



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4102190/2022

**Hearing Held at Edinburgh on 28th, 29th, 30th November, 1st, 2nd December
2022, 8th, 9th, 13th March 2023**

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**Employment Judge I McFatridge
Members: M Taylor
T Lithgow**

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Ms T Noguera

**Claimant
In Person**

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Carfraemill Limited

**Respondent
Represented by:
Mr R Reeley, Director**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous Judgment of the Tribunal was that:

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(1) The claimant had insufficient qualifying service to bring a claim of unfair dismissal. The claim of unfair dismissal is dismissed.

(2) The claim of sex discrimination is dismissed following withdrawal.

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(3) The claimant's claim of race discrimination is not well founded and is dismissed.

(4) The respondent did not unlawfully withhold wages from the claimant.
5 The claim of unlawful deduction from wages is dismissed.

(5) The respondent did not unlawfully withhold holiday pay due to the claimant following termination of her employment. The claim for payment of holiday pay is dismissed.

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REASONS

1. The claimant submitted a claim to the Tribunal in which she claimed that she had been unfairly dismissed by the respondent. She claimed that she had
15 been unlawfully discriminated against on grounds of race and sex. She also claimed that she was due a sum in respect of wages unlawfully withheld and in respect of paid annual leave accrued but untaken as at the date of termination of her employment. The respondent submitted a response in which they denied the claims. The claimant was asked to provide further
20 particulars of her claim and did so in a document entitled "Initial Consideration of Claim and Response - Further Information Required". Subsequently at a Case Management Preliminary Hearing the claimant confirmed that she wished to withdraw her claim of sex discrimination. During the course of that Hearing she also accepted that her claim of unfair
25 dismissal could not proceed as she had insufficient qualifying service. A Final Hearing of the claim took place, initially over 5 days, in December 2022. It was not possible to conclude the evidence during that time and the Tribunal sat for a further 3 days in March 2023. The claimant presented her case first. The claimant gave evidence on her own behalf and led evidence from Mr B
30 Monaghan her partner and from John Currie and Isabella Maruszak, former colleagues. Evidence was led on behalf of the respondents from Mr Robert Reeley their Director, Rebecca Craig a former employee, Jules Reeley, Robert Reeley's wife and a Director of the company, Bella Reeley who is the daughter of Jules and Robert Reeley and was the claimant's Line Manager

during the course of her employment, and Erica Lupocz who is the respondent's Finance Manager. Both parties lodged documentary productions. Initially the parties had sought to lodge a joint bundle and the claimant was to arrange for the appropriate number of copies to be produced.

5 The bundle produced by the claimant on the first day of the Hearing did not contain a number of documents which she had been sent by the respondent. The respondent therefore subsequently lodged these documents together with a copy of the respondent's Employee Handbook. Further documents were lodged by both parties at various points during the Hearing largely in

10 response to matters which arose during the evidence. The documents are referred to by page number in the Judgment below. The initial bundle lodged by the claimant was numbered pages 1-106. Subsequently additional documents were added to this bundle which were numbered 107-118. The additional documents which the respondent had sent to the claimant for

15 inclusion in the joint, bundle but which the claimant had initially decided to omit are numbered pages 200-272. On the basis of the evidence and the productions the Tribunal found the following essential facts relevant to their decision to be proved or agreed.

20 Findings in Fact

2. The respondents are a hospitality business owned by the Reeley family. The respondent is part of Intuitive Group which comprises other businesses owned by the Reeley family. At the time they had 8 hospitality businesses

- 25 situated between the Borders and Caithness. They are in the course of acquiring more. At the time the claimant was employed the group had over 100 employees and now have around 300. At any given time around 40% of these employees are foreign nationals.

- 30 3. Carfraemill is a hotel with around 10 bedrooms. The business generally concentrates on food and beverage sales and sees that as its main focus. It also hosts events such as weddings. The intuitive group acquired it in or around October 2020 from the previous owners who had run it for 24 years. The hotel had to close shortly after they acquired it due to COVID restrictions.

Although the family have businesses throughout Scotland Carfraemill is the one situated very closest to where they live and all members of the Reeley family, Robert Reeley, Jules Reeley, Bella Reeley and Lizzie Reeley are regularly there.

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4. The claimant who is a Portuguese national living in Scotland placed an advert on the "Indeed" website in or about May/June 2021. The claimant had some experience of hotel administration and management from working for hotels in Portugal. Her cv was lodged. (242). She had taken her previous employer in Portugal to court for non payment of wages.

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5. At the time the respondents were trying to rebuild their businesses after the various disruptions caused in 2020 due to the Covid pandemic. They identified they were extremely short of Managers. They were desperate to recruit and the respondent's then Operations Director Oliver Lynn saw the claimant's advert and contacted the claimant by email on 16 May. (p9-10) The claimant thereafter met with him for an interview. Whilst the claimant was not a perfect fit for what the respondents were looking for they gave her a trial shift. The claimant carried out her trial shift at one of the respondent's other businesses in Galashiels towards the end of May 2021. As was the respondent's invariable practice at the time the claimant was not paid for this shift. The shift was simply to see if the claimant liked working there and if the respondent's Managers liked her. The claimant was subsequently offered employment as assistant manager on a salary of £25,000 per annum. There was a slight delay in her taking this up due to the claimant having travelled to Portugal and being subject to Covid quarantine restrictions on her return but the claimant started work on or about 28th June 2021.

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6. The respondents at that time employed both salaried and hourly paid employees. The claimant was employed on a salaried basis using the respondent's standard salaried contract. This provided the claimant would work an average of a 45 hour week. As is usual there was an expectation that some weeks she would work more than this but that this would be made up by her working less than this during quiet periods. The claimant was

entitled to 28 days paid annual leave. The standard starting salary for an assistant manager was £25,000 per annum. Other assistant managers within the company were on that salary. Two, who had been with the respondent for some time were on £27,000 per annum.

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7. The respondent's managers Mr. and Mrs Reeley employed a number of other foreign nationals in the Inntuitive Group. At that time around 40% of staff were of non Scottish nationality. They employed a number of Portuguese nationals. One was employed as head chef who joined the respondent from "The Restaurant Group". He started on £25,000 per annum but received a substantial pay rise within weeks as they found him a very good fit for their business. He was very good at designing and preparing standard recipes. This individual was thereafter promoted to executive chef. He subsequently left the respondent for personal reasons. Another Portuguese national had been taken on by the respondent as a chef when they took over a unit from the Restaurant Group. He had subsequently opted to stay with the respondent when they sold the unit he worked in and was still working for them.

