



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Bouya

**Respondent:** UK Mission Enterprise Ltd

**Heard at:** London Central

**On:** 23, 24 & 27 March 2017  
28 March (in chambers)

**Before:** Employment Judge H Grewal  
Mr D Schofield and Ms L Moreton

## Representation

**Claimant:** Mr E Walker (Law Centre Advisor) for part of hearing.

**Respondent:** Mr D Soanes, Solicitor

# JUDGMENT

The unanimous judgment of the Tribunal is that:

- 1 The complaint of breach of contract/unauthorised deductions from wages is not well-founded;
- 2 The Tribunal does not have jurisdiction to consider the complaints of direct discrimination and harassment set out at paragraph 2.2 (f), (h), (i) and (j) of the Reasons;
- 3 The complaints of direct discrimination and harassment set out at paragraph 2.2 (a) – (e), (g), (k) – (o) of the Reasons are not well-founded;
- 4 The Tribunal does not have jurisdiction to consider the complaint of victimisation set out at paragraph 2.3(a) of the Reasons;
- 5 The complaint of victimisation set out at paragraph 2.3(b) of the Reasons is not well-founded.

# REASONS

1 In a claim form presented on 2 October 2016 the Claimant complained of breach of contract, unauthorised deductions from wages and discrimination because of race and/or religion/belief. The Claimant commenced Early Conciliation (“EC”) with ACAS on 10 August 2016 and the EC certificate was given on 10 September 2016.

## The Issues

2 The Issues that we had to determine were as follows:

### Breach of contract/unauthorised deductions from wages

2.1 Whether it was a term of the Claimant’s contract that he was to be paid £9 per hour.

### Direct discrimination and harassment

2.2 The Claimant described his race as being of Arab ethnic origin and of Moroccan national origin. He described his religious belief as being a Sunni Muslim who did not believe that it was necessary to go to mosque on Fridays or pray five times a day. Whether the Respondent subjected the Claimant to harassment related to race and/or religion or discriminated against him because of race and/or religion by doing any of the following (the particular type of discrimination alleged appears in brackets after each allegation):

(a) Throughout his employment Mohammed Yusuf (“MY”), Yoonas Malikal (“YM”) and Mohamed Shareef Valappil (“MSV”) sneaked around furtively to watch him while he worked, checked his work, “pranked” him and continuously hassled him (harassment and direct discrimination – race and religion);

(b) Throughout his employment when they were rostered to load vans MSV gave him the heaviest and most difficult loading jobs (direct discrimination – race and religion);

(c) Throughout his employment YM and Reyadh Al-jawahari did not allocate him jobs that involved receipt of large tips (direct discrimination – race and religion);

(d) Every Friday when MY, YM and MSV went to the mosque, they “looked daggers” at the Claimant, spoke in their own language as they walked past him, pointed at him and laughed or refused to look at him. On occasions they demanded that he too attend Friday prayers, although he had made it clear that it was not part of his religious belief (harassment - religion);

(e) On 21 March 2016 and thereafter MSV, at the instigation of MY, spelt the Claimant’s name incorrectly in spite of being told to correct it (harassment - race);

(f) On 31 March 2016 MY told the Claimant that he used to own shops and properties but that he had been deprived of these by Arabs and white people and that Arabs did not follow the religion of Islam (harassment - race);

- (g) From 22 April 2016 on Fridays MSV, at the instigation of MY, assigned any second deliveries to the Claimant and other drivers who were not part of the South Asian Muslim group (direct discrimination – race and religion);
- (h) Prior to 26 April 2016, when the Claimant went to get a cooked meal (which was provided to all other staff) MY said that he was not allowed to get any as they did not know what he wanted to eat (direct discrimination - race);
- (i) At a meeting on 26 April MY said that the Claimant was not given any food because Arabs eat “animal heads” and they did not have anything like that (harassment – race);
- (j) On 29 April 2016 Redouane Benmalek insulted and degraded the Claimant by saying “only gay people sit with their legs crossed” when the Claimant was the only person sitting with his legs crossed (harassment – race and religion);
- (k) On 13 May 2016 MSV instructed the Claimant to clean a van that had been used by a driver from the South Asian Muslim group (direct discrimination – race and religion);
- (l) On 23 May 2016 when the Claimant said that he did not have his timesheet MY said “Why are you lying? You’re just a liar, liar, liar.” (Harassment);
- (m) On 27 May 2016 the chef, who had been in the office with MY, came out and said to the Claimant “You’re a Moroccan, right? I know Moroccans. You are a Jew” (harassment – religion, direct race discrimination);
- (n) On 22 June 2016 MY shouted at the Claimant to go back to work although he was busy and others in the South Asian group were just sitting and chatting (harassment and direct discrimination – race and religion);
- (o) On 22 June 2016 MY “adopted a very angry and contemptuous aspect” and spat on the ground in front of the Claimant (who was sitting in his van) to show his disdain for him (harassment – race and religion).

