EMPLOYMENT TRIBUNALS

Claimant: **(1) Mr T Jeurninck**
(2) Mr M Scatena

Respondent: **Piatto (London) Ltd (in liquidation)**

Heard at: **London South (CVP)** **On: 8 & 9 September 2022**

Before: **(1) Employment Judge A.M.S. Green**
(2) Ms G Mitchell
(3) Ms L Lindsey

Representation
Claimant: in person
Respondent: not present or represented

JUDGMENT having been sent to the parties on 20 September 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. For ease of reference we refer to the claimants as Mr Jeurninck and Mr Scatena and the respondent as Piatto.

2. Mr Jeurninck and Mr Scatena both claim to have worked for Piatto, a restaurant, as employees from 30 January 2018. Mr Jeurninck claims he was employed as a waiter. He resigned as a result of the treatment below on 18 December 2018. Mr Scatena was a director of Piatto but also claims he was employed as the restaurant manager from 30 January 2018 until he resigned on 24 April 2019.

3. Mr Jeurninck commenced early conciliation with ACAS on 4 January 2019 and it ended on 1 February 2019. He submitted his claim on 27 February 2019.

4. Mr Scatena commenced early conciliation on 16 February 2019 and it ended on 19 February 2019. The claim form was presented on 12 March 2019.

5. Both complaints relate to alleged homophobic treatment, physical violence and/or threats by another director or directors and the withholding of wages. Mr Jeurninck also claims holiday pay.

6. Mr Jeurninck makes the following complaints:

    a. Direct sexual orientation discrimination under Equality Act 2010, section 13 ("EQA") and harassment related to sexual orientation under EQA, section 26, about the following conduct:

        i. Vincenzo Cugno Garrano ("VCG") threw a chair at Mr Jeurninck and made physical threats towards both men in March 2018.

        ii. The homophobic name-calling of both men from June - September 2018.

        iii. The disputing in December 2018 that Mr Jeurninck was employed by Piatto.

    b. Unlawful deduction of wages in respect of the period from March 2018 until he resigned on 18 December 2018.

    c. A claim for holiday pay for the accrued but untaken holiday at the date resignation, on 18 December 2018.

    d. Constructive wrongful dismissal without notice.

7. Mr Scatena makes the following complaints:

    a. Direct sexual orientation discrimination under EQA, section 13 and harassment related to sexual orientation under EQA, section 26, about the following conduct:

        i. The physical threats towards both men in March 2018.

        ii. The homophobic name-calling of both claimants from June - September 2018.

        iii. The accusation that Mr Scatena was stealing money without proof.

        iv. The attempt to force Mr Scatena to attend work when he was sick.

        v. Accusing Mr Scatena of being absent without reason.

        vi. stopping Mr Scatena's salary while he was off sick, despite the agreement to pay sick pay and whereas VCG would pay himself if he was off sick.

vii. Requesting that Mr Scatena sign a document renouncing he would get paid.

b. Unlawful deduction of wages for the failure to pay Mr Scatena's wages whilst off sick.

c. Constructive wrongful dismissal without notice.

8. Piatto denies that Mr Jeurninck was ever employed, but rather claims he helped out the business on an unpaid basis as he was the partner of Mr Scatena. Piatto asserts that Mr Scatena was a director but not an employee. It denies the homophobic treatment/physical violence and/or threats occurred. It denies that any pay is due to either of the men.

9. Piatto contests the claims but is now in creditors voluntary liquidation. Mr Jeurninck and Mr Scatena nevertheless seek to pursue all claims both so that they can claim any guaranteed payments from the government and, having had some legal advice, so they can explore whether there remains any other possibility of recovery of any awards made in their favour.

10. At a preliminary hearing on 11 May 2022, Employment Judge Corrigan set out the issues for the Tribunal to determine at this final hearing. For the sake of brevity, I do not intend to set out those issues. There are, however, two preliminary issues that we must determine namely whether the claims were brought in time under EQA, section 123 and if they were not brought in time, whether it would be just and equitable to extend time. The second preliminary issue is whether Mr Jeurninck and Mr Scatena were employed by Piatto within the meaning of Employment Rights Act 1996, section 230 ("ERA") and EQA, section 83.

11. We conducted a CVP hearing. Piatto was not present or represented. It had intimated that it would not attend at an earlier preliminary hearing on 11 May 2022. We worked from a digital bundle. Mr Jeurninck and Mr Scatena adopted their witness statements and gave oral evidence. We also reviewed a witness statement prepared by Ms Simona Capuano ("SC"). We were informed that she was not giving oral evidence as she could not get time off work. Mr Jeurninck produced written representations and made oral submissions on behalf of himself and Mr Scatena.

12. In relation to the discrimination and harassment claims, EQA, section 136 provides that once Mr Jeurninck and Mr Scatena have proved facts from which the Tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof 'shifts' to Piatta to prove a non-discriminatory explanation. The standard of proof is the balance of probabilities. In relation to the wrongful dismissal, unlawful deduction from wages and holiday pay claims, Mr Jeurninck and Mr Scatena must establish their claims on a balance of probabilities.

Findings of fact

13. Mr Jeurninck and Mr Scatena are a married gay couple. They married in July 2017. Mr Jeurninck is a Dutch national and Mr Scatena is an Italian national.

14. Piatta is a company limited by shares. At the relevant time, the following people were directors:

    a. Mr Scatena

    b. VGC

    c. Alessandro Spina ("AS")

    d. Fabio Corona ("FC")

15. Mr Scatena was also a shareholder in Piatta. He had a 30% shareholding. He stopped being a shareholder on 26 June 2020. At no stage during his shareholding, did he receive a dividend payment.

16. Mr Scatena and VGC had worked together. VGC is an Italian national and had initiated a conversation with Mr Scatena about opening a restaurant business together. VGC was a chef and Mr Scatena was experienced at working as a General Manager. They located premises at 495 Battersea Park Rd in London and agreed to open the restaurant at that address. At that time, they did not have a bank account for the company and they used their own money to purchase equipment. In his witness statement, Mr Scatena says VGC suggested that he used his own credit card to make these purchases on the basis that VGC did not have his bankcard with him but a record of purchases would be kept and the other party would pay back the difference. Mr Scatena did not object to this arrangement because VGC's girlfriend, VB, kept a record of transactions on an Excel spreadsheet. However, when the question of reimbursement was raised with VGC, he postponed matters saying that they should wait until the restaurant had opened. At that point, VGC said the business would reimburse Mr Scatena not himself personally.

