Case No: 2207871/2020
2206531/2021

EMPLOYMENT TRIBUNALS

Claimant: Ms T Tisha

Respondent: Sainsbury's Supermarkets Limited

Heard at: London Central (Remotely by CVP)
On: 26, 27, 28, 29 September 2022. 30 September 2022 in chambers

Before:
Employment Judge Heath
Ms L Jones
Ms T Shaah

Representation
Claimant: Mr Ehtesham Khan (Solicitor)
Respondent: Ms I Ferber (Counsel)

RESERVED JUDGMENT

The claimant's claims of unauthorised deductions from wages, direct disability discrimination, disability-related harassment and victimisation are not well-founded and are dismissed.

REASONS

Introduction

1. The claimant has been employed by the respondent, a well-known supermarket, since 2014. Since 23 May 2018 she has been working as a Customer and Trading Manager, ("CTM"). She claims direct discrimination, harassment and victimisation largely in relation to rest breaks, leave requests but also in relation to comments made by her manager and a delay in dealing with a grievance. In addition to her own disability the claimant relies on her husband's disability for her discrimination claims. Additionally, she claims unlawful deductions from wages in respect of not being paid for periods she says were agreed rest breaks.

The issues

2. There are two consolidated cases, though the only surviving complaints from the first claim concerns deductions from wages. The claimant clarified her claims for wages in her schedule of loss amended on 18 March 2022. She says that sums were deducted for time she says was agreed paid rest breaks at the end of her working days.

3. The issues in the second case were clarified by Employment Judge Beyzade at a case management preliminary hearing on 15 February 2022.

4. The respondent has since conceded that the claimant and her husband were disabled at the relevant time. The tribunal was focusing on the following alleged acts (taken from EJ Beyzade's case management summary). Whether the respondent:

    a. Refused to grant the claimant's leave request for 14 June 2021. This relates to claimant's husband.

    b. Refused to grant the claimant's leave request for 6 May 2021 and 17-20 May 2021

    c. Refused to grant the claimant's leave request for 28 May 2021 (the parties were agreed this meant the request made on 28 May for 31 May 2021).

    d. When had conversation manager accused her of something not true. She believes that was to defame her, accuse her, and to make up a false allegation. This was on 10th June 2021.

    e. Being forced to work until 5pm on 10th June 2021

5. The claimant asserts that these acts were less favourable treatment because of both her and her husband's disability.

6. She also asserts that these acts were unwanted conduct relating to her disability which had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

7. The claimant's claim number 2207871/2020 and her grievance of 3 July 2021 are conceded to be protected acts. The claimant further asserts that the above acts were detriments as a result of the protected acts. Additionally, she relies on the respondent marking her breaks from 3 May 2021 onwards as unauthorised, and the delay in progressing her grievance as detriments as a result of her protected acts.

Procedure

8. This matter was listed for a 5 day hearing to consider both liability and remedy if appropriate. At the outset of the hearing the claimant made an application to amend her claim to add in a claim for indirect discrimination.

The respondent resisted this application. For reasons given orally we did not allow the application. In short:-

a. The application added a number of significant new elements to the case. The claimant would have to establish a PCP (or perhaps even more than one) and a group disadvantage as well as a particular disadvantage. The respondent would be entitled to seek to justify the application of the PCP.

b. The PCP was not clearly articulated.

c. The elements of the claim had not been set out in the ET1, not mentioned at the preliminary hearing, and this was therefore the proposed addition of an entirely new claim. It would be substantially out of time with nothing advanced to justify extending time.

d. Although we were satisfied that the claimant was not intending to "ambush" the respondent, the effect of the application was that a significant shift in the case was presented on the first morning of the hearing. It had not even been foreshadowed before the parties came into the CVP hearing.

e. The balance of hardship favoured the respondent. It had been presented with an imprecise new claim at the door of the tribunal. It had directed its case preparation to the case clarified at the preliminary hearing. It would need time to consider all the elements of a freshly pleaded indirect discrimination claim, which would probably need an adjournment. It was not a case that the respondent could address "on the hoof". On the other hand, the claimant could still advance the claims that she had pleaded and clarified at the preliminary hearing.

9. We were provided with a 561 page bundle. The claimant additionally provided one further page of evidence during the course of the hearing.

10. The claimant produced a witness statement and gave evidence on her own behalf. The following provided witness statements and gave evidence on behalf of the respondent: -

a. Mr Elkhalil Elkhalil (Store Manager);

b. Ms Pakhizah Popal (Store Manager), also known as Shareece Popal;

c. Mr Ahmet Kaan, (Operations Manager).

11. Mr Khan had taken on the claimant's case at around 6pm on the last working day before the start of the hearing. He did so on the basis that he had work commitments which he could not get out of during the course of some of 28 and 29 September 2022. The respondent and the tribunal were prepared to work around Mr Khan's availability.

12. The evidence was due to conclude on the afternoon of 28 September 2022 with submissions on the following day. However, the claimant sought

to adduce further evidence on a matter which had arisen during the course of Ms Popal's evidence. She produced one further document on 29 September 2022, and Ms Popal was recalled that day to give further oral evidence on the issue. The representatives gave oral closing submissions on the afternoon of 29 September 2022. The tribunal was hoping to give an oral decision on liability on the afternoon of 30 September 2022, but spent the entirety of that day deliberating in chambers. The parties were contacted and the decision was reserved.

The facts

13. The claimant began employment with the respondent on 17 March 2014, initially as a Customer Service Assistant. Since 23 May 2018 she has been working as a Customer and Trading Manager ("CTM"). In this role she has management responsibility for teams of between 10 to 20 people. From January 2019 and for the relevant time, for the purposes of these claims, she has worked at the Paddington station store ("the store").

