The Tribunal orders the First Respondent to pay the following sums to the Claimant on account of race discrimination and harassment:

(i) £15,000 for injury to feelings plus £2,926 interest; a total of £17,926 for injury to feelings;

(ii) £24,673.50 loss of earnings plus £2,406.51 interest; a total of £27,080.01 for loss of earnings.

Therefore the First Respondent shall pay to the Claimant a total of £45,006.01 for race discrimination and harassment.

9. The Tribunal orders the First Respondent to pay to the Claimant £18,528.55 gross for unlawful deductions from wages.

10. **The Tribunal does not award compensation for unfair dismissal because the Claimant's loss of earnings has been compensated fully in his race discrimination and harassment claim.**

REASONS

Preliminary

1 The Claimant brought complaints of automatic constructive unfair dismissal, unlawful deductions from wages, failure to pay an itemised pay statement, *s13 Equality Act 2010* direct race discrimination, *s26 Equality Act 2010* race harassment, along with an ACAS uplift, against the First and Second Respondent.

2 Before today's hearing, the Claimant settled his claim against the Second Respondent. The claim proceeded today against the First Respondent only. The First Respondent is in liquidation and did not attend the hearing.

3 There was a list of issues. The Claimant confirmed that the issues in it accurately set out the issues in the claims that he was bringing. The issues were:

List of Issues

The Complaints

4 By a claim form presented on 18 December 2015, the Claimant Mr Ruslan Sarsembayev brought complaints of automatic constructive dismissal, unlawful deduction of wages, failure to provide itemised pay slips, race discrimination and harassment. The Respondent is in liquidation, has not taken part in the proceedings and will not be present at the final hearing.

The Issues

Automatic constructive unfair dismissal

5 Was the Claimant dismissed if the reason (or, if more than one, the principal reason for the dismissal) is that the Claimant alleged that the Respondent had infringed a right of his which is a relevant statutory right, specifically under section 104(4)(a) and section 104(4)(c) of the Employment Rights Act 1996?

6 Did, the Claimant without specifying the right, make it reasonably clear to the Respondent what the right claimed to have been infringed was?

7 Further, did the Claimant resign as a result of an act or omission or series of acts or omissions by the Respondent?

8 Did that conduct amount to a fundamental breach of the Claimant's contract of employment?

9 The term of the contract relied upon by the Claimant is the implied term of trust and confidence. He relies on the failure of the Respondent to remunerate him, their failure to provide him with pay slips and the discrimination he was subjected to.

10 Did the Claimant affirm the contract following the breach?

11 Was any such fundamental breach of contract by the Respondent (which was not affirmed by the Claimant) the reason why the Claimant resigned?

12 Did the Respondent act reasonably in treating that reason as sufficient for dismissal?

Unlawful Deduction of Wages

13 Has the Claimant suffered from unlawful deduction of wages, contrary to Clause 8 of his contract of employment and Section 13 Employment Rights Act 1996?

Failure to provide itemised pay statements

14 Has the Respondent failed to provide the Claimant with any or all of his itemised pay statements between September 2014 and August 2015 contrary to Section 8 of the Employment Rights Act 1996?

Section 13 Equality Act 2010: Direct discrimination because of race

15 The Claimant puts his racial group as an ethnically Asian Kazah.

16 Did the Respondent treat the Claimant less favourably than a real or hypothetical comparator on the grounds of race (Section 9 Equality Act 2010) as identified by the

Claimant in the table below?

Direct Race Discrimination, Section 13 Equality Act 2010				
No	Incident	Date	Persons involved	Comparator
1.	Mr Kim withholding the Claimant shares in the Respondent	3 July and I November 2015	Claimant, Mr Kimand Mr Karapetyan	Hypothetical
2.	Constant belittling and condescending treatment from Mr Kim to the Claimant (at the workplace)	September 2014 – 2015	Claimant, Mr Kim	Mr Karapetyan
3.	Respondent's failure to pay the Claimant and/or provide itemised pay statements to him	September 2014 – 2015	Claimant, Mr Kim	Mr Karapetyan

Section 26 Equality Act 2010: Harassment related to race

17 Did the Respondent engage in unwanted conduct as follows:

17.1 In or around December 2014, Mr Kim making racist comments to the Claimant in the workplace stating: *"You don't get to teach me anything. You have to experience. You are from Kazakhstan. If you don't like something, there's the door!"*

17.2 In December 2014, Mr Kim describing a young black intern at the workplace, in the presence of the Claimant, as: *"stinks like all black people".*

17.3 Between February 2015 to June 2015, Mr Kim describing South Korean as Chinese Interns, at the workplace, in the presence of the Claimant, as: *"stupid narrow eyed Asians" and "I fucking hate Chinese"*.