17. Mr Scatena invested all of his personal money into the business as well as a bank loan and a loan from Mr Jeurninck's parents.

18. The restaurant opened on 31 July 2017 but remained dormant until January 2018 when it started to trade. Piatta recruited Mr Jeurninck to work in the restaurant as a waiter. He said that he knew that Mr Scatena knew VGC and that when VGC talked about opening the business he was invited to join it because of his background in hospitality. He described himself as being in and was asked to join them at the initial phase of the business. That concluded in January 2018.

19. There is disputed evidence between the parties about whether Mr Jeurninck had a written contract of employment. Mr Jeurninck said in his evidence that he was provided with a contract of employment which he signed on 30 January 2018 which was the day that the restaurant opened for business. A copy of that document has been produced. Mr Jeurninck told the Tribunal that it was his signature on the document. The other signature is Mr Scatena's. In the grounds of resistance, Piatta refer to this document as the alleged "contract". They dispute the veracity of this document because it was "entered into under highly dubious circumstances". They go on to say:

> *In contravention of practices and arrangements in place at the time, Mr Scatena failed to notify the other director Mr Gugno Gurrano, that he had employed his husband/partner. It should be noted that the contract mysteriously surfaced some 10 months after it was signed. Following thorough searches on the Respondent's IT system, no trace of the contract was found. The Claimant is put to prove the contract.*

20. We accept that Mr Jeurninck has established that he entered the contract of employment that he produced to the Tribunal for the following reasons.

    a. He was a reliable witness and answered the questions that he was asked by the Tribunal regarding this document. He was not evasive and he was very clear that the document had been provided to him on the day that the restaurant opened and he identified both his signature and Mr Scatena's.

    b. In his oral evidence, he also told the Tribunal that all of the staff who were going to be employed at the restaurant, including Mr Scatena sat down together and signed their contracts of employment.

    c. Mr Scatena confirmed that it was his signature on the document. He said that he had used an example of a contract of employment taken from his previous employer which he had used as a template. He said that both he and VGC had worked on the documents. Typically, a copy of the contract would be kept at the premises. We have no reason to doubt what Mr Scatena says.

21. Mr Jeurninck's contract of employment provided, amongst other things:

    a. His employment commenced on 30 January 2018.

    b. He was employed as a waiter reporting to his manager.

    c. His place of work was 495 Battersea Park Road, London.

d. He was required to work a 48-hour week comprising 5 days on and two days off on a weekly shift pattern. Piatta reserved the right to change shifts to meet the needs of the business.

e. His wages were £8.50 per hour which would normally be paid by direct transfer to his bank account every four weeks.

f. On completing his probationary period, he was required to give one month's written notice of intention to terminate his employment and Piatta was required to give him up to 2 weeks' notice if he had up to 2 years' service and, thereafter, his notice period would be subject to statutory requirements which increase with service.

22. There is disputed evidence as to whether Mr Scatena had a written contract of employment. Piatta states that he was never employed. He worked as a director. Mr Scatena says that he was given a contract of employment in the same format as the one given to the other employees which he signed. He says that a copy of that contract was left at the premises. After he left his employment, he was unable to access the contract because the locks had been changed. We are prepared to accept this evidence at face value in preference to what Piatta states in their grounds of resistance. We have no reason to doubt what Mr Scatena said in his evidence and we found him a reliable and credible witness.

23. Another employee who started at the same time was SC. She worked at the restaurant as a waitress.

24. The restaurant operated a shift pattern. We were shown copies of examples of rotas. Mr Scatena explained how they operated.

    a. The first example covers the week commencing 19 February 2018 and lists the employees who worked "Front of House" which included Mr Jeurninck, Mr Scatena, SC and two other employees. The rota shows the days on which they were working, the hours for their shift and the days when they were not working.

    b. The second rota includes the Front of House staff and the Back of House staff (i.e. those people who worked in the kitchen including VGC).

25. Mr Scatena was referred to 6 examples of the rota. He also explained that he and VGC would prepare the rotas. He told the Tribunal that once the rota was prepared, he was required to work the shifts set out therein. He told the Tribunal that he did not have any option of sending someone else to do the work. He said that were that to be the case, the business would have to employ someone else which would cost money. We have no reason to doubt that Mr Scatena work shifts as claimed. We have no reason to doubt that Mr Jeurninck worked shifts as claimed and that they

and the other employees named therein were required to do the work personally.

26. On 27 February 2018, Piatto paid Mr Jeurninck £968 into his bank account as wages. This was the only time that he received payment for his work throughout his employment. He did not receive a payslip.

27. In March 2018, VGC and Mr Scatena had an argument in the restaurant. In his witness statement, Mr Scatena describes it as follows:

> *VGC and myself had to pay for the first salaries for the staff and VGC calculated everyone's worked hours and subsequently the monies owed by everyone including TJ. VB proceeded to pay out the salaries for all members of staff including TJ. The day after, VGC checked the Company's Bank Account and lost his mind when seeing that payment was issued to TJ and started to be verbally abusive at me during the conversation. When confronted with the paper he wrote (same document as above) just the day before he was screaming even louder. He assumed that I had actioned the payment and when I reminded him that VB had actioned the payment he banged his fists on the table and eventually he threw a chair at me, which hit the wall next to the restaurant entrance. This was at the front of the business which was a floor-to-ceiling, wall-to-wall window for everyone in the street to see what was going on. It was obvious he had done all of this intentionally, both calculating the payment for TJ first and then immediately checking the account after. VGC then refused to work in the business until TJ would return the money to the Company. After talking to VB, she managed to speak to him and stop his neurotic behaviour and VG then agreed to continue trading as normal. He decided that TJ would not get paid until there was more cash flow. I did not want to agree to this considering his recent behaviour and empty promises, however I felt I had no choice as he threatened to no longer show up, do orders, etc. TJ also did not agree to this, however also had no choices as at this point a lot of our personal money have been invested into the company.*

28. We accept that the chair throwing incident occurred as claimed. It was undoubtedly aggressive and very unpleasant. However, there is no evidence to suggest that VGC's behaviour was motivated by homophobia. It was an isolated incident that appeared to have been motivated by concerns over cash flow.

