EMPLOYMENT TRIBUNALS

Claimant: Mr Patrick Murray

Respondent: E Reeves Limited

Heard at: London South **On: 18, 19 and 20 July 2022**

Before: Employment Judge Khalil (sitting with members)
Ms N Beeston
Ms L Hawkins

Appearances

For the claimant: in person
For the respondent: Ms Jennings, Counsel

JUDGMENT WITH REASONS

Unanimous Decision

The claim for Unfair Dismissal contrary to S.94/98 Employment Rights Act 1996 is not well founded and fails.

The claim for Disability Discrimination pursuant to S. 13 (Direct) and s.15 (discrimination arising from disability) Equality Act 2010 is not well founded and fails.

The claim for Race Discrimination pursuant to s.13 (Direct) Equality Act 2010 is not well founded and fails.

Reasons

1. This was a claim for Unfair Dismissal, Race Discrimination (direct) and Disability Discrimination (direct and discrimination arising from disability). The claim was presented on 31 October 2020 following early conciliation between 14 September 2020 and 14 October 2020.

2. The claimant was in person, the respondent was represented by Ms Jennings, Counsel.

3. The Tribunal had a Bundle running to 549 pages.

4. The Tribunal heard from the claimant and Mr Trevor Reeves and Mr Graham Reeves, Directors (and brothers) of the respondent.

5. The claimant had intended to call 6 additional witnesses – 2 positive character references from ex-employees of the respondent, his child minder and ex-partner (and mother of his daughter) to corroborate some of the historic issues including medical issues and occasions of working late for the respondent and 2 customers (about positive service from the claimant).

6. Following consideration of these additional statements and following discussion with the respondent's counsel, the claimant was informed that whilst the Tribunal had read these statements, it did not have any questions for these witnesses and neither did the respondent's counsel, who said that they were accepted to the extent that they did not have any relevance to the issues the Tribunal needed to determine. The claimant did call Ms Carlene Oliver, his ex-partner, who was not questioned and Ms Claire Thomas, his child minder in respect of whom the claimant had 1 supplementary question but who was not otherwise questioned.

7. The Tribunal also admitted amended witness statements of the respondent, which had served to expressly deny/resist the discrimination claims. These had been served on the claimant the day before the Hearing. As the substantive nature was the same, the Tribunal considered there to be little or no prejudice, especially as the claimant would have an extra day to cross examine the respondent's witnesses.

8. The issues in the case were set out in a case management order dated 28 March 2022 at pages 68-79. It was clarified, that whilst the act of dismissal was not claimed to be an act of disability discrimination, it was in relation to race discrimination paragraph 45 and 51.5.1 (pages 74-75).

9. The claimant was asked to clarify the direct disability discrimination allegation in relation to being required to lift furniture; in response to the Tribunal, he said he believed he was asked to do so because of his stature and build – because he was a big man. Further, that this was last required of him in November 2019.

10. In relation to being asked to repair the roof, in his Witness Statement paragraph 10, he said this was one incident, presumed to be in 2010, but in the Case Management Order paragraph 5.3.1, he said it was through to 2019. In response to Tribunal questioning, he said it was last asked of him on an occasion in 2018. He said that he felt he was asked because the others were

not capable of doing the work (though he added he felt it might have been done to frustrate him).

11. Before the Hearing, disability was conceded in relation to diabetes but not in relation to the claimant's back and knee or facial disfigurement.

12. The process and the applicable law was explained to the claimant as a litigant in person, particularly the range of reasonable responses and the burden of proof relating to the discrimination claims and time limits.

13. The Tribunal heard evidence on days 1 and 2, before retiring to deliberate.

Relevant Findings of Fact

14. The following findings of fact were reached by the Tribunal, on a balance of probabilities, having considered all of the evidence given by witnesses during the hearing, including the documents referred to by them, and taking into account the Tribunal's assessment of the witness evidence.

15. Only findings of fact relevant to the issues, and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence.

16. The respondent is a furniture retailer. It is a family run business. It has about 9 employees.

17. The claimant was employed as a Porter from 1 August 2000 until his dismissal with effect from 3 July 2020. There were 2 other porters at the time the claimant was dismissed. The respondent's van driver was an independent contractor.