Disability

14. The claimant had an emergency Caesarian-section in 2018, and received an epidural. Since then she has significant sciatic nerve pain in her right leg and has experienced other health issues. These impairments have affected her ability to lift, walk long distances and stand for long periods. The respondent concedes that she was at the relevant times disabled person.

15. The claimant's husband had polio as a child which left his right leg paralysed. He uses crutches and a mobility scooter and his mobility is significantly impaired. The claimant is his sole carer. Between the claimant and her husband they care for their child born in 2018. The respondent concedes that the claimant's husband is a disabled person.

Policies and the Kronos system

16. The respondent has numerous policies governing its working practices.

17. The **Flexible Working** policy deals with flexible working request. Requests can be made by anyone employed for at least 26 weeks. The main priority for the respondent in making decisions under this policy is to keep their business running smoothly. Relevant business factors would be considered when staff made requests under the policy. Requests could be to reduce hours, change working days, change start and finish times and for a number of other reasons.

18. The policy sets out a process for making requests, which are to be made in writing to the line manager, who would meet with the staff member and subsequently let them know whether the request had been approved or not. The process would take no longer than 3 months. The staff member has a right of appeal.

19. The **Holiday** policy deals with requests for holiday. It sets out how entitlement would be calculated and deals with other matters such as pay and carrying over leave. The policy sets out how requests are to be made. It reads:

> "*You should submit your holiday request at least four weeks in advance of your proposed holiday start date. Log into Self Service (Retail: Kronos…) To make your holiday request and give your line manager notice as far in advance as possible. Holidays are agreed on a first-come first-served basis*".

20. **Kronos** is a computerised system which manages a number of staffing matters. Members of staff can log in by computer or by way of an app on a mobile device to request time off. The staff member would make a request for time off and that request would simply come up as a time off request and not differentiate which policy the request might fall under. Staff members can apply for time off using Kronos without stipulating what type of leave they are looking for, and managers can grant leave under various policies. Having worked for the respondent for a considerable amount of time, and being in a junior management role, the claimant would be expected to have a reasonable working knowledge of how to use the system.

21. Managers have different permissions and are able to gain an overview of staff availability on the Kronos system and can approve or decline leave requests using the system. A store manager, the grade above the claimant, would be able to have an overview of the staff available on any given day on Kronos and would make decisions about approving leave, or declining it, based on the manpower being shown as available on the system.

22. The **Working Time Directive** policy covers working time. There is a section of this policy dealing with breaks during shifts (our emphasis). It sets out the legal requirement, under the Working Time Regulations 1998 ("WTR"), for workers over 18 to have 20 minutes rest when their daily working time is over six hours. The policy includes a table setting out the entitlement to breaks. For "9 hours or more" the entitlement is to "*Total of 45 minutes breaks, split into one 30 minute and one 15 minute break*". The table sets out that this entitlement is to unpaid breaks. However, as a CTM the claimant was entitled to paid breaks. The policy further sets out *"Typically if your shift is over 7 hours and includes the hours 12pm to 2pm then you may have a lunch break. If you get a lunch break, 30 minutes or one hour, as agreed by your line manager. If you're working a shift of more than 8 hours, the exact timing of your rest break will depend on the type of shift you're working*".

23. There are also policies for **Carers & Parents** and **Time Away From Work**. The latter includes provision for time off for medical appointments, bereavement, public duties, jury service, career breaks, study leave and unforeseen circumstances. In respect of unforeseen circumstances the

policy sets out that staff members, if they were unable to perform their normal work duties, might be able to take time as unpaid leave, holiday or make up the time at a later date. This includes rail and tube strikes. This matter would be open for discussion with management to resolve the most appropriate type of leave.

24. The respondent also had an **Attendance** policy. This policy governed absence or sickness, ill-health or if something unexpected occurred. It set out how to report absence, and stressed that absence should be reported by a phone call rather than text or email.

The claimant's work

25. On 2 April 2016 the respondent and claimant agreed a contractual change, recorded a Contractual Change Form, to the effect that the claimant would work to 10 hour shifts on Saturday and Sunday between 1 pm and 11 pm.

26. It is right to say that the claimant claims that she has experienced discrimination and harassment and victimisation since 2017. Many of these allegations were brought in the first claim, but the tribunal held that it did not have jurisdiction to hear them as they were out of time. We will not set out these issues.

27. As set out above, claimant was promoted to CTM on 23 May 2018.

28. In January 2019 the claimant returned from maternity leave and began working in the Paddington store. She met the Area Manager, Mr Locks, on 7 January 2019 to discuss her new role. Mr Locks recorded his recollection of the meeting in an email to himself of 9 January 2019. He recorded that the claimant "*queried her 20 hour contract as to 10 hour days based on flexible working conditions with new baby and disabled husband*". Mr Locks asked the claimant to put her concerns in writing to her manager and that he would discuss the matter with HR and would reply.

29. On 18 January 2019 the claimant applied in writing to her manager, the Store Manager Mr Thadakamalla, under the flexible working policy to work to 10 hour shifts on Monday and Thursday from 7 or 8 AM. On 25 January 2019 Mr Thadakamalla approved the request and the claimant's contracted working hours were changed to Monday and Thursday 7am to 5pm. This arrangement was to be reviewed in July 2019. It was reviewed and extended in July 2019 and recorded in writing.

30. Normally a staff members login and logout time at the store would record their working hours on the Kronos system. However, the claimant's shift time of 7am to 5pm was automatically being entered on the system on what was termed a "pre-appointment" code. Her hours therefore showed as 10 hours a day whether she logged in for 10 hours or not.