29. Between June and September 2018, Mr Jeurninck and Mr Scatena were on the receiving end of homophobic name-calling as follows:

    a. In his witness statement Mr Jeurninck states that in late June 2018, he was working at the restaurant setting everything for the evening shift. He states that he was running a cleaning cycle on the coffee machine which cannot be interrupted. FC screamed "waitress"

meaning Mr Jeurninck. He witnessed being laughed at this. When he remonstrated about being addressed in this way the response was “oh your waitress is very rude” and they then proceeded to laugh again and one of them said “fucking faggot” in Italian. We have no reason to doubt what Mr Jeurninck said and accept this at face value.

b. In his witness statement, Mr Jeurninck says that there were a few weeks of relative peace and quiet before VCG started to behave irrationally again. He explains that he started speaking to him exclusively in Italian which excluded him from conversations. However, he understood some Italian and when it came to speaking, he knew the basics and could not hold a conversation. He explains that VCG would speak to their supplier, Giuseppe, and he could hear them call him all kinds of things. He states that he believed that they used any kind of derogatory term in Italian to describe his sexual orientation. SC also heard these conversations.

c. Mr Jeurninck states that the threats and insinuations and mental abuse continued and on 14 July 2018 he was alone in the Front of House, VCG decided that he did not feel like working and spent the day smoking cigarettes and chatting to customers. Mr Jeurninck says that he informed VCG that the kitchen staff were looking for him and he got the impression that they needed some help. In response, VCG started to scream at him and told him and that he should leave the thinking to him. Mr Jeurninck then states that he replied that he was just letting VCG know what he had been told and he should not “should the messenger”. VCG started mumbling in Italian and called him “frocio” [i.e. faggot] and left.

d. Mr Jeurninck then goes on to say in his witness statement that VCG came back upstairs and screamed an entire monologue at Mr Jeurninck. When Mr Jeurninck tried to interrupt, he was told to shut up. VCG said that his family were the Mafia and they could harm Mr Scatena’s family in Italy. He then made a hand gesture indicating that he would be killed. Mr Jeurninck then states that his heart rate went up to 206 bpm and he became very unwell. VCG told him to stop crying and left. Mr Jeurninck called 111 and was told to go to an Accident and Emergency department. He did this and was referred to a heart monitor and had to wear sensors and wires for a week. He was unable to work because of this and tests showed that his heart rates were normal when not around VCG. We have no reason to doubt what Mr Jeurninck says.

e. Mr Jeurninck states that on 22 July 2018, VCG came upstairs to the bar with a glass and said, “I thought you people (gay people), knew how to clean better”. Mr Jeurninck states that the only thing on the glass was a fingerprint which could have been his and he replied that may be instead of scanning glasses for fingerprints he could focus on paying them back. This was one of the many purchases

that Mr Scatena had made. In response, VCG started banging his fists on the counter and several pastries fell to the floor. He is recorded as saying "I am a real man unlike you, I won't have a little faggot talk to me like this". VCG then tried to spit at him. We have no reason to doubt what Mr Jeurninck is saying.

f. Mr Jeurninck states that after being employed for a couple of months, he was constantly received threatening comments about his sexual orientation and was frequently harassed mainly by VCG. He says that he would constantly go out of his way to come from Back of House to Front of House where he was working to make sure that he felt scared and he kept harassing him even after he stated that he had problems with his heart and was receiving medical care. We have no reason to doubt what Mr Jeurninck is saying.

g. In her witness statement, SC also refers to homophobic remarks directed against Mr Jeurninck and, in particular, she notes that VGC decided to have conversations exclusively in Italian so that Mr Jeurninck could not understand what was being said. She recalls one conversation with a supplier called Giuseppe which was conducted in front of Mr Jeurninck where he called him a "faggot" in Italian. She goes on to say "I have heard them use this terms, as well as VCG using it in other conversations constantly. I had never seen this kind of behaviour from VCG when I worked than previously and was shocked, I felt really bad for MS and TJ that they had to suffer this abuse while being used financially by VCG to open the business.

h. SC also refers to VCG talking about Mr Scatena in homophobic terms using expressions such as "faggot". We have no reason to doubt what SC says.

i. SC refers to overhearing a conversation in the back garden of the restaurant on 15 June 2018 when VCG, AS and FC were having a cigarette and talking about Mr Scatena she says that they were discussing a solution to get rid of both men. She was standing at the back of the garden and heard them using homophobic slurs. We have no reason to doubt what SC says.

j. SC states that the following week, VCG, FC and AS were having another meeting without Mr Scatena. They called Mr Jeurninck to bring them drinks and they called him a waitress even though he had told that he did not wish to be addressed in this way. He told them that he did not want to be called a waitress because he was not a woman. SC then recalls that they responded by calling him a "fucking faggot" in Italian and laughed at him. She recalls that VCG spoke in front of the others saying "I know that you [i.e. SC] are translating for that one over there" meaning Mr Jeurninck. We have no reason to doubt what SC says.