18. There was a dispute about the claimant being asked to undertake some roof repairs on occasions between 2010 and November 2019. The respondent accepted, at the Hearing, the claimant had on a few occasions assisted the respondent in this regard but that it was also asked of the other porters, comparably. In oral testimony, the claimant accepted that he had been asked to change the sign on the side, which required access to the roof, which he or one of the others had done on a few occasions. In relation to the flat roof, he said he could not say if the other porters had been asked. The Tribunal found this corroborated the respondent's evidence and the Tribunal accepted that on occasions, in relation to all porters, they were asked to undertake roof repairs. It was also stated by the claimant that as the porter who was out with the van driver, he would sometimes not be a porter in the shop for 3 days. He would

thus not know if and/or when, the respondent had asked the other porters to help out.

19. In the summer of August 2011, following the riots in Croydon, one of the respondent's shops was burnt down. The claimant said on the day after, he was asked by the Directors to sleep in the other shop as a security measure in return for which he would be paid £100. The claimant refused to do so because he felt it was unsafe to do so. The claimant said as a result, he was put under increased pressure at work and there arose petty issues when he had issues relating to his young daughter, but no further details were provided. Both directors of the respondent denied knowledge of this ever happening as alleged or at all. Ms Oliver, the claimant's ex-partner confirmed in evidence this had been relayed to her by the claimant at the time, which evidence was not challenged. The Tribunal found that it was more likely than not that the claimant's recollection was reliable. The Tribunal found it was typical of what a small family run business may ask of its employees. The Tribunal was not satisfied however that being asked to do this, could, without more, constitute, objectively, unfavourable/a detriment – on the claimant's case, he was being offered money (overtime) to sleep in the shop which he declined.

20. A week or so later, also in August 2011, the claimant believed he was asked to deceive an insurance inspector in relation to the consequential insurance claim. The claimant did not explain how he came to know or believe that the respondent was attempting to claim for furniture not damaged by the fire or why he was being asked to deal with the insurance company rather than a Director or a Manager. It was not relayed to Ms Oliver. Both Directors of the respondent denied knowledge of this ever happening as alleged or at all. The Tribunal found that because of the significant passage of time since the alleged incident and it being raised, it could not be satisfied that it was more likely than not that the claimant's recollection was reliable. The claimant was giving evidence about a matter around 10 years ago and the respondent was being asked to recollect and rebut specific allegations. Neither was the Tribunal satisfied that this could, without more, amount to unfavourable treatment/a detriment, objectively, because there was a lack of clarity or certainty as to why the claimant believed he was being asked to do something improper.

21. The claimant said that on occasions in 2013, 2016 and 2017, he was being queried about certain medical appointments. In October 2013, he had raised a grievance about this which Mr Trevor Reeves said had led to an informal resolution. In oral testimony, he said he took personal responsibility to ensure the claimant's absences were properly recorded when notified. He said the problem had been that not all absences were notified on some occasions. In support he relied on the claimant's record on page 158 and the Tribunal noted that in November 2012 there had been an investigation into the claimant's absence from the shop and in October 2013, there was missing return to work information following an absence. Mr Graham Reeves accepted there may have been miscommunication between the Directors on occasions. The Tribunal

found that it was more likely than not that there was either no notification of an absence from the claimant or a miscommunication between the Directors on a limited number of occasions. The Tribunal reached the same finding in relation to the April 2016 incident (absence relating to an ear infection), when the claimant said he was accused of having a 'sick note pad' at home.

22. In connection with the 2017 incident, this was when the claimant had been driven back from Croydon hospital by Mr Trevor Reeves following a diabetic clinic appointment. This was agreed between the parties. The claimant however believed Mr Reeves had enquired of the hospital if his appointment was genuine as he said reception had informed him about this. In oral testimony, Mr Reeves said he had driven other employees to or from clinic or dental appointments. This was accepted by the Tribunal. In his witness statement paragraph 11, he could not recall why he had given the claimant a lift but believed it would have been because the claimant had requested this. The Tribunal found that because of the significant passage of time since the alleged incident and it being raised, it could not be satisfied that it was more likely than not that the claimant's recollection was reliable. The claimant was giving evidence about a matter about 5 years ago, which was not documented and the respondent was being asked to recollect and rebut that allegation.