17.4 In or around April 2015 Mr Kim describing a student from India, at the workplace, in the presence of the Claimant as: *"corner shop girl".*

17.5 In June 2015, Mr Kim shouting at the Claimant and congratulating Mr Karapetyan for the photo shoot at the Claimant's workplace.

17.6 In June 2015, Mr Kim telling the Claimant, at the workplace, to *"just fuck*

off then".

17.7 On 14 July 2015, Mr Kim bursting into the Claimant's room saying to the Claimant, in Russian: *"are you fucking mad?"*

18 Was the conduct related to the Claimant's race and/or the race of others?

19 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

20 If not, did the conduct have the effect of violating the Claimant's dignity or creating and intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

21 In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

ACAS Uplift

22 Did the Respondent fail to comply with the Acas Code in relation to the Claimant raising his concerns regarding the treatment he was subjected to?

23 If so, it is just and equitable to award the Claimant up to 20% uplift on his compensation?

Findings of Fact

24 The Claimant gave evidence to the Tribunal. The First Respondent did not attend and did not give evidence. The Tribunal found the Claimant to be an honest and reliable witness. He answered questions openly and referred to documentary evidence which supported what he was saying, when appropriate. The Tribunal accepted the Claimant's evidence as found as follows.

25 The Claimant was employed by the First Respondent as a Public Relations Officer from 8 September 2014. He signed a contract on 14 August 2014, which provided that he would be paid £20,500 gross per annum; which is £1,708.33 gross per month. The Claimant contended that he should have been paid £394.23 gross per week or £328.98 net per week. The Tribunal accepted the Claimant's calculations in this regard.

26 The Second Respondent was an owner and director of the First Respondent. The Claimant is ethnically Asian Kazak, from Kazakhstan. The Claimant invested £4,500 in the First Respondent company.

27 Despite the terms of his contract, the First Respondent never paid the Claimant any salary and the Claimant was not given any shares in the company, despite having invested money in it and despite expecting to be given shares.

28 The First Respondent never gave the Claimant payslips. The Claimant told the

Tribunal - and we accepted - that he never received the payslips that were in the Employment Tribunal bundle. He had to rely on his family for financial support.

29 The Claimant complained regularly to the Second Respondent about not being paid. Initially, the Second Respondent told the Claimant that the First Respondent was a start up and that he would have to wait for payment. Later, however, the Second Respondent started to insult the Claimant about being a Kazak, amongst other things, if the Claimant asked to be paid.

30 The Claimant believed that an employee colleague called Mr Karapetyan, who was also from Kazakhstan, but was of Russian, Armenian and Jewish heritage and ethnicity, was paid, when the Claimant was not. Mr Karapetyan never complained about not being paid when the Claimant did.

31 The Claimant told the Tribunal that the Second Respondent regularly demeaned his work, crediting his work to other employees and shouting derisively about the Claimant's ideas, while congratulating other employees when they suggested exactly the same ideas.

32 The Tribunal accepted the Claimant's evidence that the Second Respondent made racist comments about a number of employees on the basis of their ethnicity. The Tribunal accepted the Claimant's evidence that the Second Respondent did this in the Russian language, which the Claimant could understand, and that the Claimant felt humiliated and degraded by this racist environment, which was directed towards him and to others of non Russian and non white origin.

33 The Tribunal accepted the Claimant's evidence that the Second Respondent withheld the Claimant's shares in the First Respondent from 3 July 2015; that he constantly belittled the Claimant and subjected him to condescending treatment between September 2014 and August 2015; and failed to pay the Claimant or provide him with itemised pay statements between September 2014 and August 2015.

34 The Tribunal also accepted the Claimant's evidence that, in around December 2014, the Second Respondent made racist comments to the Claimant in the workplace, stating, *"You don't get to teach me anything you have no experience you are from Kazakhstan, if you don't like something, there is the door".*

35 In December 2014 the Second Respondent described a young black intern in the workplace in the presence of the Claimant as, *"stinks like all black people"*. Between February 2015 and June 2015 the Second Respondent described South Korean and Chinese interns in the workplace in the presence of the Claimant as, *"Stupid narrow eyes Asians"* and *"I fucking hate Chinese"*.