30. After the summer break, Mr Jeurninck's grandfather became ill and it was apparent that he did not have much time left to live. Mr Jeurninck had to go to visit his grandfather in the Netherlands. On the day that he left, VCG sent a WhatsApp conversation to Mr Scatena from a group chat of all the other directors apart from Mr Scatena. A copy of this was produced to the Tribunal. The conversation is in Italian and has been translated into English. The messages were forwarded to Mr Scatena on 19 September 2018. We have reproduced those messages in full below:

[30/08/18	12:05:32] Fabio Corona ha cambiato l'oggetto in "Piatto (other)SIDE"	FB has created the group "Piatto (other) SIDE
[11/09/18	20:00:59] Vincenzo: Ma secondo te????	VCG: do you think?
[11/09/18	20:01:08] Fabio Corona: Marco?	FC: MS?
[11/09/18	20:01:11] Vincenzo: Quello a stento respira...	VCG: He barely breathes
[11/09/18	20:01:19] Vincenzo: Nella prossima vita	VCG: in the next life
[11/09/18	20:01:30] Vincenzo: Appena gli viene voglia di vivere...	VCG: He barely has the will to live
[12/09/18	12:27:11] Ale Piatto: Non sono x un cazzo contento del comportamento di Marco	AS: I'm not happy about MS's behaviour
[12/09/18	12:28:46] Ale Piatto: Noi non siamo qui per giocare sono stati investiti soldi seri e di sicuro non vogliamo rischiare che le cose vadano a male per una attitudine verso il lavoro da ignorante e da pelandrone.	AS: We are not here to play. We invested money and we don't want to risk it all because he (MS) is stupid and lazy
[12/09/18	12:29:08] Ale Piatto: Lo deve capire al volo o per me se ne può andare domani	AS: He needs to understand it now or he can leave even tomorrow
[12/09/18	12:36:05] Ale Piatto: Prima ci fotte i soldi	AS: First he (MS) steals from us
	Poi non fa niente tutto il giorno	Then he doesn't do anything all day
[12/09/18	12:36:35] Ale Piatto: Cosa pensa di fare questo???	AS: What does he (MS) think to do?
[12/09/18	12:39:08] Vincenzo: Ale hai perfettamente ragione e ne abbiamo già discusso.	VCG: you are right and we discussed about this previously
	Purtroppo sarà un processo con più step quello di muoverlo verso l'esterno e specialmente adesso che ho bisogno di uno stronzo in sala.	But it will be a long process to push him out especially because I need a bitch to work
	Cerchiamo di essere obiettivi ma di tenere il polso della situazione senza passare però per stupidi...	

[12/09/18	12:45:55] Ale Piatto: Ok se voi la pensate così va bene però dopo questa il procedimento di allontanamento si dovrebbe accelerare e alla grande. Senza più peli sulla lingua gli si dà un feedback alla prima occasione. Dopo il weekend magari.	AS: ok if you think we need to wait, let's wait. As soon as we find a cover, we need to speed up the process to kick him out. Maybe after the weekend
[12/09/18	12:47:55] Ale Piatto: Cmq adesso mi girano veramente quindi meglio se ritorno a parlarne a mente lucida. A dopo frociazzi!	AS: I'm very upset at the moment so let's talk about it later. Bye faggots
[12/09/18	14:12:30] Vincenzo: Grazie per avermi associato a Marco...	VCG: you are confusing me with MS
[12/09/18	15:51:49] Fabio Corona: 100% con Ale ma sono anche consapevole che ci serve personale in sala	FC: I agree 100% with AS but I am aware we need staff
[13/09/18	23:40:06] Fabio Corona: Poi io però sono andato a farmi fare un bocchino 😂😂😂	FC: then I went to get a blowjob
[14/09/18	00:41:02] Vincenzo: Se eri qui magari te ne faceva uno la nuova cameriera...	VCG: If you were here the new WAITRESS would give you one
[14/09/18	00:41:16] Vincenzo: Com'è che si chiama...????	VCG: what's her name?
[14/09/18	00:41:20] Vincenzo: MARCO	VCG: MARCO (MS)
[15/09/18	11:49:09] Ale Piatto: Perché cmq Marco visto che viene pagato è anche un nostro dipendente e quindi...	AS: because MS is an employee so we can do what we want
[15/09/18	11:50:51] Ale Piatto: Può anche saltare	AS: he can go
[15/09/18	11:50:51] Ale Piatto: Come cameriere. A sti punti preferisco uno stipendiato che non faccia dei danni	AS: as a waiter. I prefer to pay him to stay home
[15/09/18	13:59:11] Fabio Corona: Vi giuro...	FC: I swear
[15/09/18	13:59:11] Fabio Corona: Stavo per mandarlo a fanculo	FC: I was so close to punch him
[15/09/18	17:41:09] Ale Piatto: Cmq come dicevamo...performance review	AS: As we said before, let's do a performance review for MS
[15/09/18	17:53:34] Fabio Corona: Si si 100%	FC: Agreed

[15/09/18	17:53:57] Fabio Corona: Come farlo me lo prendo io come responsabilità	FC: I'll take responsibility on what to put in it
[16/09/18	11:26:22] Vincenzo: La settimana prossima arriverà la mamma di Valentina ragione per cui lei può essere disponibile durante il pomeriggio senza problemi...	VCG: Next week VB's mum will arrive so VB can help if we push MS out
[16/09/18	20:36:42] Fabio Corona: Bello che te la ridi... io l'avrei attaccato al muro per principio	FC: I was very close to push him to the wall and beat him up
[16/09/18	20:37:34] Fabio Corona: Cmq che sfiga che non abbiamo un'altra persona in sala	altrimenti stava saltando adesso
[16/09/18	20:39:23] Fabio Corona: Cmq sto venendo a mangiare una cosa	FC: I'm coming to eat in a bit
[16/09/18	20:39:47] Fabio Corona: Quasi quasi metto 10 o 20 pounds in cassa e accendiamo le telecamere	FC: maybe I'll put 10 or 20 pounds in the till and we turn on the cameras
[16/09/18	20:44:02] Ale Piatto: Malato cmq	AS: He's sick
[16/09/18	20:51:32] Fabio Corona: Male male proprio	FC: he's so bad
[16/09/18	20:54:54] Ale Piatto: Ste cose bisogna registrale. E dobbiamo chiedere ad un legale.	AS: we need to record everything and ask for legal advise.
	Settiamogli una trappola ben fatta e con un po di soldi (deve essere tutto registrato) e poi gli si dice che deve andare.	AS: let's set a nice trap and we put some money (everything has to be recorded) and then we tell him that he has to go
[16/09/18	20:55:15] Ale Piatto: Cmq come dipendente lo puoi licenziare al volo	AS: Anyway you can fire him as employee straight away
[19/09/18	09:30:15] Fabio Corona: Devi mettere £1 nella tips jar domani	FC: tomorrow you (VCG) have to put £1 in the tips jar
[19/09/18	09:36:19] Ale Piatto: Noi che poi Marco se lo incula	AS: no because then MS will steal them

31. In his oral evidence, Mr Scatena said that WhatsApp messages had been shared with him to intimidate him. He told the Tribunal that it had been shared to him via Air Drop on his iPhone. He received a notification on his telephone telling him that a file was to be shared with him and he accepted the sharing request. He said that this was not an unusual way to share files. He went home to read the file. He said that he was not a member of the WhatsApp group. He said the group was named "Piatto - other side".