23. The claimant's role as a porter involved the lifting of furniture. When delivering with the van driver, the claimant would be in a team of two to deliver furniture. At the shop, he would be in a team of 3 (porters). The claimant had a road traffic accident in January 2019. He returned to work in February 2019. Thereafter, he explained that he still had knee problems, his knee was strapped, but this was not visible and neither did he inform the respondent. He did not visit his GP about his knee or back issues thereafter. In oral testimony he said he was improved after 3 months. Mr Trevor Reeves explained in oral testimony that if a porter found an item of furniture too heavy, it should not be lifted at all, or should be lifted with the aid of another person or two and/or with the aid of a trolley. Alternatively, they would use a contractor. The claimant had supplied statements from 2 customers who had stated that the claimant had provided good service in relation to furniture delivery and assembly whilst commenting the other person in attendance too had not been very helpful. Whilst this was evidence of positive feedback for the claimant, it was not evidence of the respondent requiring the claimant to lift, alone, heavy furniture. The Tribunal accepted the respondent's evidence.

24. There were numerous incidents of a conduct or performance nature ranging from timekeeping, absence notification, use of mobile phone and the location of the van over a number of years – page 158.

25. Following the onset of the covid pandemic and the lockdown, the respondent issued a staff announcement on 7 May 2020 explaining that the impact of the reduction in turnover meant the respondent was no longer profitable. A loss of £20,000 was forecasted from a break-even position in the previous year. The

respondent explained it had thus far reduced prices in the Store to stimulate business, reduced delivery days, fixing electricity prices, squeezing suppliers, redirecting advertising spend, increasing delivery charges, furloughing staff, VAT and PAYE deferment and applying for a bounce back loan. The announcement concluded with a proposal to reduce one of the three porters (page 159-160).

26. There was a checklist/guidance document which the respondent relied upon, provided by Citation.

27. A telephone consultation took place on 12 May 2020 held by Mr Trevor Reeves. The minutes were at page 161. In this discussion, Mr Reeves said it was possible for the porter role to be carried out between the three porters on a job share basis.

28. Following this meeting, Mr Reeves wrote to the claimant confirming he was at risk of redundancy (page 162). By his letter dated 27 May 2020, the claimant was invited to a further consultation meeting on 2 June 2020.

29. The minutes of the meeting of 2 June 2020 were at page 165. Although not expressly cited, the minutes recorded that the claimant was informed of the 3 criteria – attendance, disciplinary record and lateness all over the previous 12 months. The claimant was asked if any other criteria should be included. This part of the minutes was disputed by the claimant. The Tribunal found it was more likely than not that the notes were accurate. There was no dispute they were contemporaneous and the dispute had only arisen in oral testimony for the first time. The minutes had been sent to the claimant under cover of the respondent's letter of 18 June 2020. The claimant was given a redundancy quote in accordance with the guidance document the respondent had previously been provided.

30. By a letter dated 18 June 2020, the claimant was invited to a further consultation meeting on 22 June 2020 (page 170). The claimant was informed that the scoring criteria would be discussed at this meeting. Minutes of the previous two meetings were enclosed.

31. The meeting on 22 June 2020 was a group meeting with all 3 porters (page 171). The claimant joined remotely. There was a discussion about the use of the van driver at this meeting and why he was working 3 days per week when it was expected to be 1 or 2 days. Mr Reeves explained this was to deal with pre-lockdown orders. There was discussion around the selection criteria and scoring. The claimant did not wish for disciplinary record to be taken in to account, the other two porters did. Mr Reeves declined this request as it would then only leave 2 criteria. Regarding absence, Mr Reeves explained that hospital appointments and emergency childcare/family emergency would be excluded from counting towards the scoring. The claimant said that if asked to return to work from furlough, he could not because of childcare.

32. The scoring of the 3 porters was undertaken on 25 June 2020. The claimant scored 11 out of 15. Mr Dowding scored 15 out of 15. Mr Danneau scored 14 out of 15. All employees scored maximum marks for disciplinary record and lateness. The scores of the claimant and Mr Danneau were lower for attendance corresponding with their lower attendance. In the claimant's case he was recorded as having 6 days (unpaid) absence in October 2019 and 6 days absence in March 2020 for a chest infection. The records were on pages 521 and 531.

33. The scoring was undertaken in accordance with the criteria on page 169. The claimant had scored '1' for attendance as he had more than 12 absences.

34. By a letter dated 25 June 2020, the claimant was invited to a further consultation meeting. Minutes of the meeting on 22 June 2020 were enclosed. The claimant was told his scoring would be discussed at the next meeting (page 172).