8. Prior to commencing employment the claimant was sent a copy of the job description for the job as Assistant Manager. This was lodged (page 11). The claimant was also asked to complete various online training modules dealing with issues such as health and safety, fire awareness, food safety etc. Information on completion of these was also lodged (page 12). In addition to her salary, the claimant's contract stated she was also entitled to sick pay at full salary for the first 5 days of any sickness absence in any year.

9. The claimant was also provided with access to the respondent's Staff Handbook, April 2019 edition, which was lodged. As Assistant Manager the claimant would normally report to a General Manager however at the time the claimant started with the company, they did not have a General Manager for the Carfraemill. The respondents had taken over the Carfraemill in or about October 2020. The previous managers had left. Initially the business had been closed due to the pandemic but reopened in April 2021. The

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respondents had hired a Manager during the period they were closed however he resigned one week after the business reopened. They also had another staff member who dealt with events who left due to ill health.

5 10. In practical terms given that the Reeley family lived very close to Carfraemill members of the family were involved in managing the business. Bella Reeley had a full time job working for an organisation in Edinburgh. She was working from home during 2021 as a result of the pandemic. Also, as a result of the pandemic the actual amount of work she had to do in this job was
10 considerably reduced. She therefore acted as de facto General Manager of the Carfraemill. She would sit in the office at the hotel and carry out work on her main job during the day but would also be available to carry out hotel management tasks when she was not busy. She dealt with preparation of the rota and also dealt with the scheduling of events. The claimant was never
15 involved in these particular tasks.

11. The Carfraemill is a well-known venue for weddings and other events and the respondents have a separate Events Management Team which dealt with bookings like this. Bella Reeley was the one who acted as liaison between
20 the Events Team and the Hotel.

12. Jules Reeley who is the wife of Robert Reeley also came into the business on a regular basis. Jules Reeley has extensive experience in the hospitality industry. Her role was primarily quality assurance. This meant that she
25 would often find herself in the Hotel pointing out things she felt could be done better. She always did this in a positive way albeit she did recognise that it placed a strain on staff to have the owner coming in on a regular basis checking up on things. The respondents saw this as an important part of their philosophy of trying to get the standards at Carfraemill up to the highest
30 level. As Mr Reeley said in evidence:

'if it is a business in Inverness which has a poor review on Trip Advisor we are concerned about it. If it is a poor review at Carfraemill this means it is our friends and neighbours who are unhappy and we are much more keen to sort it.'

13. In addition Lizzie Reeley who is Mr and Mrs Reeley's other daughter also worked in the business and also in their other local business.
- 5 14. After the claimant started work the respondents found her to be strong in some areas but extremely weak in others. They were somewhat surprised at this given her experience. They found her to be good generally at administration but much poorer at customer facing skills. They found her much weaker on food and beverage than they had expected. This was a
io problem for them because customer facing skills and emphasis on food and beverage were really what the business was about. That having been said they liked her and noted that she did have strengths in administration and were happy to work with her to improve her skills in these other areas. At no time during the course of her employment did the respondents institute any
15 disciplinary or capability proceedings against the claimant.
15. From the outset, even after they had employed the claimant, the respondents were keen to employ a General Manager for the business however they found it difficult to obtain someone suitable. The respondent did not consider
20 that the claimant had the necessary skills for this role. In the meantime Bella Reeley continued to carry out most of that role.
16. As Assistant Manager the claimant would usually act as Duty Manager when she was on shift. This meant that she was in effective charge of the building
25 and responsible for its day to day running. The claimant would also do some ordering and invoicing. She was not involved in taking bookings for events and nor was she involved in preparing the staff rota.
17. The respondents at the time operated a computerised management system
30 called 'Deputy'. This system was a key management tool. It provided a messaging system which was used by members of staff and management to communicate with each other. It also monitored staff attendance and dealt with things like holiday requests and sickness absence. Staff were required to log in and out using a facial recognition system. This created a timesheet.

At the end of each day whoever was Duty Manager was required to formally approve the timesheets in the Deputy system so that the respondents then had an accurate record as to who had been on shift and when. This would be used to calculate the pay of hourly paid employees and was also used to monitor the attendance of salaried employees. It also recorded paid holidays. The system was that where an employee wanted to book holiday in advance they would do so on the Deputy system. The system would ask for the name of their line manager which they would then input and the system would then send this request to their Line Manager for approval through the system. A box would come up on the Line Manager's screen which would only go away once the Line Manager had either approved or declined the application for holiday. During the process the person seeking holiday would have to indicate who their Line Manager was.

18. Given that the claimant was invariably Duty Manager when she was on duty the claimant would be responsible for ensuring that the timesheets including her own were correctly logged on Deputy for each day that she worked. The claimant and other duty managers had the option of changing entries by inputting hours worked manually. Usually this would be to deal with a situation where an employee had been in but had for some reason failed to clock in or alternatively failed to clock out. If a duty manager did this the system would keep a record of the original entry being overwritten and record who had altered it and how.

19. Given that as a salaried employee, the claimant was expected to work 45 hours per week the claimant would normally expect to have one or two days in the week where she would not be on rota to work a shift. Whilst this was the usual expectation the claimant was not entitled to specific days off in the week as a matter of right nor was she entitled to choose the days off in advance. If the claimant or any salaried employee wanted to have a specific day off then they required to book this as holiday. Bella Reeley would then take this into account when producing the rota for the following week. Normally rotas were produced on a Wednesday or Thursday for the week starting the following Monday to Sunday. The Deputy system would show

holidays as being 8 or 9 hours paid leave and these would be taken into account when working out the salaried employee's average of 45 hours per week.

- 5 20. As with most salaried employees in the hospitality industry there was a general expectation by the respondents that things would work on a swings and roundabout basis with salaried employees sometimes working more than 45 hours per week during busy periods or periods where there was a lack of staff and less than 45 hours per week during quieter periods.