Mr Scatena was understandably very upset when he read these WhatsApp messages. They are offensive, contain threats of violence and homophobic statements. They clearly indicate an intention to push him out of the business. In his witness statement, he says that all of the other directors were talking about inciting physical violence against and plotting how to remove him from the business. He also said that it transpired that they were putting additional cash into the till to see if he would steal it. He said that he suffered a panic attack and had to collect himself to go to work the following day. He goes on to say that he suffered from a severe anxiety attack and had to stay at home the following day. Mr Jeurninck's grandfather died whilst all of this was going on and he had to stay in Holland for the funeral.

32. We accept that Mr Scatena was accused of stealing money without any proof.

33. In his witness statement, Mr Scatena states that at the end of September, VB stopped paying his "reimbursements" which was confirmed in an email by AS on 18 December 2018 because he had been on sickness absence. Further discussion about this would continue on his return work. In the meantime, having stopped paying Mr Scatena, Piatta increased its remuneration for VCG.

34. In his oral evidence, Mr Scatena said that he thought that it was at the end of September that they stopped paying his reimbursements. It is unclear what he means by reimbursements, however we are prepared to accept that he meant his salary.

35. Mr Scatena claims that he was forced to sign a document renouncing that he would get paid. We do not accept that he has established this on the evidence provided.

36. On 18 December 2018, Mr Jeurninck resigned his employment. In his resignation email he claimed that he had not been paid his wages since March 2018 and set out how much he was owed.

37. On 25 April 2019, Mr Scatena resigned his employment. In his email resignation, he states, amongst other things:

> *You have created a situation that is unsustainable and simultaneously denying the facts for months on end, I believe that under no circumstances I will ever be able to be part of this Company.*
>
> *There has been a total and irreversible breach of trust. I cannot be part of a Company where I've been bullied for months on end and decisions are taken actively and consciously in order to damage and undermine my health. This situation has been created by you solely is then used to take decisions behind my back and without my consent. This situation is also being used and abused by the*

other shareholders to waste resources without my consent and without essential payments towards me.

Additionally I have been left without salary for the last several months, leaving me in financial ruin. I won't be able under any circumstances to borrow any other money to the Company. Besides from the money I have already borrowed to you which you refuse to return.

There is constant crying regarding Vincenzo's situation, which has been solely caused by his own doing and which you fully seem to agree with. You went as far as increasing his salary without my permission. In contrast you have personally and consciously ruined my health and well-being. After destroying my mental and physical health you have then use this situation to take all decisions behind my back and without my consent and have also decided not to pay me and ruin me financially. You are personally responsible for me not being able to work for months on end and have taken my income illegally, which has caused me to rake up a substantial debt.

I will see to it and take all steps necessary to ensure that all decisions that have been taken by you illegally, without consent and/or in breach of contract will be rectified and all monies owed will repaid in full.

In conclusion of your behaviour and events and situations that you have created I have no other option than resign from my position as Director of the Company.

I once again ask that all monies owed to me should be returned immediately both from the Company and Vincenzo Cugno Garrano respectively all legal actions will be taken against both.

38. This letter quite clearly shows that the matter had become intolerable for Mr Scatena and he resigned as a consequence.

39. Mr Scatena was unemployed until December 2019. He says his poor health precluded him from getting employment. He was unable to go through the stress of the interview process or going to work. We have no reason to doubt what he said. He then worked for three months between December 2019 in April 2020 but was laid off because of the Covid pandemic. He finally got work on 1 June 2021. He is paid £38,000 per year in his new job.

40. Mr Scatena stopped being a shareholder in Piatta on 26 June 2020.

41. Mr Scatena explained why he had waited until 12 March 2019 to present his claim to the Tribunal. He said that he had been suffering from severe stress and was unable to get things together. He was taking

antidepressants and he wanted to wait until his health was insufficiently in good shape to be able to present his claim. He had conducted some research on the Internet about his rights and he knew about going to ACAS from something that he had learnt in his previous employment where an employee had raised issues against his former employer and the matter had been referred to ACAS as an internal grievance had been unsuccessful.

42. Mr Jeurninck got another job at the end of January 2019 working for an estate agent. His base salary £16,000 per year plus commission. If he is on target, his total commission is £10,000.

43. Mr Jeurninck explained why he had waited until 27 February 2019 to present his claim to the Tribunal. He said that he had been to the citizens advice bureau for advice. However, it was difficult to see somebody because so many people wanted to use their services. He was referred to Law Centres in the area where he lived. He went to the Hackney Law Centre but they told that before they could advise him, he would need to make a payment on account. He could not afford to do that. He then went to the Tower Hamlets Law Centre where they were able to give advice on what to do next. He did some research online about his rights and then he went to the University of Westminster who provided a Law Clinic but they were not working on employment law claims at the time. He prepared the claim form himself.

Applicable law

44. EQA, section 123(1) provides that proceedings of this nature may not be brought after the end of:

    a. the period of 3 months starting with the date of the act to which the complaint relates, or

    b. such other period as the employment tribunal thinks just and equitable.

45. EQA, section 123 and its legislative equivalents do not specify any list of factors to which a tribunal is instructed to have regard in exercising the discretion whether to extend time for 'just and equitable' reasons. Accordingly, there has been some debate in the courts as to what factors may be relevant to consider.

46. To establish whether a complaint of discrimination has been presented in time it is necessary to determine the date of the act complained of, as this sets the time limit running. Where the act complained of is a single act of discrimination, this will not usually give rise to any problems. A dismissal, for example, is considered to be a single act and the relevant date is the date on which the employee's contract of employment is terminated. Where dismissal is with notice, the EAT has held that the act of discrimination takes place when the notice expires, not when it is given

(**Lupetti v Wrens Old House Ltd 1984 ICR 348, EAT**). Rejection for promotion is also usually considered a single act. In this case, the date on which another person is promoted in place of the complainant is the date on which the alleged discrimination is said to have taken place (**Amies v Inner London Education Authority 1977 ICR 308, EAT**).