36 In or around April 2015 Mr Kim, the Second Respondent, described a student from India at the workplace, in the presence of the Claimant, as, *"a corner shop girl"*.

37 In June 2015 the Second Respondent shouted at the Claimant, but congratulated Mr Karapetyan, for a photo shoot at the Claimant's workplace. In June 2015 the Second Respondent told the Claimant, in the workplace, that whatever the Claimant was doing

was wrong. On 3 July 2015 the Second Respondent told the Claimant, in the workplace, to *"just fuck off then"* and on 14 July 2015 the Second Respondent burst into the Claimant's room and said to the Claimant in Russian *"are you fucking mad"*.

38 The Tribunal finds that the Second Respondent did those things when acting as a director and owner of the First Respondent and in the course of his employment by the First Respondent and in the course of the Claimant's employment by the First Respondent, acting as agent for the First Respondent.

39 Despite this treatment by the Second Respondent, the Claimant did not initially resign, because he felt that he had better prospects in the fashion industry in the UK. He also wished to stay in the UK, because he felt secure here because of his sexual orientation. He was concerned that he would experience intolerance in Kazakhstan. The Claimant's visa was also dependent on him having work in the United Kingdom.

40 Eventually however, the Claimant resigned on 3 August 2015, by email. In his email he said that he was resigning amongst other things because of "*belittling opinions, public and professional humiliation…."*. He asked to be paid his salary owed from August 2014.

41 The Claimant told the Tribunal - and we accepted - that the First Respondent's failure to pay the Claimant and the Second Respondent's racist behaviour towards him, when he asked to be paid, were a substantial part of the reason that he resigned.

Relevant Law

42 By *s39(2) Equality Act 2010*, an employer must not discriminate against an employee by subjecting him to a detriment, or dismissing him. By *s39(7) EqA* dismissal includes constructive dismissal. By *s40 EqA* an employer must not harass his employee.

43 Direct discrimination is defined in *s13 EqA 2010* and harassment is defined in *s26*.

44 By *s109(1)-(3) EqA* anything done by a person in the course of their employment must also be treated as done by their employer and anything done by an agent for a principal, with the authority of the principal, must be treated as done by the principal. It does not matter whether the thing is done with the employer's or principal's knowledge.

45 Time limits are set out in *s123 EqA 2010*, which makes provision for continuing acts.

46 The shifting burden of proof applies to claims under the Equality Act 2010, s136 EqA 2010.

Direct Race Discrimination.

47 Direct discrimination is defined in *s13(1) EqA 2010*:

"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

48 By s9 EqA 2010, race is a protected characteristic and race includes colour; nationality; ethnic or national origins.

49 In case of direct discrimination, on the comparison made between the employee and others, "there must be no material difference relating to each case*," s23 Eq A 2010*. The requirement for comparison in the same or not materially different circumstances applies equally to actual and to hypothetical comparators, as highlighted *in Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11.

Harassment

50 *s26 Eq A* provides

"(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

…..

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect."

Constructive Automatic Unfair dismissal

51 *S94 Employment Rights Act 1996* states that an employee has the right not to be unfairly dismissed by his employer. In order to bring a claim of unfair dismissal, the employee must have been dismissed.

52 By *s95(1)(c) ERA 1996*, an employee is dismissed by his employer if the employee terminates the contract under which he is employed, in circumstances in which

he is entitled to terminate it without notice by reason of the employer's conduct. This form of dismissal is known as constructive dismissal.

53 In order to be entitled to terminate his contract and claim constructive dismissal, the employee must show the following:

53.1 The employer has committed a repudiatory breach of contract. Every breach of the implied term of trust and confidence is a repudiatory breach, *Morrow v Safeway Stores* [2002] IRLR 9;

53.2 The employee has left because of the breach, *Walker v Josiah Wedgewood & Sons Ltd* [1978] ICR 744;

53.3 The employee has not waived the breach- in other words; the employee must not delay his resignation too long, or indicate acceptance of the changed nature of the employment.

54 The evidential burden is on the Claimant. Guidance in the *Western Excavating (ECC Limited) v Sharp* [1978] ICR 221 case requires the Claimant to demonstrate that, first, the Respondent has committed a repudiatory breach of his contract, second, that he had left because of that breach and third, that he has not waived that breach.

