



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Kaur

**Respondent:** Greenhalgh's Craft Bakery Limited

**HELD AT:** Manchester

**ON:** 6 – 10 January 2021  
20 January 2021  
17-19 October 2021

**BEFORE:** Employment Judge Warren  
Ms L A Atkinson  
Mr CS Williams

## REPRESENTATION:

**Claimant:** In person  
Ms N Makan (Interpreter)

**Respondent:** Miss L Quigley (Counsel)

# JUDGEMENT

The unanimous judgement of the Tribunal is that :-

- 1 The claims of unlawful deduction from wages fails and is dismissed.
2. The claims of sexual harassment in contravention of section 26 Equality Act 2010 fails and are dismissed.
3. The claims of direct sex discrimination in contravention of section 13 Equality Act 2010 fails and are dismissed.
4. The claim of race discrimination (harassment) in contravention of section 26 Equality Act 2010 fails and is dismissed.
5. The claim of direct race discrimination in contravention of section 13 Equality Act 2010 fails and is dismissed.

**JUDGMENT** with full reasons having been given at the Hearing, the claimant has requested written reasons.

# REASONS

## Introduction

1. This is a claim brought by Mrs S Kaur. In her claim form (after some case management during which some claims were dismissed and others clarified) she made four allegations of harassment relating to her sex and harassment because of her race (one incident). She further alleged that there had been an unlawful deduction from her wages. The respondent denied all of the allegations and asserted that the claims were out of time.

2. The Tribunal had the benefit of a Punjabi interpreter throughout the proceedings.

## The Evidence

3. We had an agreed bundle of documents amounting to just less than 600 pages. All of the witnesses had made witness statements and some were cross examined, the evidence of others was accepted. The business premises of the respondent were in part covered by CCTV, and the Tribunal found this very helpful, even though it had no sound recording. We applied the standard of proof, the balance of probabilities. The primary burden of proof lay with the claimant in all of the allegations, and in the discrimination allegations we took into account the secondary burden held by the respondent.

4. Overall we found we preferred the evidence of the respondent's witnesses. The claimant's family gave clear and truthful evidence about the impact of what had happened at work on the claimant. This was entirely reliant, however, on the account given to them by the claimant, with the exception of one meeting witnessed by them at her house. That meeting did not directly impact on any of the agreed issues and did not impact on our view of the evidence overall.

5. The respondent's witnesses gave clear and reflective evidence. The claimant's evidence was tainted by inconsistency and apparent shifting emphases. To give an example: David Leigh was accused firstly of pinching her bottom, then at a later date the account was changed to flicking clingfilm with a knot in it at her bottom, so that it felt like a pinch. Yet later of wafting the clingfilm in the direction of her back. The reality seen by the Tribunal on the recorded CCTV was a small amount of limp cling film (with no knot) being wafted gently in the direction of the claimant's back as she walked past: it was far from clear that it made contact with the claimant at all. Such apparent initial exaggeration did the claimant no favours and led us to conclude that her account was the less reliable.

## The Issues

### Harassment related to sex Section 26 Equality Act 2010

6. Are the facts such that the Tribunal could conclude that on any of the following alleged occasions the claimant was subjected to unwanted conduct related to sex which had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her:

- (a) In Michael Smart speaking openly about sexual matters in the presence of the claimant more or less every day;
- (b) On 10 May 2018 when Eva Falusi accused the claimant of wanting to have sex with her (Ms Falusi's) brother and made sexual gestures towards the claimant saying she would beat the claimant
- (c) On 24 May 2018 when David Leigh swiped a piece of blue clingwrap towards the claimant's back, having previously asked the claimant to sit in his lap; and later a further allegation that he grabbed his private parts in front of the claimant
- (d) On 15 June 2018 when Martin Almond asked the claimant why she was causing so many problems and said she was doing 'sex perception' to a colleague Daniel and threatened to tell her husband.

7. If so, can the respondent nevertheless show that it did not contravene Section 26?

### Direct sex discrimination – Section 13 Equality Act 2010

8. In the alternative, if any of the matters in the above paragraphs do not amount to harassment, are the facts such that the Tribunal could conclude that they amounted to less favourable treatment because of sex than a hypothetical male comparator would have received?