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21. The respondents operated a payroll system where employees were paid monthly on the basis of hours worked up to the 20th of the previous month. The system was managed by the respondent's Finance Manager Erica Lupocz. On or about the 21st of each month she would gather together the
15 "Deputy" files which would show the hours worked by employees up to the 20th of that month. She would then run these files through the respondent's payroll programme which was called "Zero". This would then produce payslips for each employee. The system was automated in that Ms Lupocz did not require to rekey in any information. She would simply import the
20 relevant "Deputy" files into the payroll system. This would calculate any holiday pay, sick pay and ordinary pay which required to be paid and then make the appropriate deductions for PAYE, National Insurance etc. Payslips would then be sent out to the employee and automated credits made on the payment day at the end of the month. On occasions employees would
25 question their payslips, usually on the basis that they had worked more hours than shown or that they had taken holidays which had not been paid. Ms Lupocz position was that if the employee was questioning anything then it must mean that the original time slip entered into Deputy had been incorrect in some way. She would then encourage them to speak to their Manager
30 about this. If the Manager agreed, for example, that they had worked a shift but for some reason had not clocked in or out properly then Ms Lupocz could alter the timesheet manually which would then sort out the issue with pay. Apart from that it was a completely automated system.

22. Having started work on 28th June the claimant unfortunately became ill with Covid on 14th July and was thereafter absent from work sick for a period until 29th July. Given the claimant's start date the first occasion when Ms Lupocz processed the claimant's pay was on or about 21st July which was for the period from 28th June to 20th July. The claimant had attended work in the period 28th June to 14th July but had not attended work from 14th July to 20th July. Ms Lupocz, at that time, was unaware of the clause in the claimant's contract entitling her to be paid her salary at the full rate for the first 5 days of sickness absence. She therefore processed the 6 days as a claim for SSP. She did this in the way that she always processed SSP by simply running the "Deputy" Report (which noted the days sick absence) through the payroll system.
23. Her experience was that in the normal course of events this meant that the payroll system would calculate the amount of SSP due (if any) and include this in the employee's payslip. If, as occasionally happened, the employee was not eligible for SSP then the issue would be flagged and the system would instruct Ms Lupocz to produce an SSP1 form which then required to be signed by one of the Directors of the company and handed to the employee.
24. On the occasion when Ms Lupocz was processing the claimant's first payslip the system noted that the claimant was not entitled to SSP and instructed Ms Lupocz to prepare an SSP1 form which she duly did. A copy of the SSP1 form was lodged (203-208). On page 207 a box was ticked to give the reason for why the claimant could not get statutory sick pay. It was stated as being:
- "Your average earnings for the 8 weeks before you were sick were less than the lower earnings limit. You can find out more by searching for rates and threshold for employers on www.gov.uk."
25. This was, as a matter of fact, correct since at that point the claimant had not received any earnings from the respondents in the 8 weeks prior to becoming ill. Prior to that she had been in Portugal or under quarantine.

26. The SSP1 form was sent to Jules Reeley for onward transmission to the claimant. She sent it to the claimant around 13th August. It is unclear whether or not the claimant applied for or received any benefits on the strength of this form
27. The claimant was aggrieved that the decision not to give her SSP particularly as her partner who had been absent with Covid at the same time as her and who had also been with his employer for a short time did receive payment. She was also aggrieved when subsequently another employee (Chloe) who had also been with the respondents for a short period of time received SSP when she became ill and in fact was on SSP for a considerable period of weeks. When processing Chloe's application for SSP Ms Lupocz dealt with this in exactly the same way as she had with the claimant. On this occasion however the system had indicated that Chloe was eligible for SSP and had calculated this and paid it to her. Although Chloe had only recently started with the respondent on a full time basis she had previously worked for the respondent on a casual basis for which she had received payment through the "Zero" payroll system. Chloe started work on 17th July then went absent from 30th August. Given her start dates she would have received at least one pay from the respondents as a full time employee before going off sick.
28. The claimant's first payslip was lodged (page 25). This showed that she received payment gross of £1587.30 for standard hours. This was for the period 28th June-20th July. This was less than one twelfth of her annual salary because the claimant had not worked for the first 8 days in the pay month (21-28th June). From this a deduction was made in respect of the 6 days absence amounting to £496.03. The usual deductions for PAYE and National Insurance were then deducted from the gross sum of £1091.27 giving a net sum of £1055.96.
29. in order to conclude the issue of the SSP payment it is probably as well to state at this stage that the claimant continued to raise the matter with the respondent's Managers and with Ms Lupocz. Despite receiving the

explanation set out above the claimant refused to accept she was not due SSP. At no stage during this correspondence did she indicate that she considered that in any way her Portuguese nationality was relevant. During the course of the correspondence Mr Reeley realised that the claimant ought to have been paid for her first 5 days of sickness absence at full salary in accordance with her contract. He advised Ms Lupocz of this and this sum was added to the claimant's salary for month 7. The sum of £413.36 was added in. This payslip was lodged (page 27).

io 30. The respondents operated a social media chat group to which all staff members were encouraged to join. On 13th July shortly after the claimant started Jules Reeley posted a message to all staff. The message was lodged (page 98). It states:

15 "Hello all

As we move into busy season we have some information to share. David has been promoted to Shift Supervisor - I am sure you will all agree that David does a fantastic job of leading the staff when he is on duty and motivates everyone to do their best.

Tania has joined us as Assistant Manager (in training). We have had a hectic couple of weeks which is always difficult for new staff, but Tania is certainly into her role and getting to know everyone.

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Chloe Downes will be joining us as a Shift Supervisor from Monday 19th July. You will get a chance to meet her on Saturday as she is working at the wedding.

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As we are getting busier every week it's so important that everyone understands their roles and responsibilities and carries out these as professionally as possible. If you find yourself with nothing to do then please ask the Shift Supervisor for a job. Please do not congregate

in the kitchen or around the bar as this is demotivating and unprofessional.

5 A final word on tips - tips are a bonus! They will not be the same each week and will fluctuate depending on time of year, types of customer and levels of service provided. To clarify if you have looked after a table with a little or no help from others then any tip they leave is yours. If you simply take out desserts or the bill or finish
10 off the table because someone has handed the table over to you then the tip should be put to one side for the correct person. The best section will be given to the best staff members - please stay in your section and look after your own tables and try not to interfere with others unless asked for help. Any questions let me know.

Thanks

15 Jules.”

31. The claimant was upset by this message as she felt David was singled out for praise and she was not. The claimant did not mention her disgruntlement to the respondent's management at the time.