Nature of Repudiatory Breach

55 In order to establish constructive dismissal based on a repudiatory breach of the implied term of trust and confidence, the employee must show that the employer has, without reasonable and proper cause, conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between them, *Mahmud v Bank of Credit and Commerce International SA* [1997] ICR 606, *Baldwin v Brighton and Hove City Council* [2007] ICR 680, and *Bournemouth University Higher Education Corporation v Buckland* [2009] IRLR 606.

56 The question of whether the employer has committed a fundamental breach of the contract of employment is not to be judged by the range of reasonable responses test. The test is an objective one, a breach occurs when the proscribed conduct takes place.

57 To reach a finding that the employer has breached the implied term of trust and confidence requires a significant breach of contract, demonstrating that the employer's intention is to abandon or refuse to perform the employment contract, Maurice Kay LJ in *Tullett Prebon v BGC* [2011] IRLR 420, CA, para 20.

58 If the Tribunal finds that the Claimant was constructively dismissed, it must consider what was the reason for dismissal and whether it was a potentially fair reason under *s98 Employment Rights Act 1996*.

59 By *s104 Employment Rights Act 1996*, it is automatically unfair to dismiss an employee if the reason (or principal reason) for the dismissal was that he had alleged that his employer has infringed one of his rights under the *ERA 1996*:

"**S104 Assertion of statutory right**
(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or
(b) alleged that the employer had infringed a right of his which is a relevant statutory right.
(2) It is immaterial for the purposes of subsection (1)—
(a) whether or not the employee has the right, or
(b) whether or not the right has been infringed;
but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.
(3) It is sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.
(4) The following are relevant statutory rights for the purposes of this section—
(a) any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to an [employment tribunal],…."

Wages

60 By *s13 ERA 1996* employees have the right not to suffer unlawful deductions from wages.

61 By *s8 ERA 1996* employees have the right to be given itemised pay statements by their employers.

Discrimination – Injury to Feelings Awards

62 The Tribunal is guided by principles set out in *Prison Service v Johnson* [1997] IRLR 162 in relation to assessing injury to feeling awards. Awards for injury to feelings are compensatory, they should be just to both parties, fully compensating the Claimant, (without punishing the Respondent) only for proven, unlawful discrimination for which the Respondent is liable. Awards that are too low would diminish respect for the policy underlying anti discrimination legislation. However, excessive awards could also have the same effect. Awards need to command public respect. Society has condemned discrimination because of a protected characteristic and awards must ensure that if it seen to be wrong.

63 Awards should bear some broad general similarity to the range of awards in personal injury cases. Tribunals should remind themselves of the value in everyday life of the sum they have in mind by reference to purchasing power. It is helpful to consider the band into which the injury falls, see *Vento v Chief Constable of West Yorkshire Police* [2003] IRLR 102. The EAT increased the Vento bands for injury to feelings to allow for inflation in *Da'Bell v NSPCC* [2010] IRLR 19. Da'Bell was heard at the end of 2009. From then the lower band is £500 to £6,000 the middle band is £6,000 to £18,000 and the upper band is £18,000 to £30,000. In Vento the Court of Appeal said that the top band should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the grounds of race or sex. The middle band should be

use for serious cases which do not merit an award in the highest band the lower band is appropriate for less serious cases such as where the act of discrimination is an isolated or one off occurrence.

64 In *Kemeh v Ministry of Defence* [2014] EWCA Civ 91, [2014] IRLR 377, the Court of Appeal reduced an Employment Tribunal's award for injury to feelings of £12,000 in respect of a one-off racial slur. The Tribunal had seen the case as one falling within the middle band of Vento but the Court of Appeal disagreed and reduced the award to £5,000. Without wishing to minimise the offence, it was felt that a one-off slur such as this, with no lasting employment consequences, would normally only qualify for the lower Vento band.

65 In *Simmons v Castle* [2012] EWCA Civ 1039 *Simmons v Castle* [2012] EWCA Civ 1288, the Court of Appeal ruled as follows; "Accordingly, we take this opportunity to declare that, with effect from 1 April 2013, the proper level of general damages in all civil claims for (i) pain and suffering, (ii) loss of amenity, (iii) physical inconvenience and discomfort, (iv) social discredit, (v) mental distress, or (vi) loss of society of relatives, will be 10% higher than previously, unless the claimant falls within section 44(6) of LASPO.