31. On 19 September 2019 Mr Elkhalil took over as the Store Manager and became the claimant's line manager.

32. In August or September 2020 Mr Elkhalil was contacted by HR to be told that stores should no longer be using the "pre-appointment" code. The claimant therefore reverted onto the same system as everyone else, namely that her hours worked would be recorded when she clocked in and clocked out on the Kronos system

33. At 9:55 PM on 11 September 2020 the claimant emailed Mr Locks making a complaint of unfair treatment, discrimination, bullying and harassment. In her email she made a complaint that another CTM at the store, Mr Waheed, adjusted his own clocking in and clocking out times. She mentioned that Mr Elkhalil allowed her to "*leave early at the end of my shift adjusting the break time and he approve this at the beginning of his existence in this store which means I will take my break at the last part of my shift and rather than taking entitled break at the store, I shall leave*". She said that having reported Mr Waheed she was experiencing a backlash from him and Mr Elkhalil. She set out examples of this.

34. At 9:57 PM on 11 September 2020 the claimant sent another email to Mr Locks. In it she set out "*an application on the ground of flexible working policy to make an adjustment on my working hours*". She set out that she had a young baby and husband with medical conditions which amounted to a disability and that she was the sole carer for both of them. She explained that when she finished work at 5 PM it was busy for travel and her journey home takes a long time. She said;

> *"If I take the break at the last part of my shift the entitled break time which is 45 minutes that suppose to be literally at 4:15 PM and leave by this time, rather than taking break in the store, then this makes me to reach home to my family a bit early and it also gives an advantage to start travel just before the peak hour to begin, can effectively reduce the travel time. Provided the explanation and taking them into consideration, this adjustment was agreed by the line manager Mr Elkhalil since acting as a line manager in this store".*

35. The 14 September 2020 was the first shift the claimant worked following the Pre-appointment Code not being applied. The Kronos system recorded the claimant's hours. On that date the claimant worked nine hours and 43 minutes. Mr Elkhalil marked the 17 minutes not worked on that date "Authorised Unpaid". In the printouts of the Kronos system in the bundle the pre-appointment code appears until October 2020, with the number of hours worked, and the shortfall from contracted hours also being recorded. From October 2020 onwards, the pre-appointment code no longer appears. There was no evidence given on this issue by either party.

36. On 18 September 2020 the claimant emailed Mr Elkhalil ,cc Mr Locks, forwarding her 11 September 2020 email in which she applied for flexible working. She asked for a swift written outcome saying that her hours were

being unpaid and her wages unlawfully deducted. Mr Elkhalil replied to her email the following day, including the following: -

> *"I do understand that you want to talk face-to-face and that would not be a problem unless there was not an ongoing unpleasant situation. If memory serves you would agree on the event when you started acting as line manager in this store. I did on a face-to-face talk, explained my situation, I refer to the flexible working application, and you approved it. Since then the approval was evidently effective until I took the action against Mr Abdul's gross misconduct and it caused the displeasure of you and him, resulted himself taking this personal and declaration came forward from Mr Abdul Waheed to take revenge through the action of suspending my flexible working arrangement and evidently this suspension took place immediately.*
>
> *If, unfortunately, concerned matters and up to the ACAS an employment tribunal then these documents shall serve for both of us".*

37. On 21 September 2020 the claimant emailed Mr Williams a written complaint alleging unlawful deduction from wages. She included the text of her 19 September 2020 email to Mr Elkhalil.

38. On 28 September 2020 Mr Elkhalil was interviewed at a fact-finding meeting held by the manager, Mr Mishra, who was investigating the claimant's grievance that she had raised in her 11 September 2020 email to Mr Locks. Mr Elkhalil was asked whether he had ever allowed the claimant to finish 45 minutes early. He answered "No".

39. From around September 2020 the claimant began to leave work early on a regular basis. She did so despite Mr Elkhalil telling her not to leave early until the outcome of any request for flexible working. He continued to mark the shortfall in the claimant's working hours as "Authorised Unpaid". He acknowledged in his evidence that this was a mistake and he should have marked it unauthorised unpaid but he did not want to get the claimant in trouble.

40. On 14 October 2020 Mr Mishra sent the claimant's outcome letter on her grievance. Some of this deals with matters which the tribunal is not concerned with. However, relevantly, he found that there had been no agreement, written or verbal, for the claimant to adjust her break to the end of her shift. Mr Mishra went on: -

> *"After reviewing our policy regarding break in entitlement I have established that breaks cannot be taken or left before the end of the shift, you would not be legally compliant if you worked without a break for nine hours and 15 minutes and I am concerned that this could have serious health and safety implications. Based on my findings and the fact that you did not provide me with any evidence to substantiate your claims I do not uphold your grievance point".*

41. On 9 November 2020 the claimant began the ACAS Early Conciliation procedure. She received her certificate on 9 December 2020.

42. On 15 November 2020 Mr Elkhalil gave the claimant a written outcome on her application for flexible working. He had taken HR advice in coming to his decision. His letter did leave some of a pro forma template remaining in it. He set out the current working arrangements and what the claimant wanted by way of an adjustment to her hours and the reasons for it. He declined the request for the following reasons.

    a. He considered the change would have a detrimental effect on the ability to meet customer demand. He said the busiest period within the store was between 4 and 8pm and management cover was needed.

    b. He considered that the change would have a detrimental impact on performance, either the claimant's own performance, the team, the division or the business. He set out that management cover started at 4 PM on the days that the claimant worked. It the claimant's proposals were accepted it would impact on the handover between managers.

    c. He considered that the change would have a detrimental impact on the quality of the product/work/service. Again he pointed to the need for management cover and continuity of management at peak trading periods and the need for a smooth handover.

    d. He considered that there was a legal obligation to ensure the claimant took the minimum rest break possible in the middle of her shift. He said this had to be taken as time away from work and could not legally be at the beginning or end of the shift.