9. If so, can the respondent nevertheless show that it did not contravene section 13?

### Harassment related to race

10. Are the facts such that the Tribunal could conclude that Michael Smart subjected the claimant to unwanted conduct related to race which had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her when he used the phrase "Paki Shop" on one occasion in front of the claimant?

11. If so, can the respondent nevertheless show that there was no contravention of section 26?

**Direct race discrimination – Section 13 Equality Act 2010**

12. In the alternative, if any of the matters in paragraph 5 do not amount to harassment, are the facts such that the Tribunal could conclude that the claimant was treated less favourably because of race than a person in the same circumstances of a different race would be treated?

13. If so, can the respondent nevertheless show there was no contravention of section 13.

**Time Limits – Section 123 Equality Act 2010**

14. Insofar as any of the matters for which the claimant seeks a remedy occurred more than 3 months prior to the presentation of her claim, allowing for the effect of early conciliation, can the claimant show that it formed part of the conduct extending over a period which ended within 3 months of presentation?

**Reasonable steps defence – Section 109(4) Equality Act 2010**

15. If any of the respondent's employees are found to have contravened the Equality Act 2010 in relation to anything alleged above, can the respondent show that it took all reasonable steps to prevent that employee from doing that thing or anything of that description?

**Unlawful deductions from pay – Part 11 Employment Rights Act 1996**

16. Can the claimant establish that on one or more occasions between 16 February 2018 and 20 April 2018 the respondent paid the claimant less than the amount properly payable under her contract because the claimant had worked more hours than those for which she was paid?

17. Insofar as any such unlawful deductions occurred before 23 March 2019, three months before presentation of the claim ( allowing for the effect of early conciliation) can the claimant show that they formed part of the series of similar deductions ending on or after that date?

**Remedy**

18. If any of the above complaints succeed, what is the appropriate remedy.

**The Facts**

19. The claimant was employed by the respondent as a bakery operative on 22 January 2018. She worked on a production line with staff from many different backgrounds. She was supervised by team leaders and then a manager. Under the terms of the staff handbook and her contract, she was paid hourly from her clocking on records in 15 minute units. If she clocked out during a unit she could lose pay or may gain, dependent on the exact minute of the clock-out. On one occasion the claimant did not use the clock but when she advised her manager that she had not done so, she was paid those hours promptly. She did not explain her failure to use the clock.

20. The claimant believed that she should be paid to the minute and was seen to stand by the clock until such time as it moved forward to ensure that she was paid to the next 15 minutes. The claimant was suspicious of the clock, although we heard no evidence to suggest it could be wrong beyond her own observations, which culminated in her alleging, in her closing speech (but not before) that the clock had been tampered with.

21. The respondent, when it was raised with them by her, explained over and over again how it worked, but the claimant would not accept it. On one occasion the claimant asked to leave early as she was unwell and was observed to stand by the clock for seven minutes to ensure she was credited with that 15 minute unit.

22. The claimant produced a schedule from which she alleges she is owed over four hours and six minutes in pay. The claimant produced a list of dates when she alleged she was underpaid. When checked against the automated clock her figures do not tally - for example (and the most stark difference) on 30 March 2018 she claims she left at 1.59 when the clock shows her clocking out at 12.59. with no evidence of any malfunction, the Tribunal considered that it could prefer the figures set out in the clock printouts supplied by the respondent.

23. The claimant identifies as a Punjabi speaking Pakistani woman living in England. She gave evidence that Michael Smart, on an unknown date, used the phrase "Paki shop" in front of her, and she was harassed by this.

24. On a later date the claimant raised a grievance about other things. She did not raise this as part of her grievance. Michael Smart gave clear and unequivocal evidence, credible evidence, that he managed a multiracial team (including a team leader from Pakistan) and he would not have said such a thing. The evidence of that team leader, Mr Mohamed (who had worked there for 12 years), and other staff, witnesses who worked with the claimant on the production lines, was that no-one had heard any racist comment at any time from Michael Smart. We found that no such comment was made. It was noted that the claimant did not complain about this at the time, and the complaint came later in the case, but the evidence does not support her account. We do not find that Mr Smart made any racist comment.