47. The question of when the time limit starts to run is more difficult to determine where the complaint relates to a continuing act of discrimination, such as harassment, or to a discriminatory omission on the part of the employer, such as a failure to confer a benefit on the employee. EQA, section123(3) makes special provision relating to the date of the act complained of in these situations. It states that:

    a. conduct extending over a period is to be treated as done at the end of that period (section123(3)(a));

    b. failure to do something is to be treated as occurring when the person in question decided on it (section123(3)(b)). In the absence of evidence to the contrary, a person is taken to decide on a failure to do something either when that person does an act inconsistent with doing something, or, if the person does no inconsistent act, on the expiry of the period within which he or she might reasonably have been expected to do it (section123(4)).

48. The leading case is **Barclays Bank plc v Kapur and ors 1991 ICR 208, HL**, which involved a pension scheme that allegedly discriminated against a group of Asian employees. The argument on time limits centred on whether the operation of the pension scheme was a continuing act that subsisted for as long as the employees remained in the bank's employment (in which case their complaints were presented in time) or whether it was a single act that took place when the bank decided not to credit the employees' service in Africa for the purpose of calculating pension entitlement (in which case their complaints were time-barred). The House of Lords found in favour of the employees and ruled that the right to a pension formed part of their overall remuneration and, if this could be shown to be less favourable than that of other employees, it would be a disadvantage continuing throughout the period of employment. It would not be any answer to a complaint of race discrimination that the allegedly discriminatory pension arrangements had first occurred more than three months before the complaint was lodged.

49. Crucially, their Lordships drew a distinction between a continuing act and an act that has continuing consequences. They held that where an employer operates a discriminatory regime, rule, practice or principle, then such a practice will amount to an act extending over a period. Where, however, there is no such regime, rule, practice or principle in operation, an act that affects an employee will not be treated as continuing, even though that act has ramifications which extend over a period of time. Thus in **Sougrin v Haringey Health Authority 1992 ICR 650, CA**, the Court of Appeal held that a decision not to regrade an employee was a one-off

decision or act, even though it resulted in the continuing consequence of lower pay for the employee who was not regraded. There was no suggestion that the employer operated a policy whereby black nurses would not be employed on a certain grade; it was simply a question whether a particular grading decision had been taken on racial grounds. That case can, however, be contrasted with the case of **Owusu v London Fire and Civil Defence Authority 1995 IRLR 574, EAT**, in which an employee complained that he was discriminated against by his employer's refusal to award him promotion. While the EAT agreed that a specific failure to promote or shortlist was a single act — despite its continuing consequences — it drew a distinction with the situation where the act (a failure to promote) took the form of 'some policy, rule or practice, in accordance with which decisions are taken from time to time'. Accordingly, the tribunal did have jurisdiction to decide whether there was in fact such a discriminatory practice.

50. In **Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA**, the Court of Appeal made it clear that it is not appropriate for employment tribunals to take too literal an approach to the question of what amounts to 'continuing acts' by focusing on whether the concepts of 'policy, rule, scheme, regime or practice' fit the facts of the particular case. Those concepts are merely examples of when an act extends over a period and should not be treated as a complete and constricting statement of the indicia of 'an act extending over a period'. In that case the claimant, who was a female police officer, claimed, while on stress-related sick leave, that she had suffered sex and race discrimination throughout her 11 years' service with the police force. She made nearly 100 allegations of discrimination against some 50 colleagues. In determining whether she was out of time for bringing complaints in respect of these incidents, the EAT upheld an employment tribunal's ruling that no 'policy' of discrimination could be discerned and that there was, accordingly, no continuing act of discrimination. However, the Court of Appeal overturned the EAT's decision, holding that it had been side-tracked by the question whether a 'policy' could be discerned in this case. Instead, the focus should have been on the substance of the claimant's allegations that the Police Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the police force were treated less favourably. The question was whether that was an act extending over a period, as distinct from a succession of unconnected or isolated specific acts for which time would begin to run from the date when each specific act was committed.

51. In **Hale v Brighton and Sussex University Hospitals NHS Trust EAT 0342/16** an employment tribunal found that the decision to commence a disciplinary investigation against H was an act of discrimination, but it was a 'one-off' act and was therefore out of time. H appealed, arguing that the tribunal had been wrong to treat the decision to instigate the disciplinary procedure as a one-off act of discrimination rather than as part of an act extending over a period ultimately leading to his dismissal. Referring to Hendricks (above), the EAT observed that the tribunal had lost sight of the

substance of H's complaint. This was that he had been subjected to disciplinary procedures and was ultimately dismissed – suggesting that the complaint was of a continuing act commencing with a decision to instigate the process and ending with a dismissal. In the EAT's view, by taking the decision to instigate disciplinary procedures, the Trust had created a state of affairs that would continue until the conclusion of the disciplinary process. This was not merely a one-off act with continuing consequences. Once the process was initiated, the Trust would subject H to further steps under it from time to time. The EAT said that if an employee is not permitted to rely on an ongoing state of affairs in situations such as this, then time would begin to run as soon as each step is taken under the procedure. In order to avoid losing the right to claim in respect of an act of discrimination at an earlier stage of a lengthy procedure, an employee would have to lodge a claim after each stage unless he or she could be confident that time would be extended on just and equitable grounds. However, this would impose an unnecessary burden on claimants when they could rely upon the provision covering an act extending over a period. The EAT therefore concluded that this part of H's claim was in time.

52. EQA, section 123 and its legislative equivalents do not specify any list of factors to which a tribunal is instructed to have regard in exercising the discretion whether to extend time for 'just and equitable' reasons. Accordingly, there has been some debate in the courts as to what factors may be relevant to consider.