20 32. The David referred to in the message was a waiter who had worked for the respondents for some time and was promoted to Supervisor at the same time as the claimant joined the firm. David had been one of the people charged with training the claimant and 'showing the claimant the ropes' when she
25 started; David had on occasion told the claimant that she should be doing things differently from the way that she wanted to do them. The claimant felt he was being disrespectful to her. As is usual in the hospitality industry various staff members made various comments about other staff members. The claimant found this upsetting. She discussed this informally with Jules
30 Reeley when she was in the Hotel. Jules told her that gossip was rife in the hospitality industry and not to worry or concern herself about it.

33. The claimant also specifically raised the issue of David and said that she had already dealt with the issue by speaking to him direct and insisting that he

deal with her professionally. She specifically told Jules Reeley that she did not require any assistance. At no time did she allege to Jules Reeley or anyone else within the respondent that David had spoken to her inappropriately or referred to her race or nationality in comments.

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34. Shortly after this an incident occurred whereby David turned up intoxicated for a shift and behaved inappropriately to customers and was dismissed.

35. As noted above the respondents had been keen to recruit a General Manager for the business. They recruited Isabella Maruzcak in early September. She had a background of 9 years as a General Manager of a fine dining restaurant. Her first day was 15th September. On arrival she was asked to be shown the ropes by David who was at that time still in employment.. She found David's attitude to be strange and noted he was critical of many aspects of running the business. She asked about staff and he stated that "the Assistant Manager was a Portuguese girl called Tania".

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36. She subsequently had a conversation with Jules where Jules referred to the claimant as "the Portuguese girl". She advised Ms Maruzcak that she would recognise the claimant "because she always wore a jumper", found as time went on that she was unhappy with many of the ways things were done at Carfraemill. Equally the respondent felt that she was not a good fit for the position of General Manager in that business. They felt that with her fine dining background she was extremely focused on certain aspects whilst unable to deal with other front of house facing issues which were more important to them. They also discovered that Isabella was applying for other jobs and concluded that she would probably be leaving in the near future and they would need a new general manager.

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37. Prior to this the respondents became aware that a Rebecca Craig who was a friend of Bella Reeley was looking for a job. Rebecca Craig's family owned a hospitality business abroad and Rebecca had worked in that business for many years. She had now returned to the UK. Mr and Mrs Reeley knew of her and felt that her skills would be a very good fit for the business. The

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background at the time within the hospitality industry was that there was a shortage of staff and good people were very hard to find. They met with Rebecca and discussed with her whether she would be able to take on a management role. They indicated they were prepared to offer her £32,000 per annum as general manager. She said that she did not want to commit to this. She said that she had limited availability and already had various holidays and other things planned so could not commit to this type of role. She did not want to let them down. Subsequently, after David was dismissed very shortly after Isabella Maruszak started they decided to approach her again and ask if she was prepared to come in on a part time basis. By this time they were concerned that Isabella was not a good fit as general manager and, given they understood she was looking for another job she might be announcing that she was leaving at any time.

38. They contacted Rebecca again and she agreed to come in for 20-25 hours per week but to do more on occasions if required provided she had availability. She made it clear she had limited availability. The respondents offered her £13.50 per hour. This was essentially pro rata to what they would have paid her had she accepted a role as General Manager. They were keen to bring her into the business and felt that she was worth that to them. They felt she had all the skills they needed without needing any training whereas currently the claimant was still needing training and it was clear to them Isabella Maruszak may not have the correct mix of skills.

397 Isabella was on holiday at the time of Rebecca's recruitment and was annoyed that this had been done behind her back. She felt that Rebecca had been hired to supplant her.

40. On her return to work after her holiday Isabella had a discussion with Mr and Mrs Reeley. They indicated to her that they had understood she was leaving. Isabella felt slapped in the face. She also felt concerns that Rebecca's pay and the salary she had been offered as General Manager was much higher than Isabella had been offered. She decided she would not continue working and left after a short time. She had been offered a job with Scottish

Ombudsman Services. She felt that the respondents were quick to accept her resignation.

41. In the meantime the claimant was required to carry out her role as Duty
5 Manager and she felt concerned and unsupported as there had been no
General Manager to support her. This feeling intensified once Isabella
Maruszak left. However shortly thereafter Rebecca started. Rebecca and
the claimant worked well together. For their part the respondents felt that
10 Rebecca had all of the qualities they needed. She was very good at front of
house customer facing tasks. Their feeling was that whilst they liked the
claimant they were still surprised as to how poor she was at a number of
these customer facing roles. At some point in October Bella Reeley had a
conversation with the claimant where she mooted the suggestion that once
15 the respondent had completed recruitment and had things on an even keel it
might suit the claimant better if she had a role which was wholly admin
based. The claimant said that she would very much be interested in this.

42. The claimant went on annual leave between 18th and 24th October and on her
return learnt that Isabella was leaving. She left on 31 October. The claimant
20 felt that as a result of the turmoil over staff that she was required to work
harder than usual. By October the situation was that Bella Reeley was
working as General Manager and doing the rotas and arranging for events.
Rebecca was working as a Duty Manager albeit she had limited availability.
The claimant would be doing her shifts where she would be duty manager. If
25 the claimant was unavailable to be Duty Manager then her shift could be
covered by Bella, Rebecca or Lizzie. At some point around November, the
respondents again hired a new General Manager but unfortunately on the
day this lady was due to turn up she called the respondents to advise that
she would not be coming.

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43. During this period the respondents were generally happy with the claimant's
work. They were aware that she had strengths in some areas and
weaknesses in others. One issue was that because the claimant was driving
in from Edinburgh each day they felt that her timekeeping was not as good as

it could be. They never actually raised with her. They understood that other members of staff may have spoken to her about it since it would be a source of friction if someone was waiting on the claimant to arrive before they started their shift. The respondents lodged a exception report from the Deputy system which set out the claimant's attendance/lateness. This was lodged (223-227). The Tribunal accepted that this had been compiled from the claimant's timesheets which required her to clock in and clock off using a biometric system. The timesheets would have been approved by her at the end of each day. These showed a substantial number of occasions when the claimant was slightly late on arriving for shift and also showed some occasions where she left early. On some of the occasions where the claimant arrived late it was because she had been asked to pick up groceries or carry out some task on the way in although in the majority of incidents that was not the case.

44. On several occasions the claimant applied for and was given holidays. She applied using the Deputy system. The claimant was frustrated as she felt it was unfair that she was required to use holiday entitlement whenever she wanted to ensure that she had specific days off. This was a feature of the system operated by the respondents. Because employees were not entitled to a specific day off in each week and because the days off varied in each week the only way that a member of staff could be certain that they would not be rostered to work a shift on a particular day was to apply for holidays. The system however ensured that, looking at matters as a whole, an employee would still receive their allocated time off given that requirement was to average at 45 hours per week. Despite her concerns about this the claimant did not ever raise the issue with the respondents as a problem during the course of her employment.