### Victimisation

2.3 It was not in dispute that the Claimant’s complaints of 20 April 2016, 24 May 2016 and 23 June 2016 amounted to “protected acts”. Whether the Respondent victimised the Claimant by:

- (a) Redouane Benmalek making the comments set out at 2.2(j) (above); and
- (b) Making false allegations against him and dismissing him on 7 July 2016.

### Jurisdiction

3 Whether the Tribunal has jurisdiction to consider complaints about any acts alleged to have occurred before 11 May 2016.

## **The Law**

4 Section 13 of the Equality Act 2010 (“EA2010”) provides that a person (A) discriminates against another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. Race and religion are protected characteristics. On a comparison of cases for the purposes of this section, there must be no material difference between the circumstances relating to each case (section 23).

5 Section 26 provides that a person (A) harasses another (B) if A either engages in unwanted conduct related to a relevant protected characteristic and that conduct has the purpose or effect of violating B’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has that effect the Tribunal must take into account B’s perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect. Race and religion are relevant protected characteristics.

6 Section 27 provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act or A believes that B has done, or may do, a protected act. “A protected act” includes making an allegation that (whether or not express) that A or another person has contravened the Equality Act 2010.

7 If there are facts from which the Tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Tribunal must hold that the contravention occurred unless A shows that A did not contravene the provision (section 136). Proceedings on a complaint under the Equality Act 2010 may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable (section 123(1)). Conduct extending over a period is to be treated as done at the end of the period (section 123(3)(a)).

## **The Evidence**

8 The Claimant gave evidence in support of his claim. The following witnesses gave evidence on behalf of the Respondent – Colin Newman (Purchasing Manager) Asia Bryce (HR Administrator), Mohamed Yusuf (Senior Officer, Food Stores and Kitchen), Yoonas Malikal (Purchasing Stores Administrator), Reyadh Al-Jawahari (Stores Team Leader), Mohamed Shareef Valappil (Store Helper) and Redouane Benmalek (Head Chef). Having considered all the oral and documentary evidence, the Tribunal makes the following findings of fact.

## **Findings of Fact**

9 The Respondent provides goods and services to a prominent Middle Eastern family (“the client”). The extended family and its guests occupy various properties in and around London and the services provided by the Respondent include security, transport, property and housekeeping.

10 The Respondent has a food store in Chatfield Road in Battersea. The food store purchases food and drinks, prepares cooked meals in its kitchens and delivers both raw produce and cooked food to the various properties occupied by the client and its

guests. In addition to the permanent staff employed in the food store, the Respondent employs seasonal staff in the summer months when more of the properties are occupied.

11 The Claimant describes himself as an Arab of Moroccan national origin. He is a Sunni Muslim who does not believe that certain practices, such as praying five times a day or going to the Mosque on Fridays, are essential tenets of Islam. He described himself as being a “less strict” Muslim.

12 In March 2016 the Respondent had discussions about increasing the hourly rate for seasonal stores drivers to £9 per hour but no final decision was made. When the role was advertised, the rate of pay was erroneously given as £9 per hour. The Claimant applied for the role, having seen that advertisement. The Claimant was interviewed for the role by Colin Newman (who was responsible for the food store) and Safa Ahsan (Recruitment Advisor). They were not aware that the advertisement had given the rate of pay as £9 per hour. The hourly rate was not discussed at the interview.

13 On 7 March Ms Ahsan asked HR to draft a contract for the Claimant and gave them various details to put in the contract. The salary was given as £8.50 per hour. Ms Bryce checked with Mr Newman whether the rate had in fact increased to £9 and Mr Newman responded that they were sticking to £8.50 at that stage and would review it at the end of the season.

14 On 8 March 2016 the Respondent sent the Claimant a letter offering him a fixed-term position as a stores driver from 21 March 2016 to 30 September 2016. He was told that his employment would be on the terms set out in the enclosed contract of employment and that the rate of pay would be £8.50 per hour. The Claimant was asked to indicate his acceptance of the contract by signing both copies of the enclosed contract. The enclosed contract gave the rate of pay as £8.50 per hour. The copies of the contract sent out had been signed on behalf of the Respondent by Sue Aslett, Head of HR.

15 The Claimant crossed out “£8.50” on the contract and replaced it with “£9”. He signed the contract and handed it in on his first day of work, 21 March 2016. Ms Bryce telephoned the Claimant and told him that the hourly rate was £8.50. The Claimant said that he had seen the role advertised at £9 per hour. Ms Bryce informed him that that had been an error and asked him to confirm that he was willing to work for £8.50 per hour. The Claimant said “okay”. The Claimant was thereafter paid £8.50 per hour and he never raised the matter again.

16 At that time Mohamed Yusuf was in charge of the stores staff and drivers. He is of South Indian origin. Reyadh Al-Jawahari was responsible for all administrative matters and managed the drivers and ensured that they kept their vans clean. Mohamed Shareef Valappil was the most senior permanent driver and put together the daily rotas for drivers.

