



# EMPLOYMENT TRIBUNALS

## Claimant

Miss E J Maymuna

## Respondent

Simply Training and Education Limited

Held at Watford Employment Tribunal

On: 23 November 2022

Before: Employment Judge Manley  
Ms J Hancock  
Mr S Bury

Claimant: In person

Respondent: No attendance or representation

**JUDGMENT** having been sent to the parties on 15 December 2022 and reasons having been requested by the claimant in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Introduction and issues

1. By a claim from presented on 6 April 2021 the claimant brought claims for unfair dismissal and holiday pay. She also mentioned bullying and intimidation. An accompanying document set out details of matters that could be interpreted as allegations of race discrimination. The response was presented in time, denied any bullying or intimidation and defended the holiday pay claim on the basis of the claimant not having given notice of her resignation. The response purported to raise an employer's contract claim arising from her failure to give notice, but that was rejected because there was no breach of contract claim brought by the claimant.
2. In correspondence, the claimant was asked to confirm whether she intended to bring a claim for race discrimination and she confirmed she did. Her unfair dismissal claim was rejected as she did not have 2 years' service. After a preliminary hearing in January 2022, the

claimant provided details on 10 February 2022 of her claim for direct race discrimination and harassment. There was no involvement or attendance by the respondent after the response was received.

3. The issues for this hearing agreed at that preliminary hearing were, in summary, to determine any time limitation issues; to find facts with respect to the alleged discriminatory treatment and apply the tests as set out in Equality Act 2010 for direct race discrimination and harassment and, if the claimant succeeded, to decide the appropriate level of remedy. The tribunal must also decide whether any untaken holiday was due to the claimant and, if so, what sums to award for that claim.

### **The hearing**

4. The hearing started a little late and the respondent did not attend. At the preliminary hearing in January, various attempts had been made to contact the respondent without success. The case management summary containing the notice of hearing had been sent to the respondent and this hearing did not start until 10.50 without any communication from the respondent.
5. There was no witness statement from the claimant but she had sent in an electronic bundle. She relied on the 7-page document which she had sent in February detailing the race discrimination and harassment allegations. The claimant gave evidence, the tribunal considered the documents, including the response, and then deliberated. We gave judgment in the claimant's favour and calculated compensation as set out below.

### **The facts**

6. The claimant, who identifies as being of Bengali origin, commenced working for the respondent on 24 August 2020 and resigned on 19 December 2020. The person the claimant understood to be the owner of the business was Mr Sofiq Islam. The claimant was to carry out administrative tasks and make arrangements for exams. Her manager appeared to be a Ms Jayne Knight, whom the claimant was later told by her work colleague, Shauna, was in a relationship with Mr Islam.
7. The claimant's evidence is that Ms Knight, who she understands is from Nigeria (or of Nigerian heritage), made several comments to her which she found degrading, offensive and insulting. The claimant said that Ms Knight did not return her greeting and was noticeably more friendly towards Shauna, who the claimant believes is British Jamaican.
8. Specifically, the claimant's evidence, which the tribunal accepts, is that Ms Knight was abrupt and rude to the claimant in front of other staff. She would give short answers and make comments such as "How

many times do I have to explain it"?; "I think she doesn't get it" and "I feel like you ask me the same questions every day".

9. Ms Knight also talked about the claimant to Shauna complaining about her language and style on the phone. The claimant also found that she was doing the more strenuous tasks, even though she understood that she and Shauna were performing the same role.
10. Ms Knight also asked the questions about the claimant's personal life, including referencing to her ethnic background. For instance, she asked the claimant why she was not married as most women from her background were married at a young age. When the claimant replied that she wanted to finish her studies first, Ms Knight said that she had been to Bangladesh and had seen women treated as "baby machines" and all they do is cook. She then stated that women in Nigeria are very different, that they are brave and study. She said that the women in her family are educated and that Nigeria is one of the most educated countries in the world. She added that "Dhaka is too crowded and dirty" and "I don't know how anyone can live there".
11. The claimant raised the way in which she was being treated in October 2020 with Mr Islam but found that Ms Knight's behaviour got worse and that her hours were reduced, which caused her loss as she was on a "zero hours contract". Ms Knight complained about a customer having called multiple times. The claimant overheard Ms Knight describing her to students as "Indian" or "Asian girl". On one occasion the claimant overheard Ms Knight and a client laughing about her origins and then continuing to discuss it in another language that the claimant didn't understand.
12. The claimant told the tribunal about other matters concerning the running of the business that it is not necessary for us to go into as it does not appear to relate to this claim. The claimant complained she was not provided with a key to the main entrance door which led to her having to wait outside to be able to enter the building. Two other people who started work at the same time as the claimant were provided with keys.
13. After an unpleasant text message from Shauna, the claimant felt anxious and upset and decided to resign on 19 December 2020. She found new employment on 4 May 2021, having spent a month or two in Rome with family. She is still employed at that new employment and is continuing her studies.