43. Although she gave no evidence to this effect during her grievance investigation, the claimant gave evidence to us that a manager came in at 2 PM. Mr Elkhalil was certain that the manager came in at 4 PM on the days the claimant worked. We consider that, as store manager, he had full oversight of the staffing complement at various times, and do not consider that his evidence, and his rationale put forward in his flexible working decision, was undermined. We find that the other manager did in fact come in at 4pm on the days the claimant worked.

44. Mr Elkhalil gave the claimant a right of appeal.

45. There is a conflict of evidence between the claimant and Mr Elkhalil. The claimant says that she had a verbal agreement with Mr Elkhalil that she could take her 45 minute break at the end of her shift and leave early.

46. Mr Elkhalil says that there was no such agreement. He said that for the majority of the time he managed the claimant from September 2019 the claimant would work her normal hours. He allowed her to leave early by 10

to 15 minutes if her child was sick on some occasions because he wanted to support the claimant.

47. We find that there was no agreement as contended for by the claimant:

    a. The claimant had previously discussed flexible working with Mr Locks in January 2019, and therefore had some experience with the policy;

    b. She had made a formal written application under the policy on 18 January 2019 and had received a written determination on 25 January 2019. This was further extended in writing;

    c. The claimant gave no details in her evidence to us of how her alleged oral agreement with Mr Elkhalil was reached, and her emails of 11 September 2020 to Mr Locks and 19 September 2020 to Mr Elkhalil are vague and without detail;

    d. She evidently gave no evidence of the alleged agreement to Mr Mishra during the investigation of her grievance, and Mr Mishra's acceptance of Mr Elkhalil's denial of the agreement is therefore unsurprising;

    e. The overall probabilities point against a manager agreeing to a proposal that is clearly against the working time policy and against regulation 12 WTR. We consider that agreeing to the claimant working 9 ¼ hours without a break is not a decision a manager is likely to have made.

    f. We find it highly likely that if such a significant change were agreed it would have been recorded in writing. There was no paper trail whatsoever in respect of the agreement the claimant alleges.

    g. All in all, we consider that the claimant has retrospectively attempted to turn an ad hoc supportive measure implemented by Mr Elkhalil from time to time into a formal agreement.

48. On 28 December 2020 the claimant presented her ET claim 2207871/2020. The respondent accepts that this constitutes a protected act under section 27(2) Equality Act 2010.

49. On 19 April 2021 there was a preliminary case management hearing in the claimant's claim. Case management orders were made in order to prepare the matter for an open preliminary hearing on 7 July 2021, including an order that the claimant prepare a witness statement for that hearing.

50. Mr Elkhalil's last day as Store Manager was 3 May 2021. Ms Popal was to take over in that role that day. At some time in the morning of 3 May 2021 the claimant approached Mr Elkhalil to ask whether she could take some time off. Mr Elkhalil explained that she would need to take this up with the new Store Manager Ms Popal. The claimant's case is that she raised this

matter with Mr Elkhalil on 29 April 2021. We have not felt the need to resolve this conflict with Mr Elkhalil's evidence that the matter was first raised on 3 May 2021, as it makes no difference.

51. Later on 3 May 2021 Mr Elkhalil had a handover meeting with Ms Popal. He discussed numerous operational and staffing matters relating to the store. Mr Elkhalil did mention the claimant during this meeting. He told Ms Popal that there had been ongoing issues with the claimant leaving work early despite the absence of any agreement allowing this.

52. During the handover meeting the claimant approached Mr Elkhalil and Ms Popal and explained that she needed time off to prepare for her tribunal hearing. We find that the claimant verbally requested time off on 6, 10, 13, 17 and 20 May 2021. Ms Popal asked the claimant to put her request for time off on the Kronos system, and said that she would consider it.

53. On 3 May 2021, Ms Popal's first day as the claimant's line manager, the claimant clocked in two minutes late and left 28 minutes early. Ms Popal began recording these absences as "unauthorised unpaid" absences. In other words, she was recording them in the way that Mr Elkhalil acknowledges that he should have recorded them. We find that the reason why she began recording the breaks this way is that she genuinely believed that there was no agreement for the claimant to leave early, that when she did so this time was not authorised and that it should be unpaid. We do not find that the fact that the claimant had presented a tribunal claim alleging discrimination formed any part of Ms Popal's reasoning.

54. The claimant did not pursue her request for time off on 6 May 2021, and there was no refusal by Ms Popal to allow this time off, and in fact the claimant attended this day to work her shift. She clocked in on time and left at 5:04 PM, working a full shift. On this day Ms Popal had a conversation with the claimant. She indicated to the claimant that she was aware of her tribunal claim, and that she would support the claimant. However, she did explain that the claimant should not be leaving early without permission and that these absences would be recorded as unauthorised absences unless Ms Popal gave specific authority for them.

55. On 6 May 2021 the claimant submitted requests for time off on 10, 13, 17 and 20 May 2021 on the Kronos system. Ms Popal reviewed the claimant's request on the Kronos system. The claimant's case at tribunal is that these requests should have been considered under the respondent's Time Away From Work policy. This assertion during the hearing was the first time that this argument had been advanced. Mr Khan pointed to sections of this policy relating to public duties, including "legal…appointment", and to jury service as indicating that this policy was appropriate for time off for tribunal preparation. We do not accept this. Legal appointments refers to such appointments as a magistrate, a tribunal member or similar. Those duties, as well as jury service, are very much public in nature and not akin to preparing one's own litigation. We find that the respondent's holiday policy was the appropriate policy to

consider these applications under. As such the requests should have been made at least four weeks in advance of the proposed dates and would be considered on a first-come first-served basis.