17 In March 2016 there were ten permanent staff working in the stores, five of whom were drivers. Two out of the ten were white British, one of whom had worked there for eight years and the other ten years. One was an Albanian from Kosovo and Mr Al-Jawahari was of Iraqi national origin. Simeon Richards, who started on 22 February 2016, was black British. The remaining five employees were of South

Indian origin. They were Mohamed Shareef Valappil, Younas Malikal, Sahher Ponnambathayil, Mohammed Theruvath and Muhammed Cholamughath. With the exception of Mr Theruvath, they all attended the mosque at lunch-time on Fridays, as did Mr Yusuf. They did not do so as a single group, but went either individually or with some of the others.

18 The Claimant was one of seven seasonal drivers recruited between March and August 2016. Only one of them was of South Indian origin. The rest were of diverse racial backgrounds.

19 Although the permanent South Indian employees spoke sufficient English to be able to communicate, they were not fluent English speakers and were much more comfortable talking to each other Malayalam, their first language. As a result they normally spoke to each other in Malayalam, both when discussing work-related matters and personal matters. Mr Newman spoke to Mr Yusuf about it in 2015 and told him that it was not acceptable for work-related communication to be in Malayalam. Things improved for a while but then the South Indian employees reverted to speaking in their own language.

20 Some of the drivers had a good relationship with the kitchen staff and a practice had grown up whereby they were provided with surplus food prepared by the kitchen and, in particular, food for one of the client properties at 83 Eaton Square. The drivers involved would normally request the food in the morning and would indicate their preferences, if they had any. The kitchen staff would then put out the food for them at lunch time. The drivers were not entitled to be provided with lunch and the provision of meals was not something which was undertaken by the Respondent. There was a private arrangement between some of the drivers and kitchen staff whereby the latter made food available for the former. The Claimant normally brought in his own food. On a few occasions he asked for food and was told that if he wanted it, he had to tell the kitchen staff in the morning. He did so on a couple of occasions and was provided with some food.

21 Stores drivers had the following responsibilities: assisting with the unloading of supplier vehicles, checking the contents of the delivery against the relevant paperwork and that they were of good quality; loading the goods safely on to their vehicles for the deliveries which they had to make; driving to the various properties; unloading the goods at the properties; and cleaning their vehicles, cool boxes and the loading areas, ideally daily or at least every other day.

22 Mohamed Shareef Valappil created the rosters for each morning's deliveries the previous evening. The drivers were usually rostered to work in pairs and each pair delivered to a number of properties. The deliveries were rostered on a rotational basis so all drivers got to deliver to all the properties, unless a particular client had requested that a particular driver should not deliver to his property. The amount and type of goods which a driver had to load varied from day to day depending on the addresses to which he was delivering and the goods that the clients in those properties had ordered. This would sometimes result in some drivers having heavier and more difficult goods to load than their colleagues. The Claimant might on occasions have had heavier and more difficult goods to load, but that was as a result of the rotational rostering of jobs and not because he was deliberately allocated the more difficult work.

23 Sometimes additional deliveries had to be made later in the day. There were two or three such deliveries every week. These were also allocated on a rotational basis to ensure that the second deliveries were equally divided among the drivers. Therefore, if the first driver back from the morning shift had already done a second delivery that week, he would not be allocated the second delivery. Drivers who attended mosque on Fridays preferred to be allocated the second delivery on days other than Fridays.

24 The Claimant's name was spelt correctly on the daily delivery sheets which Mr Valappil compiled. There were a couple of documents on which the Claimant's name was written as "Saeed" rather than "Said". That was not written by Mr Valappil. It was an error and was not done deliberately to offend the Claimant.

25 The South Indian employees, who attended mosque on Fridays, normally went to the mosque near their workplace. They did not go together in one group. They did not demand that the Claimant should attend with them. They might well have spoken in their own language as they went past him (because that is the language which they normally used when talking to each other) and they might have laughed, but it was not directed at him. They did not display any hostility to him just because he did not attend mosque with them.

26 About a week after the Claimant started work he and Mr Yusuf had a friendly conversation over lunch. They talked about what they had done in the past. Mr Yusuf told the Claimant that he had previously owned shops but that he had lost them. He said something along the lines that it was not easy to succeed as a foreigner because the white man did not like to see you doing better than him. They also talked about Morocco which Mr Yusuf had visited. His view was that people in Morocco were not as strict in following Islam as they were. There was nothing offensive in Mr Yusuf making that observation and the Claimant did not take any offence.

27 On 21 April 2016 (Thursday) the Claimant complained by email to HR that that since he started work the employees at the store, all of whom bar one were of Indian origin, had bullied, criticised and made derogatory comments about him. He complained that that they did not speak English in the workplace, changed the rotas daily to suit them, avoided heavy deliveries, had access to the kitchen and got the lunch of their choice, added overtime illegally for themselves but deducted one hour of his overtime. He said that he believed that he was being treated differently because he was an Arab of Moroccan origin, new in the job and not a permanent employee. He said that although Mr Yusuf was nice to him in his presence, he was responsible for the inequality which he suffered.

28 Ceri Potter from HR discussed the complaint briefly with Mr Yusuf on the same day. He said that there were five Indian employees in the store and they tended to speak to each other in their own language. There were, however, employees from a variety of other backgrounds – Iraqi, Algerian, Jamaican and Bosnian – and as far as he was aware they all got on well. He said that rotas were done by one of the Indian employees and they were changed sometimes to cover unexpected events, such as sickness absence, but he was not aware of people being favoured.