45. During this period however the claimant came to know that Rebecca Craig was being paid £13.50 per hour which the claimant considered was much more than her pay which was based on a salary of £25000 per annum for a 45 hour week. The figure of £25000 per annum paid to the claimant was what the respondents usually offered to Assistant Managers. It was generally

what Assistant Managers were paid at their other venues apart from two who had been with them some time and were paid £27000.

- 5 46. The respondents operated an appraisal system whereby employees were appraised on an annual basis. Generally salaries were reviewed at that time. Had the claimant remained in employment then her salary would have been reviewed in early 2023 under this process. In any event although it would appear the claimant resented the fact that Rebecca was paid more than her she did not raise this with the respondents until she advised Robert Reeley she was resigning shortly before the end of her employment.
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47. There were a number of matters where the respondents felt the claimant was not meeting their expectations in respect of her role. One of these was in relation to customer service. They felt that on occasions the claimant would be difficult with customers and argue with the customer. The respondent's position was that even if the customer was wrong then staff should not argue. One example was where Jules overheard the claimant dealing with a customer who stated that they had ordered a Chicken Caesar Burger when they were delivered a Chicken Caesar Salad. Jules very clear view was that in such a situation the member of staff should simply apologise to the customer and then go and obtain a Chicken Caesar Burger for them. This was the case even if the customer was wrong. She was slightly horrified to find one day that in this situation the claimant was having an intense, argument with the customer over this. She intervened and told the claimant
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- 25 “ how to deal with it. She did not reprimand the claimant or institute any other disciplinary proceedings.
48. Another issue was in respect of the completion of guest check in forms. The respondents required a separate check in form to be used for each guest.
- 30 The claimant's view was that this was a waste of paper and she wanted to include the guests on the one check in form where, as was often the case, there were a substantial number of guests occupying a number of rooms all on the one booking. Jules Reeley and Bella Reeley had occasion to discuss this with the claimant on a number of occasions.

49. One of the reasons that the respondents insisted on a separate second form being completed for all guests was for fire safety. There was an end of day process which all Duty Managers required to follow. As noted above one of the things that the Duty Manager had to do was verify all the timesheets. The Manager was also expected to run a report from the computer system which provided a list of all of the guests who had checked in and the rooms they were in. This report required to be left behind the bar in a place reserved for that purpose. The idea was that if there was a fire or if there was a need to evacuate in the middle of the night then part of the Fire Safety Plan was that the Fire Brigade or anyone else would be able to immediately ascertain who was meant to be in the building.
50. An incident occurred where the fire alarm went off. The respondent's Fire Safety Plan provides that there will not be a member of staff on duty in the Hotel overnight. On occasions there may be staff who are live in who are on the premises but this is not part of the plan. The arrangement was that if the fire alarm went off then the fire alarm company who monitored the system would automatically contact Mr and Mrs Reeley at their home which was a very short distance away. That would mean that someone would be able to be on site within a very short space of time. On this occasion the alarm company failed to advise Mr and Mrs Reeley of the alarm. This was due to a failure on the part of the alarm company. As a result of this when the Fire Brigade arrived there was no member of staff available. The Fire Officer was also concerned because on checking where he understood there should be a list of guests staying in the Hotel there was nothing there. Accordingly the only way that the Fire Brigade could check on who was in each room was to go round each room individually.
51. Fortunately all of the guests were of one party and were able to confirm to the Fire Officer fairly quickly who was in the building and who was not. The alarm turned out to be a false alarm.

52. One member of staff who was first on the scene had the difficult task of trying to explain matters to the Fire Officer. The next day Jules Reeley had an extremely terse interview with the Fire Officer who was extremely critical of what had happened. The respondents require to treat this seriously since obviously an adverse report from the Fire Officer could potentially result in the business closing till the fire precautions were sorted.
53. The claimant had been the Duty Manager on the night before the incident and she was the one who would have been responsible for ensuring that the list of guests was printed and readily available. The claimant had not done this. The claimant was actually on annual leave the following day. She received a phone call from a member of staff telling her what had happened. The claimant felt aggrieved that she was being blamed (although no member of management had yet spoken to her) and felt that the real issue was that the respondents did not have a member of staff on site. Mrs Reeley's view was that this was not a huge thing. She had got a dressing down from the Fire Officer who had calmed down when she pointed out that the main issue was the failure of the alarm company and she would be making sure this did not happen again. The claimant was not subject to any disciplinary proceedings as a result of the incident nor was she reprimanded.
54. At some point in the course of the claimant's employment Jules Reeley was in the Hotel and one of the chefs spoke to her about something the claimant had done which he was unhappy about. Jules Reeley responded to him and indicated that it might be that the claimant had not understood. She said:
- "Tania did get it but you know what she is like and she may have not understood".
55. Given that the respondents had failed to find a General Manager there were constraints on the time off the claimant could have. At the time of her recruitment Rebecca had said that she had a prebooked holiday and she went off on this holiday in November. Following this Bella went on holiday.

Prior to going on holiday Bella gave the claimant a box of chocolates which she said was a reward for all the hard work the claimant had been doing.

56. On Bella's return to work she fell ill and was then off for a few more days. Her shifts required to be covered by the claimant, Lizzie and Rebecca. The claimant felt overworked and underappreciated.

57. At around this time she indicated that she wanted to have a discussion with Robert Reeley about her position. She mentioned this to a number of members of staff and to Bella. The position at that time was that Robert Reeley was not involved in the day to day running of the Carfraemill Hotel. His role in the company is strategic. The company was at that time engaged in the acquisition of two new units in Inverness and in Caithness. Mr Reeley was spending most of his time dealing with these acquisitions. This involved a great deal of travel up to the north of Scotland. When he was back at home in the Borders he would pop into the Hotel but he did not have any executive role in the Hotel. Jules Reeley was in the Hotel 4 or 5 times a week. She also had no executive role but did spend a great deal of time checking things and trying to keep the standards up.