25. The claimant accused Michael Smart of discussing sexual matters 'more or less every day' in front of her. The claimant was in the habit of recording clock-in times and covertly recording conversations with staff on her phone, but she kept no records of what was said by Mr Smart which we found surprising if these comments were actually made.

26. Emma Morris' grievance meeting with the claimant was covertly recorded by the claimant, but Mr Smart's alleged behaviour was not mentioned by her in any detail at all. The claimant said she trusted Emma Morris. We were surprised that she did not complain in detail if that were the case.

27. The other staff who gave evidence all agreed that Mr Smart did not talk about private matters at all. The claimant knew that CCTV was in place when these alleged comments were made but waited until the CCTV had been deleted before listing her potential witnesses and complaining.

28. In any event, the respondent's witness evidence was that the claimant herself raised matters of sex in conversation with her fellow workers, and we found this credible. For example, on one occasion she came to work and alleged that she was sore after too much sex on holiday.

29. On another occasion, the claimant and Eva Falusi had an argument over the claimant audio recording her fellow workers' conversations to which she was not party (and then translating them from Hungarian). Ms Falusi accused the claimant of wanting to have sex with her (Ms Falusi's) brother/cousin who had been an employee. Ms Falusi did not speak Punjabi and her first language was Hungarian. She used an arm gesture to suggest having sex, by way of clarification. The claimant took offence and raised a complaint.

30. The CCTV, which the Tribunal was able to see, showed an argument between the two women. As a fact, no-one else was involved until the claimant moved away and continued to harangue others who were standing nearby. On the CCTV she could be seen waving her arms around and stamping her feet. Two witnesses (Mr Gere and Mr Almond) explained that the claimant had expressed interest in Ms Falusi's brother/cousin in terms of a relationship. It ill behoved the claimant to take exception to Ms Falusi's gesture when considered in the context of her own behaviour.

31. The claimant then alleged that David Leigh had invited her to sit on his lap on an unspecified date, and then on another occasion waved clingfilm at her back. David Leigh described himself as a joker, 'messing around and horseplay'. He subsequently received low level counselling and a warning for messing around with the clingfilm referred to above.

32. The whole clingfilm incident was recorded on CCTV which the Tribunal viewed. We considered Mr Leigh's evidence and the claimant's explanation. Mr Leigh's explanation matched what we could see on the CCTV. He picked up a piece of clingfilm which was rolled, it was wispy and limp. He wafted it towards the claimant's back more than once, as she walked passed him, but only on the last occasion did she notice it. There was no knot in the clingfilm although the claimant alleged there was. It looked unlikely that it even made contact with the claimant. It was in the direction of her back, not her bottom.

33. The claimant on that occasion called the police into the bakery (without any reference to her team leader or manager) and complained that Mr Leigh had pinched her bottom. They viewed the video and agreed that there was no evidence of an assault or a sexual assault. The claimant initially asserted she had been pinched on the bottom, and that it then felt as though she had been pinched on the bottom, and finally that she believed that is what had happened. Her account later changed to Mr Leigh waving the cling film in her direction. Her account is fanciful.

34. The claimant further asserted in her evidence that Mr Leigh grabbed his private parts in front of her, an allegation for which we had no context at all and which was denied by a credible witness (who was supposed to be there when it happened). She also alleged that at some point he had invited the claimant to sit on his knee. It was noted that the claimant had failed to mention these incidents when

she had called the police, and we find it to be inherently unlikely that either happened.

35. On 15 June 2018 the claimant suggested that Mr Almond asked her why she was causing problems and alleged she was doing “sex perception” to Daniel (the cousin/brother). Daniel had told Mr Almond that the claimant had propositioned him as her husband was away. The Tribunal tested the use of the phrase “sex perception” as it made no sense, and Mr Almond as a native English speaker would not have used it. In her closing remarks the claimant finally admitted that she may have been wrong and that he had said “sex propositioned”, equally incomprehensible to a native English speaker. In time the claimant gave evidence that Mr Mohammed and Natalie heard the conversation. She did not mention this until she gave her evidence in Tribunal. Neither of them supported her account. We found both Mr Almond and Mr Mohammed to give straightforward unwavering accounts upon which we could rely.