29 On the following day Ms Potter made Colin Newman aware of the complaint. He said that Simeon Richards, one of the new seasonal drivers, had also complained to him about the Indian employees giving instructions to each other in their own

language. Mr Newman said that he intended to speak with the team in general the following week and could raise the issue of the language used at the workplace.

30 On the following Tuesday (26 April 2016) Ceri Potter and Colin Newman met with Mr Yusuf and the Claimant to discuss the Claimant's complaints. The meeting lasted about an hour and a quarter. At the meeting it was agreed that the Indian staff speaking in their own language was an issue at Chatfield Road and that Messrs Yusuf and Newman would need to address it. It also emerged that there was an issue about food being made available to some staff but not to others. It was agreed that Mr Yusuf would look into it to ensure that there was a fair system of sharing food out. There was also a discussion about the allocation of work and the payment of overtime. The Respondent explained to the Claimant how this was done. It was agreed that following this meeting Mr Newman and Ceri Protter would arrange a meeting with the whole team to discuss language and communication at work, food and other issues. At the end of the meeting the Claimant said he was pleased that the discussion had taken place and with the resolution proposed. He was advised that in future he should raise issues with Mr Yusuf as and when they arose.

31 On 29 April Redouan Benmalek, the head chef, stopped by in the office on his way out for a chat with some of the drivers who were there. In the course of the conversation, Mr Benmalek said that certain things were seen very differently in England. He said that in Algeria (from where he came) it was quite normal for two men, who were friends, to walk down the street holding hands. However, if they did that in England, people would assume that they were gay. He said that in England even if a man sat with his legs crossed, people assumed that he was gay. The Claimant had his legs crossed at the time and asked Mr Benmalek whether he was suggesting that he was gay. It occurred to Mr Benmalek later that the Claimant might have thought that he was suggesting that he was gay and that he might have been offended by it. When he saw him next, he apologised if he had caused him any offence.

32 On 5 May 2016 Mr Newman, Mr Yusuf and Ms Potter had a meeting with all the managers and staff at Chatfield Road. They discussed a number of issues. Mr Newman had prepared in advance of the meeting a document setting out what a driver's role entailed and what the company expected of the drivers. This made clear that all routes and team would be rotated to ensure an even workload for all staff and that all instructions to staff should be communicated in English. The drivers were also told that a list would be put up every morning and any driver who was interested in being provided with lunch should put his name on the list.

33 On 9 May Ms Potter wrote to the Claimant setting out the discussions that they had had in relation to his complaints and how they had agreed to address them. She said that she hoped that the meeting and the actions agreed had effectively addressed his concerns but that if they had not, or if he had any further concerns, he should contact her, Mr Yusuf or Mr Newman.

34 Following the meeting a list was put up every morning for drivers who wanted lunch to request it. The Claimant very rarely did. Those who requested it were provided with a meal at lunch. What they were provided with depended largely on what was available.

35 Cleaning the van daily or at least every single was day was an important part of



the driver's duties. The drivers delivered fresh fish and meat and it was essential that any spillages were cleaned as soon as possible. It was Mr Al-Jawahari's responsibility to ensure that all the drivers cleaned their vans. The Claimant did not like cleaning his van and tried to avoid doing it. On one occasion the Claimant said that he would take the van to the petrol station and pay for it to be cleaned. Mr Al-Jawahari said that it was part of his job to do it and if he wanted to take it to the petrol station he should speak to Mr Newman about it. On a couple of occasions when Mr Al-jawahari asked the Claimant to clean a van, he refused on the grounds that he had not been the last driver to use it. Generally, cleaning the van was the responsibility of the last driver who used it. However, there was no fixed rule to that effect. In deciding to whom to allocate the job Mr al-Jawahari would take into account who was available and which drivers had cleaned vans in the previous two days. Hence, the job could be allocated to a driver who had not cleaned any vans in the preceding two days, even if he was not technically the last driver to have used that van. On occasions Mr Yusuf had to speak to the Claimant about cleaning his van.

36 On 23 May 2016 (Monday) the Claimant went into the office to hand in his timesheet for the previous week. Mr Yusuf asked him why he had not handed it on Friday and the Claimant said that he needed to check the times when he had started and finished work. Mr Yusuf asked the Claimant why he could not remember when he had started and finished working and asked him whether it was because he was lying about his times. Mr Yusuf was not serious when he said that, he was making a joke about it. The Claimant did not say anything to him at the time about being offended by what he had said.

37 On 26 May 2016 the Claimant complained in writing to Ceri Potter about matters that had occurred since he had made his last complaint. He said that there had been an improvement in the way that most of his colleagues communicated with him but that did not include the supervisors and management. He said that on 29 April Mr Benmalek had said that in the UK if a man sat on a chair with his legs crossed that confirmed that he was gay, and that he had found the remark very offensive because he was the only one sitting with his legs crossed. On two occasions he had been asked to empty vans which he had not used, his requests to leave early on 19 and 20 May had been refused while others had been allowed to do so, on 23 May when he had tried to explain to Mr Yusuf why he had not handed in his timesheet on Friday Mr Yusuf had been offensive and said "stop lying" twice and on 24 May Mr Al-Jawahari had supervised him while he cleaned his van.