56. Notwithstanding the fact that four weeks' notice had not been given, we find that Ms Popal gave consideration to the applications. We find that she had regard to staffing availability she could see from the Kronos system in making her decisions on the claimant's applications for leave. She was able to grant holiday to the claimant for 10 and 13 May 2021. She was unable to approve holiday for 17 and 20 May 2021 as the system showed that there was insufficient managerial cover available for those days. We find that Ms Popal made her decisions on the claimant's applications for leave solely on the basis of the staffing situation apparent to her on Kronos. We find that she did not consider the claimant's or her husband's state of health in making these decisions, and did not have regard to the fact that the claimant had done a protected act.

57. The claimant worked on 17 May 2021, clocking in 23 minutes late but staying six minutes after her shift ended. She did not inform Ms Popal that she would be late and offered no explanation or apology. The claimant worked on 20 May 2021, clocking in late and leaving early without explanation or apology. On this day she emailed Ms Popal making a number of references to her ongoing tribunal claim.

58. On 18 May 2020 the claimant wrote to a solicitor in the respondent's legal department indicating that holiday had been refused and she was in difficulty preparing a witness statement in tribunal proceedings and would require an extension of time to prepare it. The respondent solicitor asked what date the claimant proposed providing her statement, and appeared broadly amenable to agreeing an extension.

59. On 22 May 2021 the claimant applied for unpaid leave for 24, 27, 31 May 2021 and 3 June 2021. We find that Ms Popal looked at the staffing complement on Kronos and saw there was management cover for one of these weeks but not the other. She therefore authorised the claimant to have unpaid leave for 24 and 27 May, but not the other dates. She authorised this leave despite the fact only two days notice had been given before the first date. The reason why she did not authorise two dates was solely because the system showed that there was insufficient management cover and had nothing to do with the claimant's or her husband's disability or tribunal proceedings.

60. On Friday 28 May 2021 the claimant messaged Ms Popal requesting the following Monday 31 May 2021, a Bank Holiday, as unpaid leave. She said that there would be travel disruption and her closest station would be closed. The claimant and Ms Popal had a telephone conversation later that day and Ms Popal said that there was no management cover but that the claimant was free to see if she could swap a shift with a colleague. The claimant made no reference to feeling sick. We find that the reason Ms Popal declined the request for unpaid leave and instead suggested a shift swap was because there was no management cover for the following

Bank Holiday Monday. Again, disability and tribunal proceedings played no part whatsoever in Ms Popal's decision-making.

61. Later that night the claimant had health issues which necessitated calling an ambulance and going into hospital.

62. On Saturday 29 May Ms Popal messaged the claimant asking whether she had been able to swap shifts with another CTM as she needed to ensure the store was covered. She was unaware of the claimant's health issues. On Sunday, 30 May 2020 the claimant messaged copies of her hospital discharge summary to Ms Popal. She did not, however, ask for the following day off sick. She had, in fact, succeeded in swapping her shift with a colleague, so that she would instead work the following Friday, 4 June 2021. We were not told why, and we cannot ascertain the reason why the claimant provided this medical evidence. We were surprised also that Ms Popal responded to it with a "thumbs up" emoji.

63. On Tuesday, 1 June 2021 the claimant messaged Ms Popal as follows:-

> *"I hope all is well with you. Please see the attachments for details as I am required some authorised days off as my husband has COVID-19 vaccine appointment on 14th June and my babies schooling required some days to attend which are 17th June, 1st July & 8th July. Thanks in advance".*

64. She attached copies of her husband's appointment at St Thomas's Hospital vaccination centre. Ms Popal's reply was "*Hi Tisha, you need to submit on Kronos as per process and I will review. Please going forward follow the right channels and messaging me is not process*". At this point, we find, Ms Popal did not know that the claimant's husband was disabled.

65. The claimant waited another week before applying for the 14 June 2021 as unpaid leave on Kronos. By this time another CTM, Romina, who worked a five day week, had approached Ms Popal to request that she did not work 14 June 2021 for childcare reasons.

66. Romina's Kronos printout was put into evidence by the claimant, who logged onto Kronos while the hearing was underway. It was put to Ms Popal that the fact that Romina's Kronos print out was blank for 14 June 2021 indicated that Ms Popal was lying when she said she had given Romina the day off that day. We accept Ms Popal's evidence that the reason it was blank was that Romina's working days were simply moved, rather than a holiday request being considered and granted. We note that the claimant's Kronos entry for 31 May 2021, when she had swapped shifts, was similarly blank.

67. Ms Popal declined the claimant's request on Kronos for leave on 14 June 2021 because she saw on the system, and knew from her conversation with Romina, that she did not have management cover on that day. She did not have management cover because she had previously agreed to move Romina's working day. The rejection of this request had nothing to do with the claimant's or her husband's disability, and nothing to do with tribunal proceedings.

68. The claimant continued to leave work early (4.26PM on 3 June 2021, 4:31 PM on 4 June 2021 and 4:16 PM on 7 June 2021). At some point, on a date that we cannot be certain about, Ms Popal had a conversation with the claimant about this, and the claimant said that she wanted to get clarity on the situation from Mr Umar Khan, a senior HR adviser. Ms Popal's clear instruction to the claimant during this conversation was that until clarification was received from HR the claimant was to work her contracted hours until 5 PM. The claimant did not comply with this instruction. On 6 June 2021, Ms Popal informed the claimant that HR had not approved any flexible working request relating to leaving early.