36. The claimant went through a grievance process with Emma Morris whom she covertly recorded. We had an agreed transcript. It served the claimant little benefit, and in fact supported the respondent’s account overall.

## **Submissions**

### Claimant's Submissions

37. Unlawful deduction from wages. The claimant asserts that she is owed payments for 4 hours and 6 minutes of work. She considered that it was clear the company made manual changes to the clock – sometimes in her favour. She gave examples of how she said her pay was inaccurate.

38. Sexual harassment – although her written submissions were in English, she did not make any submissions in this regard other than to write one sentence in what the Tribunal assumed was her native Punjabi in direct contravention of the Tribunal’s order that they should be in English

39. Credibility – the respondent has taken statements from a number of staff and when she spoke to them later they said they had no issues with her. She had asked to be allowed to use her covert audio but been refused at case management stage.

40. The CCTV showing the Faluzi incident had been tampered with so the Tribunal could not see the Hungarian men abusing her in their own language.

41. She had deleted her Facebook discussions with Danial, but that did not mean she had romantic talk with him and he did not give evidence at the tribunal.

42. Some of the 15 respondent witnesses whose statements were used in her grievance, and some at the hearing did not work with her.

43. She was not defensive because she was telling the truth, she has not changed her account, and has told the truth.

44. Many of her recordings were made outside work.

45. Jennifer, who gave evidence, does not have English as her first language, and Ms Morris must have asked her to include the 'too much sex' comment in.
46. The respondent witnesses did not always remember incidents in cross examination and had to be reminded of them. The claimant generally did include dates and times.
47. MS did not agree to any of the 'dirty' allegations she made against him
48. Mr Mohamed had worked for MS for 12 years so was unlikely to say anything against him
49. The respondent failed to keep the CCTV. They have relied on word of mouth only except where the claimant presented a grievance.
50. On 29 May she had told Ms Morris that Mr Leigh touched her shoulder and back and hugged her from behind and would say come and sit on my lap. She forgot to mention grabbing his private parts and Emma should have asked her more.
51. Claimant was unaware CCTV was only held for 28 days
52. Employees said in their statements what the respondent wanted them to say to secure their own jobs
53. Eva Falusi humiliated the claimant playing with her honour in front of other employees. It was unwanted conduct. The company as deleted that footage. There was no excuse for making the hand gesture. The claimant did not share her personal life and worked on a different line to some of those commenting.
54. The swiping of the cling film is a vulgar crime, committed to a lady without her permission. It was not horseplay although everyone used the term at work and in the hearing
55. The cling film did have a knot in it.
56. Mr Almond could not remember the incident on 22 June
57. The claimant made a mistake between sex perception and sex proposition
58. Mr Almond was not telling the truth in his evidence
59. The claimant raised the issue with the 'paki shop' comment to Emma, who failed to investigate it. Mr Mohamed was brought up in Iran.

#### Respondent's Submissions

60. Unlawful deduction from wages :- The claimant is relying on her own manual notes of her finishing time to allege that she is owed 4 hours and six minutes. The claimant was paid as an hourly employee. The burden of proof lies with the claimant to establish that the respondent has failed to pay her for all work done. The claimant's manual records do not match the clocking on records of the respondent.



There was no evidence of the machine failing to operate properly, and Emma Morris, whom the claimant trusted, gave evidence that the automated machine did not fail. Only in her closing speech did the claimant suddenly, and without evidential foundation suggest that the respondent had selectively tampered with the clock system and its records. She could not explain however why this should result in a random loss to her of 4 hours and 6 minutes, nor why the respondent should do so. This example is used by the respondent to suggest the claimant's lack of credibility throughout.

### Sexual Harassment.

61. After citing the law (referred to below) The Tribunal was asked to consider the credibility of the various parties. The respondent avers that the claimant both in the internal and Tribunal proceedings had a propensity to lie, misrepresent events and make serious allegations without any evidential basis, and gave seventeen examples. The Tribunal should reject the claimant's evidence.