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58. The claimant had a number of issues. The first was that she felt that she was being required to fill in the gaps due to the fact that Bella and Rebecca had limited availability. She wanted to know when a General Manager was to be appointed. She was also concerned about her pay. She was angry that she felt she was doing exactly the same job as Rebecca but Rebecca who was on an hourly rate was ending up being paid more. In addition Rebecca had limited availability which meant that she could to some extent pick and choose her shifts. She was also concerned that in general terms she was not allowed to do the rota because Bella did it. She was also not involved at all in the weddings and events side of the business. This caused friction to both her and Rebecca because on occasions events would be sprung on them that they had previously been unaware of.

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59. The respondents intended to close the Hotel for a week in early January since at that time the Hotel was usually extremely quiet. This would enable everyone to get a break. The family would be going abroad. What it meant was that all staff would require to take the closed days as part of their holiday.
- 5 These days were put up on the Deputy system by Bella in or about September and from discussions with the claimant in October Bella understood that the claimant was well aware of these dates.
60. A problem arose in that the claimant wished to take the week after this as
io holiday in order to go to Portugal for a family birthday. As noted above the appropriate procedure would be for the claimant to put the holiday request on Deputy and then the Deputy system would ask her for the name of her Line Manager. Once this had been input a message would pop up on the Line Manager's computer which would not go away until the holiday request had
15 either been approved or declined. The weeks the claimant wanted off would cause difficulty for the business since the family (Jules Reeley, Lizzie Reeley and Bella Reeley as well as Bob Reeley) would still be on holiday the week after the Hotel was closed.
- 20 61. At some point in December the claimant submitted a holiday request on Deputy for some of those days she wanted off. Instead of indicating that Bella was her Line Manager which would then have caused the request to go to Bella the claimant put down herself as her Line Manager and then approved the holiday herself. The result of this process was that neither of
25 the other Managers within the business would have been aware that the claimant had a holiday request for this period which she had approved herself.
62. Bella returned to work following a period of illness at the end of December.
30 The claimant spoke to her indicating that she wished to speak to Mr Rob Reeley about various things to do with her job. Bella suggested that she speak to Jules. She said that Rob Reeley was up in the north of Scotland and was unlikely to be in the Hotel very much. The claimant said that she wanted to speak to Rob since she "hated Jules". Bella was somewhat taken

aback by this as she had no inkling up to that point that there was any difficulty in the relationship between the claimant and Jules Reeley. She was also somewhat surprised that the claimant would say that to her about her mother.

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63. The claimant also approached Mr Reeley on Christmas Eve when he was in the Hotel having a meal with friends. He said that he was usually around and would be able to have a word with her later.

io 64. On 27th December the claimant sent a message to Mr Reeley using the Deputy system stating:-

“Hi Rob how are you? I hope you have enjoyed your Christmas with family.

15

I have been wanting to speak to you for a while now already but can never catch you at the proper time. I really need to do so before the end of the year. Will you be able/available to stop by the Carfraemill on Wednesday afternoon/evening? I really hope ? forward to it.

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Please let me know! Thanks Tania.”

65. On receiving this Mr Reeley asked his wife Jules if she could have a word with the claimant. He did not respond to the claimant before the end of the year.

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66. On 31st December Rob Reeley was due to attend meetings in Thurso and Inverness. He knew that his wife Jules had booked a table at the Hotel to have dinner with friends but had told her and the rest of the family that it was very unlikely he would be there since he would be getting away from Inverness very late. At some point during the day the claimant again mentioned to Bella she wanted to speak to Rob and Bella told her that she did not think Rob would be back that evening. Later on in the day the claimant asked Bella if she could leave early as the Hotel was very quiet. Bella said that she could leave early if in exchange she agreed to come in

earlier on the following day so that she could open up and the claimant agreed to this.

- 5 67. As it happens Robert Reeley's business in Thurso was finished by late afternoon and he received a message to the effect that the meeting in Inverness which he had planned to go to afterwards would not be happening. He was therefore able to drive down to the Hotel arriving around 9pm. He was too late for dinner but joined his wife and their friends at the table.
- 10 68. The claimant attended work on 1st January as planned. During the course of the morning she discovered that Mr Robert Reeley had been in the Hotel the previous evening. She was extremely annoyed at this and felt that Bella Reeley had deliberately lied to her. She also felt that Bella Reeley had misled her into leaving early so as to avoid the possibility of her having a
15 discussion with Robert Reeley.
- 20 69. Robert Reeley had been aware in general terms that the claimant wanted to have a discussion with him. He did not set out to avoid her but from his point of view there was absolutely no priority attached to this. He did not have any executive management role at Carfraemill. If the claimant had any issues to do with her employment he expected her to raise these with Bella who was her Line Manager or Mrs Jules Reeley who was in Carfraemill several times a week. If the claimant was intending to ask him about a pay rise then his
25 answer would have been to tell her that this would be dealt with at her annual appraisal which would be happening some time in the New Year.
- 30 70. During the period running up to 31st December there was also an incident where the claimant had told Bella she had a doctor's appointment the following Monday. Bella had told her that she was unavailable as was Rebecca. She asked the claimant if she could possibly come in to work after her doctor's appointment. The claimant was angry at this since she knew that the reason Bella did not want to cover for her was because Bella had a tennis lesson on Monday nights.

71. At some point on 1 January the claimant decided that she would take further days off for her holiday to Portugal in January and put in a holiday request for those days which she also approved herself using the same procedure as she had used for the initial days off she had booked in October. She approved them herself which was contrary to the respondent's procedure.
72. As a result of what she saw as Mr Reeley avoiding her and Bella having lied to her the claimant decided that she would leave. The claimant finally spoke to Mr Robert Reeley on 5th January when he was in the Hotel. The claimant raised a substantial number of concerns with Mr Reeley going back to when she felt that she had been badly treated by David when she had started the previous August. She felt that she had been unsupported. She complained that Rebecca was paid more than her. She complained again about the fact that she had not received SSP when she was off with Covid. She complained about the fact that Mr Robert Reeley had not been available for a meeting. She raised the issue that she felt that she had been unfairly blamed over the fire alarm incident albeit she accepted that she had not been reprimanded or subject to any disciplinary action. She told Mr Reeley that she was resigning. During the course of the conversation she also indicated that she would be going on holiday from 15th January. Mr Reeley was alarmed at this since he had previously been totally unaware that the claimant had made a holiday request and approved it herself. He was aware that if she had asked for her holiday to be approved in the usual way by either himself, Bella or Jules then it would not have been approved. The business was closed up until 14th January and the family i.e. Jules, Lizzie, Bella and Robert Reeley would still be on holiday from 15th January which he was now told was the days the claimant would be taking off.
73. Mr. Reeley indicated during the course of this conversation that he was unhappy at the claimant having approved her own holidays and indicated that this was unacceptable to the respondent. He also spoke generally regarding the respondent's position. He did say to the claimant that although he accepted her resignation that if she wanted to have a think about matters for

a few days and then get back to him he would be prepared to accept any change of mind.