69. On 7 June 2021 the claimant was looking to leave at 4.15 PM when Ms Popal asked why she was leaving early. The claimant again stated she was entitled to 45 minutes break and that was why she was leaving. Ms Popal told the claimant that she was contracted to work her full hours and that they would have a conversation Thursday, 10 June 2021 about these issues.

70. We find that the claimant's defiance of Ms Popal's clear instructions was a source of frustration to Ms Popal. On 10 June 2022 Ms Popal had a conversation with the claimant, which became heated. She set out a summary of this conversation in a file note, which was in the bundle. Ms Popal set out her understanding of the contractual position and the claimant leaving early. She also discussed requests for unpaid leave, some of which were accommodated and some of which were not. She also raised the correct procedure for submitting requests for time off, namely on Kronos. She set out her expectation that the claimant should work her contractual hours and that if she continued to leave early Ms Popal would follow the conduct policy because of unauthorised absence. Any question of Ms Popal "forcing" the claimant to work until 5 PM this day must be understood in the light of the fact that these were her contracted hours and she had been told clearly by Mr Elkhalil, Ms Popal and HR that these were her hours.

71. The claimant's case is that during this conversation Ms Popal said "*Don't treat me like EK (i.e. Mr Elkhalil). I am not EK. I reiterate that I am not EK, if you feel you can treat me or talk to me in the mannerisms that you did with EK, I will not follow it*". The claimant describes this as defamatory and false.

72. Ms Popal acknowledged that she did not refer to Mr Elkhalil by name during this conversation, but did, in response to the claimant's raised voice and sarcastic tone, say that she did not know whether she was allowed to conduct herself like she did with other managers, but that she, Ms Popal, would not tolerate it.

73. We do not find that there is a vast amount of difference between the two accounts. We do not find that referring to Mr Elkhalil by name really makes any difference. We find that there was a conversation which became heated, in all likelihood on both sides, where Ms Popal indicated that however the claimant may have behaved with previous managers, she (Ms Popal) would not tolerate the way the claimant was behaving. We

find nothing defamatory or offensive about this, even taking the claimant's case at its highest.

74. We further find that Ms Popal raised the issues she did, and raised them in the heated manner we find that she did, because of her frustration with the claimant's defiance of her repeated instructions. We do not find that the claimant's or her husband's disability, or the fact that she had presented a tribunal claim, motivated Ms Popal to say what she did in the way that she did.

75. This was the last interaction between Ms Popal and the claimant.

76. On 13 June 2021 the claimant emailed Ms Popal to say she could not work from 14 June 2021 and did not expect to return before 28 June 2021. She said she was experiencing a workplace-related stress and depression along with other ongoing medical conditions which have been exacerbated by Ms Popal's inappropriate and unfair actions.

77. On the same day Ms Popal emailed senior management and HR about the claimant. Ms Popal set out the factual background and indicated that she would be withholding sick pay and would like a discussion about the reasoning for this. Ms Popal told us that she believed that the claimant's absence may have been as a direct response to the issues that occurred on the meeting of 10 June 2021 rather than genuine sickness, and accordingly felt that withholding sick pay was appropriate.

78. To withdraw sick pay in such circumstances appears odd. However, we have reminded ourselves the claimant's claims and the issues in the case, and note that there is no claim in respect of this. We further note that there was no evidence led and no cross examination about any withdrawal of sick pay, although it is referred to in the claimant's schedule of loss. As it is not a claim before us and we heard no evidence about it we say no more about this.

79. On 3 July 2021 the claimant submitted a grievance. She alleged "disability discrimination in association" about the refusal to allow time off for her husband's coded vaccination on 14 June 2021. She also alleged "obstruction on the ongoing fair trial at Employment Tribunal", and this concerned refusal to allow time off on 17 and 20 May 2021, which she described as victimisation. She also raised "travel disruption on bank holiday and medically collapsed", which related to not being allowed unpaid time off on 31 May 2021. She also complained about "working pattern – break time" which was concerning her 45 minute break which she said she was allowed to take at the end of each day. She also complained about "defamatory statement" about the words used by Ms Popal on 10 June 2021. Her final complaint was in relation to "hostile environment continuation" which was around Ms Popal's management of her. She asked for the area manager to conduct the grievance meeting.

80. HR acknowledged the claimant's grievance by email on 5 July 2021. On 26 July 2021 the claimant sent a chasing email to HR as she had heard nothing. HR responded that day apologising and saying the matter

had been escalated for the attention of the relevant manager who would contact the claimant in due course.

81. On 5 August 2021 Mr Ahmet Kaan, Operations Manager, wrote to the claimant inviting her to a Fair Treatment (the name of the respondent's grievance process) meeting on 24 August 2021 at a store of the claimant's choice or by telephone or video link.

82. The meeting took place on 24 August 2021. The claimant was accompanied by her union representative and Mr Ahmet Kaan was supported by a notetaker. Mr Ahmet Kaan explained at the beginning of the meeting that he had been on holiday when he had been asked to pick up the grievance investigation, and he apologised for the delay. He explained the purpose of the meeting and gave the claimant the opportunity to give as much detail as she wanted. The claimant said that she did not want to expand on her statement which contained what she wanted to say. Mr Ahmet Kaan wanted to go through the allegations in turn, but the claimant wanted him simply to look at the written material. The representative indicated that the claimant felt exhausted by the process and wanted Mr Ahmet Kaan to look at the claimant's grievance. The representative asked for a response by 7 September 2021, which Mr Ahmet Kaan agreed to.

83. Mr Ahmet Kaan did not respond within this timeframe, and the claimant chased him for a response on 2 October 2021. On 18 October 2021 Mr Ahmet Kaan replied to apologise for the late email, indicating he had almost concluded the grievance but did have a question for the claimant. He invited a further meeting to discuss one point of her grievance so that he could investigate this further. On 21 October 2021 the claimant responded that she had nothing further to add on this point and that he should speak to Ms Popal about this issue.