62. The issue is whether Mr Smart made sexual remarks on a daily basis or not.

63. The respondent conceded that if true such matters would be of a sexual nature. If it occurred the respondent would say it was not unwanted as the claimant made sexual comments herself (the unchallenged evidence of Jennifer Petrovic about the claimant's comments on her return from holiday). The claimant gave no dates or specifics about what she alleges was said, or when. In the light of the claimant's lack of credibility she has not discharged the evidential burden placed upon her Mr Smart is a credible witness, and his evidence was supported by Mr Mohamed, whose evidence had the hallmarks of candour. The claimant suggested that she was embarrassed and precluded by her culture and religion to share such details, to account for her failure to provide any, was undermined by the fact that her grievance meeting was with Emma Morris, a lady whom she liked and trusted. She covertly recorded that meeting and was able to demonstrate the Falusi arm gesture.

64. At the time the claimant did not suggest that there were witnesses to Mr Smart's behaviour. She listed them once she was aware that the CCTV had been deleted. The claimant was always aware of the existence of the CCTV and never asked for it to be saved.

65. In summary the respondent averred that the claimant's evidence was wholly unreliable and the Tribunal should reject the claim on the facts.

### The Eva Falusi allegation

66. The allegation is that Eva Falusi accused the claimant of wanting to have sex with her brother and making sexual gestures towards the claimant saying she would beat her. Ms Falusi accepted that she made the arm gesture and accused the claimant of wanting to have sex with her cousin. If this allegation is true then it does not meet the threshold for harassment. It was not reasonable for it to have the effect. The witnesses confirmed the claimant's earlier comments about her desire to have sex with the brother/ cousin. It could not be said this was unwanted.

67. The context of Ms Falusi's actions was that the claimant had been heard to express a romantic interest in Ms Falusi's brother/ cousin. Ms Gear gave evidence that this was known throughout the factory. Ms Falusi's first language was Hungarian, she was not a fluent English speaker. Ms Falusi took exception to the claimant recording conversations between the Hungarian workers, and then translating them. The claimant was seen on the CCTV to become angry and upset. Efforts to calm her down failed. The arm gesture was made to compensate for Ms Falusi's language difficulty.

68. The Tribunal are asked to find that the reason why Ms Falusi made the comment and gesture had nothing to do with the claimant being female, but because she believed the comment to be true and the gesture to express what she was trying to say.

#### Allegation David Leigh

69. The claimant alleges that Mr Leigh swiped a piece of cling film towards her back having previously asked the claimant to sit in his lap. The respondent would say this was not an act of a sexual nature. It was horseplay and messing around. It was clearly directed at her back, with no commentary. An unremarkable exchange which the claimant has grossly exaggerated in the retelling. Mr Leigh was visibly distressed by the suggestion he had sexually harassed the claimant. His evidence had the hallmarks of an honest witness.

70. With regard to the 'sit in my lap' comment, the claimant at the Tribunal suggested for the first time that there were witnesses present. It occurred in the break room she said, which was full. However she adduced no further evidence. The claimant deemed the cling film incident to be so dirty and vulgar that she immediately called the police. However she kept quiet about being asked to sit on Mr Leigh's lap.

71. In her last statement she made the allegation about Mr Leigh grabbing his private parts. She claims it was witnessed. She did not mention it earlier, and had no recollection of the time and date, in stark contrast to the cling film incident.

#### Allegation Mr Almond

72. The claimant alleged that on 15 June Mr Almond asked the claimant why she was causing so many problems and said that she was doing sex perception to Danial and threatened to tell her husband. If true this was not of a sexual nature. Danial and the claimant were friends and flirted. Danial was concerned about her advances and sought Mr Almonds advice. The phrase 'sex perception' is not understood and made no sense. In any event the claimant was herself comfortable discussing sex in the workplace. The CCTV was checked and there was no conversation between Mr Almond and the claimant. The claimant changed her evidence and said that Mr Mohamed and Natalie were present. The respondent would ask the Tribunal to prefer the evidence of the respondents because Mr Almond is an English speaker and would not have used the term sex perception Mr Mohamed had a good recollection of the day and was a credible witness. The claimant's explanation for her failure to complain at the time, saying her family was threatened. This was only suggested after she had left work without gaining

permission and so knew her job was at risk. If made this comment did not amount to sexual harassment. The Tribunal is invited to find it was not made.