35. A further consultation meeting took place on 30 June 2020. The minutes were at page 174. The claimant disputed that his scores were discussed with him at this meeting. The minutes recorded his scores were discussed. For reasons given above, the Tribunal accepted these minutes as an accurate summary. The minutes were also enclosed with the subsequent letter of 1 July 2020 (page 175). By that letter, the claimant was invited to a final consultation meeting to take place on 3 July 2020. He was forewarned the outcome of that meeting could lead to the claimant's dismissal. The claimant was informed of his right to be accompanied.

36. On 1 July 2020, the claimant had also been issued with a flexible furlough letter (pages 173/174). The Tribunal accepted Mr Graham Reeves' evidence that this was issued because a decision in relation to the claimant was not yet final.

37. The minutes of the 3 July meeting were at pages 176-177. At this meeting, the claimant challenged his 6 days absence in October 2019 which he said was for childcare. Mr Reeves said there was no note to this effect and the absence had been unpaid. Notwithstanding, he re-scored the claimant, taking these days out of the count and the claimant was re-scored 13 for attendance. He thus still had the lowest score. The claimant expressed how he had supported the business in the past and his reliability and he said there was still enough work as the van was working (delivering) 3 days per week. Mr Reeves explained the van was servicing pre-lockdown orders and there was not enough work for 3 porters. The claimant raised his length of service as a factor. Mr Reeves said this had not previously been raised when the criteria was discussed with the three porters at risk. Further, that it did not seem fair to him to factor long unsatisfactory service over medium exemplary service. At the conclusion of this meeting, the claimant was dismissed. He was informed he did not need to work

out his notice. He was given a right of appeal. This was confirmed in writing (page 178).

38. The claimant consulted Solicitors and a letter dated 6 July 2020 from 'Status Legal' was received by the respondent. There was reference to a miscalculation of the redundancy pay (by reference to 19 not 20 years' service), why the claimant was not granted flexible furlough, that his scoring had been miscalculated by reference to 6 days of absence in error, there was a query about his holiday pay and there was a general comment that his dismissal was personal as it had not escaped his attention he was the only black person amongst the porters and he was not the last to arrive or the oldest (pages 180-181).

39. This letter was treated as an appeal and the claimant was invited to an appeal hearing for 21 July (page 183). The claimant was informed of his right to be accompanied. The minutes were at pages 185-187. The appeal was heard by Mr Graham Reeves, Director.

40. At the appeal hearing the claimant said the scoring wasn't done properly and that he was challenging everything. He said he couldn't be deemed sick. Although his years of service for his redundancy had been corrected, he said it shouldn't have been wrong, he also queried why, as a senior porter, he hadn't been paid senior pay and he said he couldn't be discriminated against because of sickness. He challenged why he hadn't been furloughed until October in response to which Mr Reeves explained this would only have happened, if necessary, but there wasn't enough work for 3 porters. In relation to scoring, Mr Reeves explained this had been re-done at his final meeting. The claimant repeated his earlier comments that if he was sick, he couldn't come to work. The claimant also said he had heard one of the porters had offered to be made redundant. Following a summary of the claimant's appeal points, the meeting ended with a decision reserved.

41. In respect of the voluntary redundancy consideration, this related to one of porters, Mr Danneau coming forward offering to be made redundant. This was on 15 June 2020 – the minutes of the meeting with Mr Trevor Reeves was on page 533. (There was text message exchange with the claimant too on page 192). It was rejected by Mr Reeves as he said it was not considered appropriate with such a small pool, particularly if others volunteered too. In evidence, he said he was advised that voluntary redundancy was optional. It was deleted in the guidance script too (page 163).

42. By a letter dated 24 July 2020, the appeal was rejected. This was at page 188-191. The claimant was informed his scoring had been adjusted to account for the 6 days in October 2019. The claimant's illness in March 2020 was accepted as being genuine, but nevertheless qualified as absence. He explained that the differences between the three were not much, but a selection had to be made. The business case for redundancy was reaffirmed. He said there was no

requirement for a third porter even after October 2020 because of the prevailing circumstances. The volunteer who had come forward subsequently withdrew his request. (In oral testimony, Mr Reeves added that he felt it to be most fair to stick to a fair selection process rather than assess if the volunteer should be considered as he considered that if the other two wanted to volunteer too, they wouldn't be able to select fairly).

Applicable Law

Equality Act 2010 ('EqA')

43. S. 6 (Definition of Disability)

(1)A person (P) has a disability if—
(a)P has a physical or mental impairment, and
(b)the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities

44. S. 13 (Direct Discrimination)

(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.