66 It seems that awards of compensation for injury to feelings ought to be increased in accordance with the +10% principle

67 By *s126 ERA 1996* Tribunals shall not award compensation for unfair dismissal and discrimination in respect of the same dismissal and loss caused by it.

Discussion and Decision

Automatic Unfair Dismissal

68 The Tribunal has accepted the Claimant's evidence that the First Respondent never paid him, despite the terms of his contract and that the Second Respondent subjected the Claimant to racist abuse when the Claimant asked to be paid.

69 The Tribunal finds that the First Respondent's behaviour, in failing to pay the Claimant and subjecting him to abuse, when he asked to be paid and on other occasions, amounted to a fundamental breach of contract. The Tribunal finds that the Claimant resigned in response to it. The behaviour, in not paying the Claimant and subjecting him to racist abuse when he asked to be paid, was a continuing state of affairs and the Claimant therefore did not delay in resigning in response to it. The Claimant was constructively dismissed.

70 The Tribunal then goes on to consider what was the reason, or principal reason, for the constructive dismissal.

71 On the evidence, the Tribunal accepts that the principal reason for constructive dismissal was the Respondent's failure to pay the Claimant and its racist abuse of him when he asked to be paid. The Claimant resigned because the First Respondent breached the term of trust and confidence between employer and employee, particularly by abusing him when the Claimant asserted his right not to suffer unlawful deductions. Accordingly, the Tribunal finds that the Claimant was automatically unfairly dismissed

under *s104 Employment Rights Act 1996*.

Unlawful Deductions from Wages

72 The First Respondent failed to pay the Claimant, at all, in breach of the terms of the Claimant's employment contract. It therefore subjected him to unlawful deductions from wages from the start of his employment to its termination. The First Respondent also failed to provide an itemised pay statement to the Claimant, at any time, in breach of *s8 Employment Rights Act 1996*.

Direct Race Discrimination

73 With regard to direct race discrimination, the First Respondent did not give the Claimant any shares in the company despite the Claimant having invested money. The Second Respondent belittled and condescended to the Claimant and did not pay the Claimant and failed to give him itemised pay statements. The Second Respondent subjected the Claimant to racist comments when he asked to be paid and other times.

74 The Tribunal considered whether this amounted to less favourable treatment of the Claimant compared to a comparator.

75 Clearly, the belittling and discriminatory comments on the basis of race were less favourable treatment because of race. The First Respondent is liable under *s109 EqA 2010* for the Second Respondent's comments. It subjected the Claimant to race discrimination.

76 With regard to the failure to pay the Claimant, the Claimant relied on Mr Karapetyan as a comparator. The burden of proof was on the Claimant to prove the primary facts. On the balance of probabilities, the Tribunal did find that Mr Karapetyan was paid, when the Claimant was not, because Mr Karapetyan did not complain that he had not been paid. Accordingly, we find that the First Respondent did subject the Claimant to less favourable treatment than Mr Karapetyan, who was of a different racial origin. Given that the Second Respondent also subjected the Claimant to racist abuse when the Claimant asked to be paid, the Tribunal finds that it could conclude from these facts that the failure to pay the Claimant and give him pay slips was because of race.

77 With regard to the failure to give the Claimant shares, the Tribunal has found that the Claimant invested money in the company. The Tribunal concludes that it is likely that the First Respondent would have issued shares to another investor who had invested money in the company. Again, because of the otherwise discriminatory treatment to which the Claimant was subject, we find that we could conclude that the failure to give him shares was because of his race and amounted to less favourable treatment. Therefore the burden of proof shifted to the First Respondent to show that race was not part of any other reason why it did not pay him, issue him payslips and give him shares.

78 The Respondent has not attended and has not given evidence and the Tribunal does not accept the matters set out in its ET3. We found the Claimant to be a credible witness.

79 Accordingly, we find the First Respondent has not discharged the burden of proof to show that race was not part of the reason for the treatment. We find that the First Respondent did subject the Claimant to direct race discrimination when it failed to pay him, failed to give him shares and failed to give him itemised payslips.

Race Harassment

80 With regard to race harassment, the Tribunal has found that the Second Respondent did subject the Claimant to all the acts of harassment set out in the list of issues. We find that that that behaviour was unwanted by the Claimant in every regard and we find that that behaviour was related to race. Many of the comments made were related directly, either to the Claimant's race, or to other people's races. We also find that the belittling treatment of the Claimant and the insulting words towards him which did not specifically refer to race, were also related to race, because the Second Respondent treated the Claimant detrimentally because of race in a persistent, ongoing manner. We accepted that the Claimant's contention that the Second Respondent had a view of him as being inferior, because he was a member of a minority race from the former Soviet Union.