### **Race discrimination**

73. This relates to the single comment alleged against Mr Smart stating he would go to the 'paki shop'. The respondent accepts that if found to have been said the comment would meet section 26 and be an act of harassment related to race. The Tribunal is invited to find the denial to be the more credible because the claimant could not put a date on this, the fact she improved her evidence to suggest it happened on a production line with witnesses, and that she had earlier said so, when she had not. She did not mention it in her grievance meeting with Ms Morris. Mr Mohamed is a Pakistani man who had worked with Mr Smart for 12 years and never witnesses any racist remarks and Mr Smart was a credible witness.

### **The Law**

#### **Unlawful deductions from wages**

##### **Section 13 Employment Rights Act 1996**

74. S.13(1) s.13(1) An employer shall not make a deduction from the wages of a worker employed by him unless:-

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

the worker has previously signified in writing his agreement or consent to the making of the deduction.

75. Section 26 Equality Act 2010

(1) A person (A) harasses another (B) if –

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

(b) The conduct has the purpose or effect of –

(i) Violating B's dignity, or

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

(2) A also harasses B if\_

(a) A engages in unwanted conduct of a sexual nature, and

(b) The conduct has the purpose or effect referred to in subsection (1) (b)

(3) A also harasses B if –

- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to.....sex,
  - (b) The conduct has the purpose or effect referred to in subsection (1) (b), and
  - (c) Because of B's rejection or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- (4) In deciding whether the 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 was reasonable for the conduct to have that effect.

*Richmond Pharmacology v Dhaliwal [2009] IRLR 336*

76. The Tribunal must determine:

- (1) Did the respondent engage in unwanted conduct
- (2) The purpose or effect of the conduct. Did the conduct in question either:
  - (a) Have the purpose or
  - (b) Have the effect of either (i) violating the claimant's dignity or (ii) creating an adverse environment for her?
- (3) Was that conduct on the grounds of a protected characteristic or not?

77. When determining issue (2) the Tribunal should have regard to the context of the alleged harassment and whether it was 'reasonable' for the conduct to have the effect complained of.

*Pemberton v Inwood [2018] EWCA Civ 564*

78. Per Underhill LJ:- A Tribunal must consider both subsections (1) (a) and (1) (b) of section 26. – whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must take account of all the other circumstances.

*Bakkali v Manchester Buses t/a Stagecoach [2018] IRLR 906*

79. Per Slade J – conduct can be related to a relevant characteristic even if it is not because of that characteristic.

80. A Tribunal will determine the complaint on the material before it including evidence of the context in which the conduct complained of took place.

EHRC Code sets out that conduct of a sexual nature can cover verbal, non-verbal or physical conduct.

Direct discrimination

Section 13 Equality Act 2010

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

The shifting burden of proof

This applies to the claimant's claims of discrimination and harassment

Section 136 Equality Act 2010:

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

Talbot v Costain Oil, Gas and Process Limited and others 2017 ICR EAT

81. HHG Shanks - when considering inferences:-

82. It is unusual to find direct evidence of discrimination.

83. Normally an Employment Tribunal's decision will depend on what inference it is proper to draw from all the relevant surrounding circumstances, which will often include conduct by the alleged discriminator before and after the unfavourable treatment in question.

84. It is essential that the Tribunal makes findings about any primary facts that are in issue so that it can take them into account as part of the relevant circumstances.

85. The Tribunal's assessment of the parties and their witnesses when they give evidence forms an important part of the process of inference.

86. Assessing the evidence of the alleged discriminator when giving an explanation for any treatment involves an assessment not only of credibility but also reliability, and involves testing the evidence by reference to objective facts and documents, possible motives and the overall probabilities.

87. Where there are a number of allegations of discrimination involving one person, conclusions about that person are obviously going to be relevant in relation to all the allegations.