38 Ms Potter spoke to Colin Newman and Mohamed Yusuf about the Claimant's complaint on the same day and updated her manager Joanne Brimpong about what they had said. She said that needing authorisation from a manger to leave early and being observed when washing vehicles were normal operational requirements and not unreasonable. Mr Newman said that he had asked for the washing of cars to be monitored because there had been continuing issues with it not being done properly. She said that Mr Yusuf had accepted that he had made a comment about the Claimant lying but said that he had done so in a light-hearted way and had not intended to cause any offence. Mr Benmalek had already apologised to the Claimant for his comments. She said that there were also concerns about the Claimant's performance, but she had advised Mr Yusuf that these needed to be addressed separately. Mr Yusuf and Mr Newman were to meet the Claimant on 1 June.

39 Ms Brimpong approved the course being adopted and said jokingly

*“One thing that you forgot to mention is when can we stand him down :)))”*

40 Messrs Newman and Yusuf met with the Claimant on 1 June. The meeting lasted a little over two hours. At the meeting they discussed the Claimant's complaints about being asked to wash a van when he had not been the last person to use it, Mr Yusuf calling him a liar and refusal of requests to leave early. In each case Mr Yusuf provided his explanation of what happened and Mr Newman accepted his explanations. Mr Newman told the Claimant that if there were issues going forward he should raise them at the time rather than bottling them up and writing long complaints later. He asked the Claimant why he felt that he was being treated differently and the Claimant said that it was a racial matter but was unable to say why he felt that or to provide any evidence in support of it.

41 On 9 June 2016 Ceri Potter wrote to the Claimant that she hoped that he felt that the matter raised by him had been satisfactorily addressed at the meeting on 1 June 2016.

42 In June during Ramadan there was no food available for the drivers at lunch time as the food for the clients was not prepared and delivered until later in the day. If there was any surplus food the kitchen staff took that and they might have shared it with drivers who were their friends.

43 On 22 June 2016 Mr Yusuf saw the Claimant and Donatien Tivoli sitting in a van that was loaded and ready to go. He said to them something like “You people, get to work”.

44 On 23 June the Claimant sent Mr Yusuf a letter in which he said that he could not handle his bullying and harassment any more and that if his discriminatory attitude did not change he would have to involve a third party against him. The letter was also forwarded to HR. He said that on 22 June Mr Yusuf had singled him out and had pointed at him with an intimidating look and shouted “Stop chatting and go back to work you people”. He asked him why he had not shouted at his Indian colleagues who were sitting inside the office chatting. He said that later in the day Mr Yusuf had acted very rudely by spitting in front of him while looking at him *“in a meaningful way without any reason,”* He also said that Mr Yusuf had singled out three or four employees who were not Muslims by suspending their lunch during Ramadan. He said that his Indian colleagues took home bags of food daily and that he was the only Muslim employee who had not been offered any meal to take home.

45 In that letter the Claimant set out things which he said that he had been told about Mr Yusuf by his colleagues but he had not been prepared to believe before 23 May when Mr Yusuf had accused him of lying. He said that he had been told in April by Messrs Benmalek, Al-Jawahari and Hysni Zogaj that it had been Mr Yusuf's decision not to offer him any food and that Mr Yusuf allowed others to take food home which was charged to the bill of the guest in 83 Eaton Square. Mr Benmalek had told him that if he had not followed Mr Yusuf's instruction he might have lost his job. He said that Mr Al-Jawahari had told him that Mr Yusuf had called Hashir Velliyattil (who had started as a seasonal driver in May 2016), while he was in India, and had invited him to work for the Respondent because he preferred people from his country to work there because he charged them a fee/bonus. He also said that Mr Al-Jawahari had warned him to be careful of My Yusuf because he had once been

given a formal warning as a result of a recording made by Mr Yusuf.

46 Joanne Brimpong acknowledged the complaint on 24 June.

47 On 29 June the Claimant spoke to Mr Yusuf and apologised for sending the email to HR. He offered Mr Yusuf a gift (which Mr Yusuf did not accept) and the two of them shook hands.

48 On 30 June Ms Brimpong discussed the Claimant's complaint with Mr Yusuf. Mr Yusuf raised again the fact that there were issues with the Claimant's performance. He set these out in an email the following day. He said that the Claimant had been taking pictures at work without permission, he sometimes arrived late, he did not use the company phone even though he had been told that he must use it and that other drivers did not like going on deliveries with him.

49 Ms Brimpong telephoned the Claimant to invite him to a meeting to discuss his complaint. The Claimant told her that he wanted to withdraw his complaint. On 1 July Ms Brimpong sent him an email that their view was that the meeting should still go ahead and she asked him to attend a meeting with her and Ceri Potter on 8 July.