## **The law**

14. The claimant's discrimination claims arise under Equality Act 2010 (EQA) and the right not to suffer unlawful deduction of wages under Employment Rights Act 1996 (ERA) for holiday pay.

15. The EQA claims are for direct race discrimination under s13 EQA and harassment related to race under s26 EQA. The burden of proof rests on the claimant to show facts from which the tribunal could conclude there was less favourable treatment because of race for the s13 claim. For the s26 claim, the claimant has to show facts from which the tribunal could conclude that there was unwanted conduct that was related to race and had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
16. If those facts are shown, the respondent can seek to show, with evidence, that the treatment was not because of race. The claims must be brought within three months of the acts complained of unless there are part of conduct extending over a period bringing them in time or it is just and equitable to extend time. If the claimant succeeds, the tribunal can award compensation to be calculated as damages in the county court and a sum for injury to feelings.
17. For the holiday pay claim, the claimant has to show that she was entitled to annual leave which she did not take during her employment. The tribunal can then calculate the sum due to her on termination of employment.

## **Conclusions**

18. The tribunal considered the holiday pay claim first. There was no clear denial in the response that the claimant was entitled to payment for untaken holiday. The respondent stated in the response that the claimant had not given notice but that has no effect on her holiday entitlement. The claimant's evidence, which the tribunal accepted, was that she had taken no holiday whilst employed by the respondent. The tribunal therefore found that the complaint of unlawful deduction of wages for failure to pay holiday pay succeeds. The respondent is ordered to pay the gross sum of £340.59 (1.82 weeks at average weekly pay of £187.14) to the claimant.
19. The tribunal then considered the EQA claims. We found that the facts show clear unwanted conduct related to the claimant's ethnic origin which violated her dignity etc. There was no question but that the negative references to stereotypical assumptions women of Bangladeshi origin, contrasting it with Nigeria were hurtful and upsetting to the claimant. In particular, the reference to women being baby machines and cooks and references to the claimant's mother was unwanted conduct which related to race. Referring to the claimant as the Asian girl and laughing when talking about her country of origin was also conduct which amounted to harassment.
20. The tribunal also found that there was direct race discrimination under s13 EQA. There was less favourable treatment of the claimant with respect to the work she was given to do, the failure to provide a front

door key and the reduction in her hours. The respondent had not provided a denial of the claims as set out in the claimant's February 2021 document and had not attended the tribunal to deny what she said had happened. For both claims, the claimant cannot be precise as to dates of the incidents complained of but the tribunal is satisfied it amounted to conduct extending over a period and the claim was brought in time.

21. The EQA claims therefore succeeded. The tribunal decided that it was not appropriate to award a sum for loss of wages because the claimant was not looking for work in the UK when she left the respondent and had visited family in Rome.
22. We therefore considered what was the right level of injury to feelings to award. We decided to award a sum within the lower band of Vento, but towards the top of that band because there were several instances of poor treatment and the claimant felt that she was forced out of the job. We awarded £6000 with interest calculated at £985.12.
23. The respondent was ordered to pay those sums to the claimant.

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**Employment Judge Manley**

**Dated 22 January 2023**

JUDGMENT SENT TO THE PARTIES ON

30 January 2023

AND ENTERED IN THE REGISTER

FOR SECRETARY OF THE TRIBUNAL