88. The Tribunal must have regard to the totality of the relevant circumstances and give proper consideration to factors which point towards discrimination in deciding what inference to draw in relation to any particular unfavourable treatment.

89. If it is necessary to resort to the burden of proof in this context section 136 Equality Act provides in effect that where it would be proper to draw an inference of discrimination in the absence of any other explanation the burden lies on the alleged discriminator to prove there was no discrimination.

*British Medical Association v Chaudhary (No 2) 2007 IRLR 800 CA*

90. Inferences must be drawn from actual findings of fact not assumed facts.

*Qureshi v Victoria University of Manchester and Anor 2001 ICR 863 EAT*

91. The Tribunal must look at the totality of its findings of fact and decide whether they add up to a sufficient basis from which to draw an inference that the respondent has treated the claimant less favourably on the protected grounds.

## **Conclusions**

92. We do not find on the facts that the claimant suffered sexual harassment or direct sex discrimination. She has not satisfied the Tribunal to the required standard of proof. Looking at the evidence in its totality in relation to every one of her four allegations, we do not find that there is sufficient evidence to find a basis from which to draw an inference that the respondent has treated her less favourably on the protected ground of her sex. Nor do we find that the respondent or its employees have harassed her on the same protected ground. We rather find that she has deliberately exaggerated and enhanced her evidence to 'fit' the case she sought to bring. We had clear evidence of such exaggeration in relation to the cling film allegation. We witnessed the contemporaneous CCTV for ourselves. There was absolutely no suggestion that this was anything other than a small piece of cling film being wafted in the direction of the middle of the claimant's back as she walked past. She was only aware of 1 occasion, there were four, one after the other. It is not clear that it even made contact at all. She however called the police and alleged she had been pinched on the bottom, before changing her account as time went by. We found other allegations had no foundation in truth, because they were not raised at the time, when others were, and that on one occasion she had to change her case, because her initial case against Mr Smart was not witnessed as she alleged by Mr Mohamed. Her reference to sex perception, later changed to sex proposition was simply incomprehensible and so inherently unlikely to have been said by an individual whose first language was English. We found the claimant to be unreliable as a witness. We preferred the straightforward and consistent evidence of the respondent witnesses, supported on two of the incidents by contemporaneous CCTV. We find therefore that the claimant was not the victim of sexual harassment, nor direct sex discrimination in relation to any of the 4 allegations she raised.

93. We do not find on the facts that the claimant suffered racial harassment or direct race discrimination. Her evidence about one comment of a proposed visit to the 'paki shop' was undated and not specific. It was not raised at the time, whenever

that was. It was difficult therefore for the respondent to counter. Mr Smart explained that he had always worked with multi-racial teams and would never say something like that. We found that to be credible. We felt able to consider the evidence of Mr Mohamed to be preferable to the claimant's. He had worked with the company for 12 years and had never heard that, or any other racist comment. He was of Pakistani origin. We took into account our other conclusions in relation to the claimant, that she did not give a reliable account to us. We concluded that on our findings of fact we could not find that this was said, there are no inferences to be drawn and the claim fails.

94. The claimant was paid in accordance with her terms and conditions of employment. There is no credible evidence that there has been any unlawful deduction from wages. The claimant knew she should be paid in accordance with her contract – and was observed to ensure she was credited with additional units, rather than debited. There was no evidence at all that anyone had tampered with the clocking on machine, and no evidence of complaint from any other. Miss Morris confirmed that to be the case. The claimant simply wanted to be paid for every minute she worked rather than in 15 minute units, as specified in her agreed contract. This claim has no merit. Her own manual records were not accurate when we compared them with the mechanised clocking out system – on one occasion being an hour out. Her evidence in this regard is not reliable and we do not find her claim to succeed.

95. We heard insufficient evidence about dates of allegations to be able to find that any or all of the incidents were in time, but as we have found all of the claims to lack merit in any event we do not comment further on this.

96. All of the claims are thus dismissed.

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Employment Judge Warren  
26 January 2023

REASONS SENT TO THE PARTIES ON  
27 January 2023

FOR THE TRIBUNAL OFFICE

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