5 74. Mr Reeley wrote to the claimant confirming the position on 8th January. The letter was sent to the claimant using the Deputy messaging system. The letter was lodged (page 200-201). The Tribunal considered that on the balance of probabilities the claimant had received this letter. The letter confirmed Mr Reeley's position regarding the various matters raised by the claimant at the meeting. It was probably as well to set out the terms of the letter in full.

io

"Resignation

Tania

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Following on from our meeting on Wednesday night I am disappointed that you have decided to resign your position at the Carfraemill and in particular your decision to leave without working notice and whilst Jules, Bella and Rebecca are on holiday.

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We discussed your concerns however the reasons you outlined are in our opinion not a true reflection on circumstances.

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1. David left the business in late August so referring to how he treated you on your first few weeks does not appear to have any bearing on your current employment. - You did not make any complaints about David until he had left the business.

2. Rebecca was employed on the basis of her experience and suitability for a senior role and her agreement has no bearing on your salary.

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3. The situation with your Covid leave has been discussed at length between you, Erica and Bella. We are subjected to the rules set by the government on SSP and its relation to Covid and whilst I appreciate that you were not fully aware, I am confident that we gave you all relevant information at the time as it became available.

4. Whilst I am a shareholder and do influence direction/decision making etc I am rarely around and as you know (due to commitments at our new sites in the north) and do not get too involved on a day to day basis - Jules as owner/Director of the Carfraemill and Bella as Interim Manager are your Line Managers and immediate support on a day to day basis and should be consulted in the first instance whether or not you like it/them.
5. You raised the situation following the fire alarm incident where the Fire Officer was extremely unhappy and felt that you were unfairly blamed. You admitted that you did not follow fire procedures (leaving all guest registration documents in summary in the correct place) and therefore you placed our guests in danger. There is no sugar coating of this, you were at fault although other than a brief discussion to remind you of the importance of process, no disciplinary action was taken against you. Jackie had to deal with the aftermath of this including extremely unhappy guests and a Fire Officer who threatened to close the business down. In our opinion Jackie was entitled to be unhappy that you put her in this position.
6. You have the same rights and rules as all other employees and in particular holiday requests must be made in line with our procedure as detailed in our Handbook.

I accept that you have made your decision and wish you well in the future - please ensure that you hand over any keys, company possessions etc prior to leaving.

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As discussed, your notice period is one month from the date of your resignation (5th January) and you are required to work this, however as you have stated you do not wish to return to work as you are flying to Portugal on unapproved leave, your last day of work will be January 14th - this will be a strange day only as the site does not reopen following closure until 14th so it is likely to be quiet and will need a full reset although Jackie will be working on the 13th to turn heating etc on.

30

As you discussed with Bella, your holidays from the 15th January has not been approved (Jules, Bella and I are already on holiday (and therefore this is classed as absence without permission, however, as you don't want to return to work I see nothing to be gained by pursuing this.

5

Any and all monies owed and salary, tips and accrued but unused holidays will be paid in full less any overpayments etc in the normal pay run.”.

io 75. The claimant's last day at work was 14th January. The claimant then travelled to visit her family in Portugal. She did not have a fixed return date.

76. The respondents had provided a laptop for use of Duty Managers at the Hotel. The claimant had been the person who normally used this and on occasions had taken it home with her. The respondents had not had any difficulty with her doing this. They had however expected her to return the laptop prior to leaving on 14th.

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20 77. On 16th January Bella could not find the laptop at the Hotel and sent a message to the claimant over Whatsapp stating:

“Hi Tania

Can you tell me where you left the laptop please?”.

25"

78. The claimant responded with a photograph of her with her family in Portugal and said:

“Hi Bella

30

Just seen your message now. Loving being back in Portugal with family and friends.

5 Sorry not to have said anything about that: I actually mentioned to Becca that I want to give it back in person to one of you (owners) rather than to leave it somewhere unattended before you check that everything is working properly and she agreed. Also I've still to email Rob, because (1) I did not want to disturb him during your holidays and (2) I am still not sure the exact date I'll be back. Apologies for that, really please believe me and do not worry it will be given back as soon as I am back in the country."

10 The following day Bella responded to the claimant stating:

"Hi Tania

15 The laptop must be returned by this Wednesday at the latest. Two reasons (1) our new Operations Manager will be using it and he starts on Thursday which is why I asked you to bring it in before we closed on the 5th. (2) You are no longer employed with Intuitive therefore this constitutes as gross misconduct. I hope Brian can drop it off? If it's not returned unfortunately we will need to buy a new one which will be deducted from your final pay. Sorry Tania.

20

Bella."

79. (Page 202) The claimant then responded saying:

25"

"Hey Bella

30 Apologies but I think there might have been some sort of miscommunication or misunderstanding as I did not have any intention to keep it. Just wanted to return it in person (as per reasons stated before) but sadly our holidays overlapped.

Anyway that's absolutely fine. I can get Brian to return it tomorrow (he can't today). CAN YOU PLEASE TELL ME WHEN WILL YOU

BE AROUND SO YOU CAN MAKE SURE EVERYTHING IS OKAY
WHEN IT'S HANDED BACK.

5 As to no longer being employed by Intuitive given that I am still on
annual leave and under my notice period I really don't understand
that statement. It saddens me but it just proves exactly what my gut
was telling me about your feelings towards me and my decision to
leave at the end of the day was definitely the best for both sides.

io Let's sort it out as soon as possible. Hence please let me know your
availability for tomorrow (afternoon/evening)."

Bella then responded:

15 "Hi Tania

I am off tomorrow but I will let Rebecca know to expect Brian and he
can put it up in the office. I can collect from here tomorrow night on
my way home. Thanks for arranging. I hope you enjoy the rest of
20 your holiday."

The laptop was thereafter returned by the claimant's partner.