50 On 4 July at 8.59 am Mr Al-Jawahari sent an email to HR, copied to Messrs Newman and Yusuf, in which he said that he wanted to complain about a driver who had "*used very bad remarks towards*" him. Mr Newman asked Mr Yusuf to look into the matter. Mr Yusuf spoke to Mr Al-Jawahari who told him that he had asked the Claimant about his timesheet and the Claimant had told him to "fuck off". Mr Yusuf then spoke to the Claimant about it and the Claimant denied having used the word "fuck". He said that there must have been a misunderstanding because when Mr Al-Jawahari had queried an entry in his timesheet he had told him that he should just fax it to the Head Office and they could raise any queries with him. Mr Yusuf reported the above to Mr Newman.

51 At 5.40 pm the same day Mr Velliyattil sent Mr Newman an email complaining about the Claimant's dangerous behavior. He said that shortly after leaving on their delivery that morning, the Claimant had telephoned the office and said that he was not able to drive. About a minute later the office called Mr Velliyattil and asked him to take over the driving. When Mr Velliyattil informed the Claimant of that, he stopped in the middle of the road on Battersea Bridge, got out and walked around to the passenger side and expected Mr Velliyattil to move to the driver's seat. Mr Velliyattil refused as he said that it was not safe to do so in the middle of the road. The Claimant then got back into the driving seat and drove until they found a place to park and change. For the rest of the journey the Claimant abused and insulted Mr Velliyattil; he called him "stupid" and told him that he had "no brain" and "no common sense."

52 On 5 July 2016 Mr Newman invited the Claimant to a meeting on 7 July to discuss "*some concerns that we have regarding your current performance and attitude in the workplace.*" The Claimant was not given any details of the concerns. He was warned that one of the outcomes of the meeting might be dismissal and was advised of his right to be accompanied.

53 The Claimant went to see Mr Newman and asked whether he was going to be dismissed and Mr Newman said that it was a possibility. The Claimant asked him

whether it was about Mr Al-Jawahari and the “F word”. Mr Newman said that that was part of it.

54 The Claimant produced a written response to Mr Al-Jawahari’s allegation that he had sworn at him. The Claimant repeated the account which he had given Mr Yusuf and said that Mr Al-Jawahari had made a false allegation against him because he had stopped being friendly with him because he was tired of all his negative comments about the company employees and their owners.

55 The disciplinary hearing took place on 7 July 2016. It was chaired by Colin Newman and Ceri potter from HR was present. The Claimant attended alone. At the hearing the Claimant was asked about the two incidents on 4 July. He maintained that he had not used the word “fuck” in his exchange with Mr Al-Jawahari. In respect of the second incident the Claimant accepted that he had jumped out of the van at a red light on Battersea Bridge and that Mr Velliyattil had refused to move into the driver’s seat. He denied that he had said anything rude or inappropriate to him. When he was asked whether he thought that it was safe to get out there. He replied,

*“By law probably not, but we are all humans and you can see people swap on red light. I shouldn’t do it but I wasn’t putting anyone at risk.”*

56 Mr Newman adjourned the hearing for 40 minutes to consider his decision. He concluded that Mr Al-Jawahari’s account was accurate, the Claimant had behaved in an unprofessional and dangerous way by stopping on the bridge, he still did not recognise that his actions had presented a serious safety risk and that he had been rude and insulting toward Mr Velliyattil. His decision was to dismiss that Claimant with immediate effect. The Claimant was paid one week’s pay in lieu of notice.

57 The decision to dismiss was confirmed in writing on 12 July 2016. As the Claimant had been dismissed the meeting scheduled for 8 July did not take place.

## **Conclusions**

### **Breach of contract/unauthorised deductions from wages**

58 It was made clear in the offer letter that the Respondent would pay the Claimant £8.50 per hour. The substituting of £9 for that by the Claimant and his signing the contract is not evidence that the parties agreed that he would be paid £9. Ms Aslett signed the contract before the Claimant made that alteration. Her signature is not evidence of that term having been agreed between the parties. There being as dispute between the parties as to what that term should be, a discussion took place between Ms Bryce and the Claimant whereby it was made clear that the Respondent would pay £8.50 and the Claimant accepted that and agreed to work at that rate of pay. The fact that the Claimant did not raise the matter thereafter with anyone thereafter is a strong indicator that he had accepted and agreed to work at £8.50 per hour. As the parties had agreed that the Claimant would be paid at that rate, the Respondent was not in breach of his contract of employment by paying him that rate. As the Claimant was paid what was properly payable to him, there have been no unauthorised deductions from his wages.

Direct Discrimination and harassment

59 We considered firstly the complaints which related to acts or omissions that occurred after 11 May 2016 because those complaints were presented within the primary time limit (as extended by the provisions to facilitate Early Conciliation). Those complaints fell into two categories – those which the Claimant said continued throughout his employment and those which he said occurred on specific dates after 11 May 2016.