84. On 2 November 2021 Mr Ahmet Kaan interviewed Ms Popal who gave her account of the matters raised in the claimant's grievance.

85. On 4 November 2021 Mr Ahmet Kaan sent the claimant grievance outcome letter in which he did not uphold much of her grievance. He partially upheld her complaint of "defamatory statement" "*as there appears to have been a challenging conversation however I am not able to conclude if the exact comment was made as there are opposing versions of events".*

86. Mr Ahmet Kaan gave evidence that in addition to his own holiday, his store manager took leave shortly afterwards, that he was a new manager in a store, that he had a high workload and had difficulty coinciding diaries with Ms Popal, another busy manager. It was not put to Mr Ahmet Kaan in cross examination that his delay was motivated by the claimant protected act of putting in a discrimination grievance or a previous tribunal claim. The tribunal itself asked this question, and Mr Ahmet Kaan was clear that this was not why his investigation was delayed.

87. We find is a fact that the reason why the grievance proceeded more slowly than it should have done was because of holidays, diary clashes and a heavy workload.

The law

Unauthorised deductions from wages

88. Section 13 of the Employment Rights Act 1996 ("the ERA") provides: -

> *(1) An employer shall not make a deduction from wages of a worker employed by him unless—*
>
> > *(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
> >
> > *(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*
> >
> > *[…]*
>
> *(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

Equality Act 2010 ("EA") claims

89. Section 39(2) EA provides as follows: -

> *An employer (A) must not discriminate against an employee of A's (B)—*
>
> > *(c) by dismissing B;*
> >
> > *(d) by subjecting B to any other detriment.*

Direct discrimination

90. In respect of direct discrimination, Section 13(1) of the EA provides 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.*

91. Section 23(1) of the EA deals with comparisons, and provides:-

> *On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.*

92. The EAT in *Chief Constable of West Yorkshire v Vento [2001] IRLR 124* made clear that using examples of individuals who were not true comparators was a proper way of constructing a hypothetical comparator.

93. The burden of proof provisions (which apply equally to harassment) are set out in section 136 EA:-

> *(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) 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.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

94. When considering direct discrimination, the tribunal must examine the "reason why" the alleged discriminator acted as they did. This will involve a consideration of the mental processes, whether conscious or unconscious, of the individual concerned (*Amnesty International v Ahmed [2009] IRLR 884*). The protected characteristic need not be the only reason why the individual acted as they did, the question is whether it was an "effective cause" (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor [1996] IRLR 372*).

95. Guidance on the application of the burden of proof provisions of the Sex Discrimination Act 1975 (which is applicable to the EA) were given by the Court of Appeal in *Igen v Wong [2005] IRLR 258*:

> *"(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".*
>
> *(2) If the claimant does not prove such facts he or she will fail.*
>
> *(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".*
>
> *(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.*

(5) It is important to note the word "could" in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 74(2) of the SDA 1975.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

96. Tribunals are cautioned against taking too mechanistic an approach to the burden of proof provisions, and that the tribunal's focus should be on whether it can properly and fairly infer discrimination (*Laing v Manchester*

City Council *[2006] ICR 1519*). The Supreme Court has observed that provisions "*will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence, one way or the other*" (Hewage v Grampion Health Board *[2012] UKSC 37*).

97. The Court of Appeal has emphasised that "*The bare facts of a difference in treatment, without more, sufficient material from which the tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination"* (Madarassy v Nomura International plc *[2007] IRLR 246*). "Something more" is needed for the burden to shift. Unreasonable behaviour without more is insufficient, though if it is unexplained then that might suffice (Bahl v Law Society *[2003] IRLR 640*).

Harassment

98. Section 26(1) EA provides: -

> *A person (A) harasses another (B) if—*
>
> > *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
> >
> > *(b) the conduct has the purpose or effect of—*
> >
> > > *(i) violating B's dignity, or*
> > >
> > > *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

99. Section 26(4) EA sets out factors which tribunals must take into account: -

> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
>
> > *(a)the perception of B;*
> >
> > *(b)the other circumstances of the case;*
> >
> > *(c)whether it is reasonable for the conduct to have that effect.*

100. Section 212(1) EA provides that conduct amounting to harassment cannot also be direct discrimination.

101. The Court of Appeal in Richmond Pharmacology v Dhaliwal *[2009] IRLR 336* stated:-

> *"an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been*

violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so….We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

102. The Court of Appeal again emphasised that tribunals must not cheapen the significance of the words of section 26 Equality Act 2010 as "*they are an important control to prevent trivial acts causing minor upsets being caught up by the concept of harassment*" (*Land Registry v Grant [2011] ICR 1390*).

Victimisation

103. Section 27 Equality Act deals with victimisation and provides: -

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

104. A person suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work (*Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11.* An unjustified sense of grievance is not sufficient (*Barclays Bank plc v Kapur (No. 2) [1995] IRLR 87* and *EHRC Employment Code*, paragraphs 9.8 and 9.9).

Conclusions

Unauthorised deductions from wages

105. As is apparent from our findings of fact, we have found that there was no agreement for the claimant to take a break at the end of each 10 hour shift. The time she took off from September 2021 onwards was unauthorised and unpaid. She had not worked her contractual hours on these days and there were no sums properly due in respect of the shortfalls. There was no deduction under section 13 ERA.