81 We found that the behaviour had both purpose and effect of violating the Claimant's dignity and creating the prohibited environment. We take into account the perception of the Claimant. We find that it was reasonable for him to perceive that behaviour to be belittling, humiliating and offensive. The circumstances of the case also indicate that the Claimant was humiliated and belittled, despite his best efforts in the workplace.

82 We find the First Respondent was liable for the acts of the Second Respondent, pursuant to *s109 Equality Act 2010* and that it subjected the Claimant to race harassment.

No Claim for Breach of Contract or Holiday Pay

83 The Claimant did not bring a breach of contract or a holiday pay claim and therefore we give no judgment on such claims.

Compensation for Race Discrimination and Race Harassment

84 With regard to injury to feelings, we have found that the First Respondent - through the actions of the Second Respondent, for which it was liable - subjected the Claimant to race discrimination and race harassment throughout the Claimant's employment, by not paying him and subjecting him to abuse about the country of his origin when he asked to be paid. We have found that the First Respondent's director and agent, the Second Respondent, belittled the Claimant's work and ideas.

85 We accept the Claimant's evidence that he felt personally attacked, disgusted and intimated and shocked and humiliated by the conduct. We accept his evidence that an atmosphere was created which was racially abusive towards him and other employees. This led to the Claimant resigning and therefore losing his job and having to leave the UK, losing friends and job opportunities. We accept the Claimant's evidence, however, that he feels better now and has "moved on", after leaving the workplace.

86 With regard to the appropriate band of *Vento,* we considered this was a lengthy period of serious harassment and discrimination and had serious consequences, including job loss. However, we find the Claimant has been able to put those things behind him and there is no evidence of any medical intervention required. We find therefore that this case is appropriately in the middle band of *Vento.* The middle band was £6,000 - £18,000 in 2009 and before the 10% uplift applied in *Simmons v Castle.* We find the appropriate band is now over £7,000 to £20,000.

87 For this year long abuse and failure to pay and the loss of his job and having to move countries, we think that an award in the upper part of the middle band is appropriate. We award £15,000 for injury to feelings. We also award interest at 8% from September 2014 until today. That is 890 days. The calculation is 890 ÷ 365 x 0.08 x £15,000 = £2,926. The total for injury to feelings and interest is £17,926.

88 As the Tribunal has indicted the Claimant resigned as a consequence of the race harassment and race discrimination and therefore the First Respondent is also liable to pay damages for the loss of his job, because the constructive dismissal was an act of race discrimination. The Claimant lost the opportunity to work in the UK and we accept that it was difficult for him to mitigate his loss. He claims 75 weeks' loss from the date of his resignation to the date of the hearing. The Tribunal finds that he has made efforts to find alternative work, as evidenced by pages 184 – 249 of the bundle. The First Respondent has not produced evidence of alternative work which the Claimant could, or should have obtained in the period. The Tribunal therefore does award 75 weeks at £328.98 net, a total of £24,673.50. It awards interest at 8% on that figure, from the mid point of the period. We award interest for 445 days. The calculation is 445 ÷ 365 x 0.08 x £24,673.50 = £24,06.51.

89 The Claimant also claimed three months future loss. However, while the Tribunal has accepted that the Claimant has not been able to find work, we conclude that 75 weeks has been an adequate period in which he ought to have been able to find work. He was on a relatively modest wage at the First Respondent. We do not award the Claimant any future loss from today.

Award for Unlawful Deductions from Wages

90 The Claimant claims 47 weeks' loss of earnings. Unlawful deductions from wages are awarded gross. We award 47 x £394.23 = £18,528.85 gross for unlawful deductions from wages.

Unfair Dismissal Compensation

91 With regard to unfair dismissal, the Claimant was not employed for long enough to be entitled to a basic award. He also was not employed for long enough in order to earn statutory rights; so he does not need to be compensated for loss of statutory rights. Compensation for loss of earnings has been awarded fully under the race discrimination complaint. Therefore we do not make any further award on account of the unfair dismissal complaint, because to do so would be to award double recovery.

Employment Judge Brown

22 February 2017