45. S.15 (Discrimination arising from Disability)

(1)A person (A) discriminates against a disabled person (B) if—
(a)A treats B unfavourably because of something arising in consequence of B's disability, and
(b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Burden of proof

46. The burden of proof is set out in S.136 (2) EqA. This provides:

"If there are facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred."

47. S.136 (3) provides that S. 136 (2) does not apply if A shows that A did not contravene the provision.

48. The guidance in ***Igen Ltd v Wong 2005 ICR 931*** and ***Barton v Investec Henderson Crosthwaite Securities Ltd 2003 ICR 1205 EAT*** provides guidance on a 2-stage approach for the Tribunal to adopt. The Tribunal does not consider it necessary to set out the full guidance. However, in summary, at stage one the claimant is required to prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, (now any other explanation) that the respondent has committed an act of discrimination. The focus at stage one is on the facts, the employer's explanation is a matter for stage two which explanation must be in no sense whatsoever on the protected ground and the evidence for which is required to be cogent.

49. The Tribunal notes the guidance is no more than that and not a substitute for the Statutory language in S.136.

50. In ***Laing v Manchester City Council 2006 ICR 1519 EAT***, the EAT stated that its interpretation of Igen was that a Tribunal can at stage one have regard to facts adduced by the employer.

51. In ***Madarassy v Nomura International PLC 2007 ICR 867 CA***, the Court of Appeal stated:

    "*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal "could conclude" that, on a balance of probabilities, the respondent had committed an unlawful act of discrimination"*

52. The Tribunal had regard to the ***Keeble*** factors for out of time claims and S. 33 of the Limitation Act 1980 and S.123 EqA (just and equitable extension).

Unfair Dismissal: S.94/98 Employment Rights Act 1996 ('ERA')

53. The respondent relied on S.98 (2) (b) (Redundancy) in relation to its potentially fair reason for the claimant's dismissal. The burden to show the reason rested with the respondent.

54. In ***Williams and Others v Compair Maxam [1982] ICR 156***, it was established that the features of a fair redundancy would involve consideration of:

    - Early warning of redundancy
    - Consultation with the union (if applicable)
    - Fair selection criteria
    - Fair selection in accordance with criteria
    - Consideration of alternative employment

55. The range of reasonable responses applies both to the substantive decision to dismiss and to the procedure ***(Sainsbury's Supermarkets Ltd v Hitt 2003 IRLR 23).***

Conclusions and analysis

Unfair Dismissal

56. The Tribunal concluded that the respondent had established that there was a genuine redundancy situation as a result of the covid pandemic and the first lockdown and the consequential actual and predicted financial consequence to the respondent, as a small family run retail furniture business. The respondent had made a number of other cost-saving measures too. The Tribunal took Judicial notice of the fairly stark and direct impact of covid on the retail and hospitality sector in particular.

57. There was warning of the redundancy situation by the respondent's staff announcement dated 7 May 2020.

58. A key battleground in this case was the respondent's choice of a selection criteria. There was no criticism about the respondent's choice of pool. The criteria chosen by the respondent, with HR consultancy support and advice, was not one with which the Tribunal could interfere. It was open to the respondent to use this criteria. It was reasonable and objective, including the use of ill health absence which was genuine. There was no assertion in this case it ought to be discounted because it arose from a disability. The criteria was consulted on and though the claimant did raise length of service, this was rejected by the respondent as not being a fair measure as there was no qualitative measure of service in that period and a long server could be unfairly advantaged over a shorter server with better quality service. This was a decision open to the respondent. It was within the range of reasonable responses.

59. There was no criticism by the claimant about the consultation process even though he disagreed with the minutes and even suggested some had been made up. The Tribunal has already rejected this and found the minutes were contemporaneous and accurate. The consultation process was fair and reasonable.

60. No question of suitable alternative employment arose in this case. There was none.

61. There was a question mark over whether the respondent acted permissibly in rejecting the interest of Mr Danneau in offering to volunteer for redundancy. The respondent was concerned what would happen if the other two porters also

expressed a similar interest or were asked about it but there was no enquiry of the other 2 porters. The respondent had however also been informed they did not have to consider volunteers and they decided not to because the pool was small and because they preferred instead to stick to a process of selection. This was confirmed by Mr Graham Reeves in oral testimony. This was not a case of a respondent declining a volunteer because of the risk of losing skills or a key employee, but that is not the only basis upon which volunteers can be declined. It was open to the respondent to consider a selection process to be a fairer approach. Although slow to reach this conclusion, the Tribunal considered this to be within the range of reasonable responses.