Equality Act claims

106. We will deal with the claims in the order in which they appeared in the agreed list of issues, which is not strictly chronological. Most of the acts alleged are put further and in the alternative as claims of direct discrimination, harassment, and victimisation. Where that is the case, we will deal with all claims under the heading of each act. As will be apparent from our findings of fact above, we have already made findings in relation to the motivation of the relevant actors. We remind ourselves of the provisions of section 212(5) EA which mean that we cannot find that an act is both an act of direct discrimination and of harassment.

Refused to grant the claimant's leave request for 14 June 2021.

107. Our findings of fact are that the reason why Ms Popal declined the leave request for 14 June 2021 was because, on the information available to her on both Kronos and from talking to Romina, she had no management cover for the store. It was not motivated by disability (the claimant's or her husband's) or by a protected act.

108. The refusal was clearly unwanted, but it did not relate to disability in any way. Even if it had in some way related to it, it would not have been reasonable, in all the circumstances including the claimant's perception, for the conduct to have the requisite harassing effect (to use shorthand for the effect set out in section 26(1)(b) EA) and there was no evidence that that was its purpose.

109. The claimant's claims of direct discrimination, harassment and victimisation are not upheld.

Refused to grant the claimant's leave request for 6 May 2021 and 17-20 May 2021

110. Again, we have found as a fact that the reason why Ms Popal declined the leave requests was because of legitimate staffing reasons. In respect of 6 May 2021, the request was raised orally, Ms Popal asked the claimant to progress requests on Kronos and the claimant did not do so for this date. This refusal had nothing to do with disability or a protected act.

111. In respect of 17 and 20 May 2021, we have found that the reason why these dates were not granted was because Ms Popal saw on the Kronos system that there was no management cover. She had granted days off the previous week (despite the requests not being put in in the timescale

envisaged by the policy) which is strongly suggestive of no improper motive. This refusal had nothing to do with disability or a protected act.

112. Again, the refusal was unwanted but did not relate to disability. Even if it did, it would not have been reasonable to regard the refusal as having the requisite harassing effect, and there was no evidence that that was its purpose.

113. The claimant's claims of direct discrimination, harassment and victimisation are not upheld.

Refused to grant the claimant's leave request for 28 May 2021.

114. We found as a fact that on 28 May 2021, when the claimant requested the bank holiday of 31 May 2021, Ms Popal took the decision based on the fact that there was no management cover. She nonetheless allowed the claimant to explore the possibility of swapping her shift. The claimant did this, arranged for a colleague to cover the Monday shift, and instead worked the following Friday. The reason why Ms Popal took this approach was for staffing reasons and had nothing to do with the claimant's or her husband's disability or the claimant's protected acts.

115. The refusal of leave was unwanted, but was not related to disability in any way. Even if it had been it would not have been reasonable to regard this as having the requisite harassing effect, and there was no evidence that that was its purpose.

116. The claimant's claims of direct discrimination, harassment and victimisation are not upheld.

When had conversation manager accused her of something not true. She believes that was to defame her, accuse her, and to make up a false allegation. This was on 10th June 2021

117. We have found that there was indeed a heated conversation between the claimant and Ms Popal on 10 June 2021. However, we found that the reason why Ms Popal said what she did in the way that she did was her frustration at the claimant openly defying her clearly articulated instructions to work her contracted hours. We struggle to see any defamation or false allegations here, even on the claimant's case.

118. What Ms Popal said and the way that she said it was not related to disability. Again, even if it were, it would not be reasonable to regard it as having the requisite harassing effect, and there was no evidence that that was its purpose. If, somehow, some sort of relationship with the claimant's disability and her desire to leave early could be established, Ms Popal was obviously raising matters which had genuinely been a concern for management. On the most generous reading of the facts to the claimant this type of conduct comes nowhere near that envisaged by the cases of *Dhaliwal* and *Grant*.

119. The claimant's claims of direct discrimination, harassment and victimisation are not upheld.

Being forced to work until 5pm on 10th June 2021

120. Our findings are that the claimant was not "forced" to work until 5 PM on 10 June 2021. What happened was that Ms Popal, like Mr Elkhalil before her, and having confirmed the position with HR, told the claimant what her contracted hours were and warned her that if she continued to leave early, against management instruction, her absence would be treated as an unauthorised and possibly a conduct matter. The reason why Ms Popal did this was to make clear what the claimant's contractual obligations were and to warn her of the consequences of continuing not to comply with them. Ms Popal's motivation was in no sense because of the claimant's or her husband's disability or because of any protected acts.

121. Ms Popal's instruction was not related to disability. Even if it was, it would not be reasonable to regard such conduct as having the requisite harassing effect, and there was no evidence that this was its purpose.

122. The claimant's claims of direct discrimination, harassment and victimisation are not upheld.

The respondent marking her breaks from 3 May 2021 onwards as unauthorised (victimisation)

123. We have found as a fact that the reason why Ms Popal began recording the claimant's time when she left early as unauthorised unpaid was because she genuinely believed (and reasonably so on our findings) that there was no agreement for the claimant to leave early, that the time she left early was unauthorised and that it should be unpaid. We further found that the protected act was in no sense the reason why she took this approach.

124. The claimant's claim of victimisation is not upheld.

Delay in terms of responding to the claimant's grievance

125. As indicated above we found that the reason why Mr Ahmet Kaan took longer than he would have hoped to deal with the claimant's grievance was because of his and a colleague's holidays, a heavy workload and difficulty finding time in both his and Ms Popal's diaries to meet up. There is no evidence that the fact that the claimant had put in a claim of discrimination, or alleged it in her grievance had any bearing on the time taken to deal with the grievance.

126. The claimant's claim of victimisation is not upheld.

Overall conclusion

127. For the reasons set out above none of the claimant's claims are upheld and they are dismissed.

Employment Judge **Heath**

7 October 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

10/10/2022

FOR EMPLOYMENT TRIBUNALS