60 The complaints relating to matters which the Claimant said occurred throughout his employment are those set out at paragraph 2.2(a), (b), (c), (d), (e) and (g) (above). We have not found that Messrs Yusuf, Malikal and Valappil furtively watched the Claimant while he worked or that they “pranked” or hassled him. The Claimant did not adduce any specific evidence to support that vague and generalised allegation. The only evidence which the Claimant gave of his work being checked was that he was on occasions told how to load a van safely. Loading goods safely on the van was an important part of a driver’s job and when the Claimant did not do it properly he was told how it should be done. It might well be that the permanent Indian drivers were not told how to load their van safely. The obvious explanation for that was that they were experienced, having done the job for many years, and knew how to do it whereas the claimant was new and did not. There was no evidence before us from which we could infer that the Claimant’s race or the fact that he was a less strict Muslim had anything to do with it.

61 We considered 2.2(b) and (c) together. We found that Mr Valappil created the rosters and that deliveries were rostered on a rotational basis so that all drivers got to deliver to all the properties, unless a particular client had requested that a particular driver should not deliver to his property. We have not found that Mr Valappil rostered the Claimant to do the heaviest and most difficult loading jobs. On occasions as a result of the rostering the Claimant might have had more difficult jobs than his colleagues, but the same applied to his colleagues. On occasions they got the more difficult loading jobs. Race and religion played no part in the rostering of jobs. The same applied to being allocated deliveries to addresses where the guests tipped more generously.

62 It was not in dispute that Messrs Yusuf, Malikal and Valappil went to the mosque at lunchtimes on Fridays. We have not found that there was any animosity by them towards the Claimant or any other Muslim employee who did not attend mosque on Fridays. We have found that they did not always go as a single group. We have not found that they talked about or laughed at the Claimant as they went past him or that they looked daggers at him. We have not found any conduct on their part which could be construed as subjecting the Claimant to a detriment or to harassing him.

63 It is not in dispute that on occasions the Claimant’s name was spelt as “Saeed” rather than “Said”. Mr Valappil was not the person who spelled it incorrectly and there was no evidence at all that Mr Yusuf instigated anyone to spell the Claimant’s name incorrectly. We have found that it was a genuine error as the name can be spelt either way. The fact that the Claimant has alleged this to be race-related harassment and took photographs of the incorrect spelling indicates to us that from very early on the Claimant was looking for any evidence that he could find to support a claim for discrimination.

64 The prime consideration in the allocation of second deliveries was that they should be shared out among all the drivers. The preferences of individual drivers were accommodated as long as they did not interfere with the equal distribution of second deliveries. Hence, those who wished to attend mosque on Fridays might not be allocated second deliveries on Fridays but they would be allocated their share on other days of the week. Similarly, those who were allocated second deliveries on Fridays were not allocated them on the other days of the week.

65 We, therefore, concluded that the complaints which the Claimant made of direct discrimination and/or harassment throughout his employment are not well-founded. We then considered the complaints in respect of specific acts that occurred after 11 May. These are the complaints at paragraph 2.2 (k), (l), (m), (n) and (o) (above).

66 The Claimant did not give any evidence of being asked by Mr Valappil on 13 May to clean a van that had been used by another driver. It was accepted that on one occasion the Claimant was asked to clean a van which had been used by another driver but that that was because he had not cleaned any vans the previous days and other drivers had. We have not found any unfairness in the process for cleaning vans. We have found that it was a task which the Claimant reluctant to undertake.

67 We have not found that on 23 May Mr Yunus said to the Claimant “You’re just a liar, liar, liar.” The Claimant’s evidence to the Tribunal was that Mr Yunus had said to him “stop lying” twice. We have not found that Mr Yusuf used either of those phrases. We have found that Mr Yusuf asked the Claimant whether the reason that he could not remember his times was because he was lying about them. We accepted Mr Yusuf’s evidence that he did that as a joke. There was no evidence from which we could infer that making that remark had anything to do with the fact that the Claimant was a Moroccan or an Arab or someone who was not a strict Muslim.

68 The Claimant’s allegation about a chef, who knew that he was Muslim, saying to him that he was a Jew, at the instigation of Mr Yusuf, just to offend him is implausible. It seems a bizarre thing for anyone to do. The Claimant has not identified the chef in question or any witnesses who heard this remark. There was no evidence to support the Claimant’s assertion that this was done at the instigation of Mr Yusuf. The Claimant did not complain about that at time or in his complaint of 23 June 2016. We did not find that this occurred.

69 We have found that on 22 June Mr Yusuf said to the Claimant and Mr Tivoli something like “You people, get to work”. He said that because they were sitting in their van which was loaded and ready to go. If they were waiting for someone else, as the Claimant claimed they were, Mr Yusuf did not know that. That comment was directed at both the Claimant and Mr Tivoli. It was a normal instruction in the workplace. It is difficult to see how that could amount to subjecting the Claimant to a detriment or to harassing him. There is no evidence from which we could infer that it had anything to do with the fact that the Claimant is a Moroccan or a less strict Muslim. We have not found that Mr Yusuf looked angry and spat in front of the Claimant to show his disdain from him.

70 For the reasons set out above, we concluded that the Claimant’s complaints in respect of acts that are alleged to have occurred after 11 May 2016 are not well-founded.