53. Previously, the EAT suggested that in determining whether to exercise their discretion to allow the late submission of a discrimination claim, tribunals would be assisted by considering the factors listed in S.33(3) of the Limitation Act 1980 (**British Coal Corporation v Keeble and (Ors) 1997 IRLR 336, EAT**). That section deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice which each party would suffer as a result of the decision reached, and to have regard to all the circumstances of the case, in particular: the length of, and reasons for, the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

54. The relevance of the factors set out in **Keeble** was revisited in **Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 ICR D5, CA**. In that case, the Court of Appeal upheld an employment judge's refusal to extend time for a race discrimination claim presented three days late. It noted that the judge had referred to the factors set out in S.33(3) of the Limitation Act 1980, following **Keeble**. As to the first factor, the length of and reasons for the delay, the judge had been entitled to take into account that, while the three-day delay was not substantial, the alleged discriminatory acts took place long before A's employment terminated, and

that he could have complained of them in their own right as soon as they occurred or immediately following his resignation. As for A's assertion that he had mistakenly believed that he could benefit from an automatic extension of time under the early conciliation rules, the judge was entitled to take the view that this did not justify the grant of an extension, given that A had left it until very near the expiry of the primary deadline to take advice and then chose not to act on that advice because he thought that the solicitors had misunderstood the position. With regard to the **Keeble** factors, the Court pointed out that the EAT in that case did no more than suggest that a comparison with S.33 might help 'illuminate' the task of the tribunal by setting out a checklist of potentially relevant factors; it certainly did not say that that list should be used as a framework for any decision. In the Court's view, it is not healthy for the **Keeble** factors to be taken as the starting point for tribunals' approach to 'just and equitable' extensions, as they regularly are. Rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may occur where a tribunal refers to a genuinely relevant factor but uses inappropriate **Keeble**-derived language. The best approach for a tribunal in considering the exercise of the discretion is to assess all the factors in the particular case that it considers relevant, including in particular – as Mr Justice Holland noted in **Keeble** – the length of, and the reasons for, the delay. The Court noted that, while it was not the first to caution against giving **Keeble** a status that it does not have, repetition of the point may still be of value in ensuring that it is fully digested by practitioners and tribunals.

55. The Court of Appeal's approach in **Adedeji** was followed by the EAT in **Secretary of State for Justice v Johnson 2022 EAT 1**. There, an employment tribunal had concluded that J's harassment claim was issued only a few weeks out of time at the most and that it would be just and equitable to extend time. In doing so, it decided that a lengthy delay in the claim being brought to trial, which was neither party's fault, was not relevant. The delay in question was due to J's concurrent personal injury claim, which resulted in the harassment claim being stayed for several years. On appeal, the EAT held that the tribunal had erred in directing itself that it was only the period by which the complaint was out of time that was legally relevant. It was clear from **Adedeji** that tribunals should consider the consequences for the respondent of granting an extension, even if it is of a relatively brief period. Those consequences included whether allowing the claim to proceed would require the tribunal, for whatever reason, to make determinations about matters that had occurred long before the hearing. Accordingly, in the instant case, although it was neither party's fault that there had been a considerable delay in the claim being heard, this was nevertheless a factor that the tribunal was required to consider.

56. The strength of the claim may be a relevant factor when deciding whether to extend time. In **Lupetti v Wrens Old House Ltd 1984 ICR 348, EAT** the Appeal Tribunal noted that tribunals may, if they think it necessary, consider the merits of the claim, but if they do so they should invite the

parties to make submissions. However, this is not necessarily a definitive factor: even if the claimant has a strong case, time may not be extended for it to be heard.

57. To establish whether a complaint of discrimination has been presented in time it is necessary to determine the date of the act complained of, as this sets the time limit running. Where the act complained of is a single act of discrimination, this will not usually give rise to any problems. A dismissal, for example, is considered to be a single act and the relevant date is the date on which the employee's contract of employment is terminated. Where dismissal is with notice, the EAT has held that the act of discrimination takes place when the notice expires, not when it is given (**Lupetti**). Rejection for promotion is also usually considered a single act. In this case, the date on which another person is promoted in place of the complainant is the date on which the alleged discrimination is said to have taken place (**Amies v Inner London Education Authority 1977 ICR 308, EAT**).

58. In **Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA** one of the arguments before the Court was that in the absence of an explanation from the claimant as to why she did not bring the claim in time and an evidential basis for that explanation, the employment tribunal could not properly conclude that it was just and equitable to extend time. However, the Court of Appeal rejected this argument. It held that the discretion under EQA section123 for an employment tribunal to decide what it 'thinks just and equitable' is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation for the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard. However, there is no requirement for a tribunal to be satisfied that there was a good reason for the delay before it can conclude that it is just and equitable to extend time.

59. A claim for unlawful deduction from wages under ERA, section 13 must be made within three months from the date of the last deduction (ERA, section 23 (3A). The Tribunal can extend time where it considers that it was not reasonably practicable to present the claim in time.

60. A breach of contract claim by an employee must be made in the tribunal three months starting with the effective date of termination (Article 7 Of The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. The Tribunal can extend time where it considers that it was not reasonably practicable to present the claim in time.

61. A claim for payment in lieu of holiday on termination of employment must be made within three months from the date when the payment should

have been made (Working Time Regulations 1998, regulation 30 (2). The Tribunal can extend time where it considers that it was not reasonably practicable to present the claim in time.

62. ERA, section 230(1), defines employee' as 'an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment'. ERA, section 230(2). provides that a contract of employment means 'a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing'.

63. EQA prohibits discrimination by employers against existing or prospective employees. The definition of employment under EQA is broad, covering, inter alia, individuals working under a contract of service, apprentices, and self-employed people working under a contract personally to do work (sections 83(2)(a)-(d)). More recent appellate case law indicates that the scope of the term "employee" aligns with the term "worker" under ERA, section 230(3).

64. Thus, for a person to be an employee for the purposes of the EQA, he or she must fit into one of the six categories provided for in section 83(2). It is apparent that for a person to be employed there must be a contract in existence.