Disability Discrimination

62. The Tribunal first considered the querying of appointments allegation. The allegations in this regard were between 2013-2017. There was no positive case advanced by the claimant why the claim was not submitted in time or why it was just and equitable to extend time. No explanation was provided at all. This was discussed during this Hearing and had been discussed at the Case Management Hearing. The claims were substantially out of time and there was already a recollection issue in respect of the 2017 incident. Giving evidence about the 2013 incident and the informal grievance resolution would require testimony about matters 9 years ago. The claim is out of time.

63. In the alternative, the claimant had not provided an impact statement as ordered in relation to his asserted disability of facial disfigurement. The claimant's witness statement did not address this either. Neither was the Tribunal taken to any document in the bundle. There was an inadequate basis from which the Tribunal could consider if or whether the claimant had a severe disfigurement within the meaning of S.3, Schedule 1 EqA 2010. The claimant carried the burden of proof to demonstrate he came within S.6 EqA, but he did not discharge this burden.

64. In the further alternative, the Tribunal concluded the claimant's appointments were being queried by the respondent either because of the claimant's non-notification of a particular absence or because of miscommunication of the claimant's notified absences between the Directors – not because of the claimant's diabetes or facial disfigurement. (The Tribunal noted that both the other porters were also diabetic (paragraph 49 CMO), whose absences the claimant said were not queried, which made that part of the claim highly implausible). In respect of the S.15 claim (discrimination arising from disability), the Tribunal concluded that the querying of absence was because of the notification issues – which was not something which arose in consequence of his diabetes or his disfigurement.

65. In relation to the requirement to lift heavy furniture, the Tribunal also concluded, for the same reasons as referred to already, that the claimant had not

discharged the burden that he had a long-term physical impairment impacting him substantially on his ability to carry out normal day to day activities relating to his knee or back. He returned to work in February 2019 and worked without issue. Mr Graham Reeves said in oral testimony nothing was said thereafter. Thus, the Tribunal also concluded in the alternative the respondent did not know or could reasonably have been expected to know, the claimant was disabled by reason of his knee or back.

66. In the further alternative, the Tribunal concluded the claimant was not required to lift heavy furniture because he was disabled. On his own admission, he felt he was asked to lift heavy furniture because of his build/stature. The Tribunal concluded, the claimant was not required to lift heavy furniture alone. He did this of his own volition rather than rely on another porter or the van driver or other options.

Race Discrimination

67. In relation to the two claims relating to August 2011, these were substantially out of time. There was no positive case advanced by the claimant why the claim was not submitted in time or why it was just and equitable to extend time. No explanation was provided at all. This was discussed during this Hearing and had been discussed at the Case Management Hearing. The claims were substantially out of time. The Tribunal has already commented on the lack of clarity or information about the insurance incident. The claims were out of time.

68. In the alternative, the Tribunal concluded that in respect of the sleeping in the shop incident, there were no facts from which the Tribunal could conclude this was an act of race discrimination. It was a request which was declined and in addition, the sort of informal request that a small family run business might make of an employee. The burden of proof did not shift. The Tribunal has already found the insurance incident as alleged/described by the claimant did not happen.

69. In relation to the climbing on the roof incident, the Tribunal concluded that this incident too was out of time as the last occasion of this was on an unspecified date in 2018. There was no positive case advanced by the claimant why the claim was not submitted in time or why it was just and equitable to extend time. No explanation was provided at all. This was discussed during this Hearing and had been discussed at the Case Management Hearing. The claim was out of time.

70. In the alternative, the Tribunal concluded that the claimant was asked to repair the roof and/or change the sign on more than one occasion, even though the claimant's witness statement seemed to refer to one incident only, but these were not tasks required of the claimant exclusively but of the other porters too. The claimant's own evidence corroborated the respondent's evidence about

this. There were no facts from which the Tribunal could conclude this was an act of race discrimination. The burden of proof did not shift.

71. By reason of the Tribunal's conclusions in respect of Unfair Dismissal, the Tribunal concluded the claimant's dismissal was not an act of race discrimination. There were no facts from which the Tribunal could conclude this was an act of race discrimination. The burden of proof did not shift.

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Employment Judge Khalil
10 August 2022