71 It follows from that that the complaints in respect of acts that occurred before 11 May 2016 (at paragraph 2.2 (f), (h), (i), and (j)) were not presented in time. We considered whether it would be just and equitable to consider them. The onus is on the Claimant to persuade us that it would be just and equitable to do so. An important factor to take into account is why those complaints were not presented in time. It was clear from the evidence that very soon after starting work the Claimant came to the conclusion that he was suffering race and religious discrimination and he complained regularly about it to his employers. It is equally clear that he was taking pictures and trying to compile evidence to support such a claim. The Claimant has not given any explanation of why he did not present a complaint to the Tribunal. He has not put forward any grounds upon which we should exercise our discretion to consider claims that were not presented in time. In all the circumstances, we conclude that it would not be just and equitable to consider those complaints.

72 In case we are found to be wrong in reaching that conclusion, we set out briefly what we would have concluded in respect of those matters.

73 We did not find that on 31 March 2016 Mr Yusuf made the comments alleged by the Claimant. The Claimant's own evidence did not support the allegation that he made. The comments that Mr Yusuf made did not have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. There was no evidence that the Claimant's perception was that they had that effect. He did not complain about the comment in any of his three complaints to the Respondent. No reasonable person could have concluded that it had that effect. It was an innocuous remark. Mr Yusuf simply set out his opinion of how people in Morocco followed Islam, based on his visit there. We would not have concluded that that remark amounted to harassment related to race.

74 We have found that prior to 26 April 2016 some drivers got lunch and others (including the Claimant) generally did not. The provision of lunch, however, had nothing to do with race. It was dependent on relationships between the drivers and the kitchen staff. There was no entitlement to lunch. The reason that the Claimant did not get lunch had nothing to do with the fact that he was Moroccan or Arab. He was a new employee who did not have a long-standing relationship with the kitchen staff. We would have concluded that there was no direct race discrimination in the provision of lunch.

75 We did not find that on 26 April Mr Yusuf made the comment about Arabs eating "animal heads".

76 The comment that Mr Benmalek made about people sitting with their legs crossed has to be seen in the context in which it was made. That comment was not directed at the Claimant. There was no evidence from which we could infer that the making of that comment had anything to do with the fact that the Claimant is Moroccan or not very strict Muslim. Mr Benmalek was not part of the south Indian group who were strict Muslims who the Claimant claims discriminated against him. Mr Benmalek is also North African; he is from Algeria. The Claimant did not give any evidence that Mr Benmalek was hostile to him in any way because of his Moroccan origin.

77 Had we decided the complaints about the acts that occurred before 11 May 2016 we would have concluded that they were not well-founded.

Victimisation

78 The Claimant also relies on Mr Benmalek's comment as being an act of victimisation. We concluded that it would not be just and equitable to consider that claim for the same reasons that it would not be just and equitable to consider the complaint of direct race discrimination in respect of it. Had we considered it, we would have concluded that the complaint was not well-founded. There was no evidence of any link between the comment and the Claimant's complaint of race and religious discrimination.

79 Finally, the Claimant said that his fellow employees made false allegations against him and that he had been dismissed because he had made three complaints of race and religious discrimination. It was not in dispute that his complaints of 21 April, 26 May and 23 June 2016 amounted to protected acts. The complaints made against the Claimant on 4 July 2016 were not false allegations, in that they were not fabricated by his colleagues. Both his colleagues reported what had in fact happened or what they genuinely believed had happened. It is significant that large parts of their complaints were not disputed by the Claimant. The Claimant's initial response to Mr Al-Jawahari's complaint was that there had been a misunderstanding because he had said "fax it", which sounds similar to "fuck".

80 We then considered whether the Respondent had dismissed the Claimant because he had made allegation of race and religious discrimination. In doing so we took into account that the Respondent had not subjected the Claimant to any detriments or taken any steps to terminate his employment after he made the complaints on 21 April and 26 May. Instead it had taken them seriously and attempted to address them by meeting with the Claimant, Mr Yusuf and all the staff. It had put in place changes as a result. By the time the complaints were made on 4 July 2016 the Claimant had made it clear that he wanted to withdraw his last complaint and had apologised to Mr Yusuf for raising it. Instead it was the Respondent who insisted that the matter should be addressed and that the Claimant should attend a meeting on 8 July 2016. That action is inconsistent with the Respondent having decided, on the receipt of his last complaint, to terminate his employment. The Respondent had had concerns about the Claimant's performance and attitude towards his work since about May. Mr Yusuf had first raised these with HR on 26 May 2016 and raised them again on 1 July 2016. The Claimant's conduct on 4 July on Battersea Bridge had presented a serious safety risk and the worrying aspect was that he did not accept or recognise that.

81 Having considered all the above we concluded that the Respondent dismissed the Claimant because of his poor performance and attitude towards work. It did not dismiss him because he complained about race and religious discrimination. There were procedural flaws in the dismissal process but these stemmed from the fact that the Claimant did not have the requisite length of service to complain of unfair dismissal.



**Case No: 2208362/2016**

Employment Judge Grewal  
30 May 2017