65. A relationship where it can be difficult to establish the existence of a contract is that involving volunteer posts. On the face of it, the word 'volunteer' would seem to rule out a contractual relationship, since it suggests that there is no obligation. However, employment tribunals must look behind the labels ascribed to a relationship to determine whether it in fact falls within EQA, section 83(2). In **Murray v Newham Citizens Advice Bureau 2001 ICR 708, EAT**, for example, M had applied to the CAB to become a trainee voluntary adviser. The EAT overturned the tribunal's decision that the position for which M had applied did not amount to 'employment' for the purposes of the Disability Discrimination Act 1995. In the EAT's view, the tribunal had erred in concluding that the documentation relating to the volunteer adviser post and training programme — which required the applicant to agree to a number of matters, including a commitment to volunteer on a particular two days a week — placed no obligation on either party. It had also erred in putting too great an emphasis on the absence of pay (under the agreement, M was entitled only to be reimbursed for travel expenses) to support its conclusion that there was no contractual arrangement with mutually binding obligations. In the EAT's view, the absence of pay was just one of a number of factors to be weighed in the balance.

66. In **X v Mid Sussex Citizens Advice Bureau and anor 2013 ICR 249, SC** the Supreme Court held that volunteer workers are essentially without employment rights. However, volunteers who have a contract to do work personally will be covered by the definition of employment in EQA, section 83(2).

67. Sexual orientation is a protected characteristic. Section 13 (1) of EQA defines direct discrimination as follows:

> *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.*

68. Harassment claims must be made within three months of the act complained of or the last of a series of acts.

69. The general definition of harassment set out in EQA section 26(1) applies to all protected characteristics except marriage and civil partnership and pregnancy and maternity. It states that a person (A) harasses another (B) if:

    a. A engages in unwanted conduct related to a relevant protected characteristic — section 26(1)(a); 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 — section 26(1)(b).

70. There are three essential elements of a harassment claim under EQA, section 26(1):

    a. unwanted conduct

    b. that has the proscribed purpose or effect; and

    c. which relates to a relevant protected characteristic.

71. Mr Justice Underhill, then President of the EAT, expressed the view that it would be a 'healthy discipline' for a Tribunal in any claim alleging unlawful harassment specifically to address in its reasons each of these three elements (**Richmond Pharmacology v Dhaliwal 2009 ICR 724, EAT**).

Discussion and conclusions

Time limits

72. Regarding the claim for direct discrimination and harassment, the claims relating to the allegation that the chair was thrown in March 2018 was not made in time. This is a freestanding and isolated act and is not part of a continuing act. Mr Jeurninck should have presented his claim on or before 5 October 2018. His claim is significantly out of time. Mr Scatena should have presented his claim on or before 17 November 2018. His claim is significantly out of time. We are not satisfied that it would be just and equitable to extend time. Both men might have found it difficult to get advice. However, there were capable of researching their rights on the Internet and they obviously knew where to go to get advice because that is what they did. We also do not believe that the underlying reason for the chair throwing incident is necessarily connected with their sexual orientation. We believe it can be explained as an outburst of anger relating

to cash flow. The underlying strength of that claim is also relevant when considering whether it is just inequitable to extend time.

73. Regarding the claim for direct discrimination and harassment relating to homophobic name-calling and disputing that he was an employee, this formed part of a continuing act particularly there had been a reference to Mr Jeurninck being told to go and speak to his "husband". Consequently, these claims are in time as far as Mr Jeurninck is concerned.

74. Turning to Mr Scatena's claims to the extent that they have not really been dealt with above, we believe that there was a sustained campaign that was motivated by homophobic behaviour to force him out of the business. All of the examples of unfavourable treatment for his direct discrimination claim and the unwanted conduct for his harassment claim form part of that campaign. There are two reasons why Piatta were trying to force him out. Either it was because they did not like him or it was because he was a gay man. We have seen more than enough evidence to support the latter in terms of offensive and sustained homophobic behaviour. It would be perverse to find otherwise. Mr Scatena went on sick leave immediately after he saw the WhatsApp messages which in itself, triggered his concerns about why he had not been paid sick pay.

75. Although not identified at the preliminary hearing on 11 May 2022, there are other claims that were presented out of time and we must consider these. Regarding the arrears of pay claim, we note that Mr Jeurninck was only paid once on 27 February 2018. His claim is substantially out of time and we believe that it would have been reasonably practicable for him to present the claim within time. He could have taken advice earlier and we do not accept the reason that he waited over a year before he made his claim.

Employment status

76. We believe that Mr Jeurninck was an employee. He had a contract of employment which both parties signed. He worked shifts according to weekly rotas. It was clear that once he was placed on the rota, he was obliged to work the shift. He was paid at least once for the work that he performed and received payment on 27 February 2018.

77. We believe that Mr Scatena was also employed. Although we did not see his contract of employment, we are prepared to accept his evidence that he had signed a contract that was substantially in the same form and terms as that which was signed by the other employees. We are prepared to accept as explanation as to why he was unable to produce this document to the Tribunal. The contract was within the premises of the restaurant, and after he left his employment, the locks had been changed and he was unable to get access to his contract. He did not have a copy. Even if we are wrong, we remind ourselves that there is no requirement for a contract of employment to be reduced to writing and we have seen sufficient evidence that he worked for Piatta. He also worked shifts as the

rotas as illustrated above. He was also paid for the work that he did and there is no suggestion that he had the right to nominate a substitute to work instead of him. He worked regularly at the restaurant in a hands-on role. He meets the definition of an employee in both ERA and the broader definition in EQA.

The substantive claims

78. Given our findings of fact, Mr Jeurninck and Mr Scatena have established that they suffered less favourable treatment in comparison to their named comparators. Their claims for direct discrimination based on sexual orientation are well-founded.

79. Given our findings of fact, Mr Jeurninck and Mr Scatena have established that they suffered from unwanted conduct as a result of their sexual orientation which had the purpose of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. They were quite clearly deeply offended and threatened by the behaviour. They have established that they were harassed because of their sexual orientation.

80. We find the wrongful dismissal claim to be well-founded relying on the same findings of fact.

81. On termination of employment, Mr Jeurninck would have been entitled to payment in lieu of untaken holiday. The claim is well-founded.

82. On the findings of fact, Mr Scatena has established that he suffered from an unlawful deduction from wages in his arrears of pay claim. The Tribunal does not have jurisdiction to hear Mr Jeurninck's claim as it is out of time.

83. Remedy in respect of both claims will be dealt with in a separate judgment.

_____
Employment Judge A.M.S. Green
Date: 20 September 2022

Sent to the parties on
Date: 23 September 2022