80. At around this time Bella had cause to check some of the work the claimant
2T had been doing in January before she left. As with many hospitality
businesses the respondents obtained a number of bookings through online
channels such as booking.com. The procedure for some of these was that
the agency would supply a virtual card based on the card details which the
customer had provided whilst booking. In order to take payment the
30 respondents required to enter into the system and put through a charge using
the virtual card details. The respondent's published policy was that they
would not take payment until after the customer's stay. Bella discovered that
the claimant had been putting through virtual card payments and
unfortunately she had put through a number of payments for customers who

had yet to stay in the Hotel as well as those who had already stayed but where payment had not already been taken. Bella's understanding was that the claimant had simply made a mistake in relation to these payments.

5 81. The claimant's final pay for tax month 10 was processed as usual at the end of January. The payslip was lodged (page 27). It covered the claimant's pay for the period between 20th December and 19th January. It had been produced in the usual way by the respondent's Finance Manager taking details from the Deputy system and inputting it into the payroll system. She
10 put in the system that the claimant's last day at work was 14th January. The system showed that the claimant had taken standard annual leave on 24th, 25th, 26th August, 6 September, 27th September, 20th, 21st, 22nd, 23rd, 24th October and 7th, 8th, 9th, 10th, 11th January. The claimant had therefore taken a total of 15 days annual leave. The claimant had taken 3 days sick leave
15 over and above the period of sick leave she had taken in July 2022. She had been absent on sick leave on 28th October and 11th and 12th December.

82. The claimant was paid the proportionate amount of her pay to 14th January. Although the claimant had exceeded her entitlement to paid sick leave no
20 deduction was made by the respondent for the 3 additional days when the claimant had been sick. The claimant was not paid anything in respect of the balance of her holidays since she had taken 15 days holiday which was the extent of her entitlement.

25 837 Following the termination of her employment the claimant contacted CAB who wrote to the respondents on her behalf. The letter from CAB was lodged. In the letter it was noted that the claimant verbally tendered her resignation on 5th January. The letter goes on to state:

30 "Ms Noguera was prepared to work through her notice period and was surprised we told her she was no longer an employee of the company having her accrued annual leave being allocated up to her last day of work 14th January 2022. You will be aware that it is necessary ? Working Time Regulations to give adequate notice so

that leave is being allocated. The Regulations state that the notice has to be at least twice the number of days allocated. You have therefore failed to give appropriate notice in this case and I would ask them that these days are treated as accrued annual leave and paid to Ms Nogueira. Ms Nogueira sought an explanation regarding her last pay from Mr Reeley following the company's Finance and Payroll Manager advice but as of today she has still heard no response.

I calculate that Ms Nogueira was due 15.5 annual leave days for the period she worked for Carfraemill. From her records it shows that she had only taken 6 days during 2021 and I note that 5 more days had been paid as accrued leave with her salary on 29th January 22 therefore leaving 4.5 days still to be paid for.

I would ask that you review her final salary and pay Ms Nogueira of outstanding monies as soon as is practicable and would look for a response by 9th March 2022 at the latest. "

84. The respondents duly responded and there was some correspondence with a view to sorting the matter of holiday pay. At no point did the claimant or those acting on her behalf indicate that the claimant was of the view that her treatment was in any way linked to her nationality. The first the respondents knew of this was when they received the ET1.

~~85. The claimant remained in Portugal for some time before returning to the UK.~~

She did not seek new employment for a period of several months but was successful in obtaining alternative employment with a large chain in or about July 2022. In January 2022 Rebecca Craig agreed to take over as general manager of the hotel. She stayed in post for around six months. Her relationship with the respondent had deteriorated by the time of the hearing and she had been told she was no longer welcome in the hotel.

Matters arising from the evidence

86. With regard to documents there was an issue at the start of the hearing. The respondent advised that it had been agreed between the parties that they would send their documents to the claimant and she would be responsible for preparing a joint bundle. The claimant lodged the joint bundle but it soon became clear that she had taken it on herself to omit a number of productions from the respondents which had been sent to her. When challenged with evidence that she had agreed to prepare the joint bundle she sought to revert to an earlier order made by the tribunal which indicated that each party was responsible for their own productions but that it would be a good idea to have a joint bundle, remaining silent as to who would be responsible for preparing it. The tribunal were in no doubt from the correspondence between the parties that the agreement was that the claimant was to lodge a joint bundle. This would be standard on the basis that both parties were unrepresented. The claimant could give no good explanation as to why she had simply taken it on herself to exclude a number of documents almost all of which did not suit her case. In addition she had also lodged edited versions of certain documents, for example, a whatsapp message sent to Bella regarding a laptop omitted a photograph of her family which the original message contained. The tribunal accepted that the claimant has no legal training and may not have appreciated the import of what she was doing and the Tribunal did not take this incident into consideration when assessing her evidence. Thereafter, however, it became clear to us that there were issues with the claimant's general approach to the hearing.

87. There were a number of matters where the evidence of the claimant differed from the evidence of the respondent's witnesses. In general terms the Tribunal preferred the evidence of the respondent's witnesses. This tended to be confirmed by the contemporary documents. There were a number of matters where we felt the claimant's evidence was unreliable.

88. The claimant's general approach to matters was that she had a very fixed world view and was simply not prepared to listen to any explanation or any evidence which contradicted this. This was clear in her evidence but became much more marked during her own cross examination and in her cross examination of the respondent's witnesses. She would simply not accept the answers which she was given which were in many cases uncontrovertibly true and based on the contemporary documents. She would then seek to ask the same questions again and again becoming more and more agitated when the answer was repeated. The claimant also at times gave entirely contradictory answers at various points in her evidence and in her cross examination by Mr Reeley. With regard to the key points the Tribunal's view was that the claimant had probably been subject to comment by certain of her colleagues including David at the outset of her employment which she did not like and which she disagreed with. The claimant did not give any real specific instances in her evidence in chief. When cross examined by Mr Reeley as to the alleged hostile atmosphere she said it had started after her return from Covid. When asked for details she said:

"Don't make me relive it. It was horrible."

89. Even taking the claimant's evidence at its highest it was clear that the comments were directed at the claimant's apparent lack of experience and knowledge rather than having anything whatsoever to do with her Portuguese nationality. The claimant also accepted eventually in her evidence that she had spoken to David herself and felt that she had dealt with the matter. She also said that she had told Jules that she had had interpersonal issues with David but that she had spoken to him and that these were dealt with.

90. With regard to the SSP issue it was clear that the claimant had a very strong sense of grievance about this. She simply would not accept that the respondent's Finance Manager had simply input the information into the respondent's payroll system and obtained the answer which it gave. The Tribunal noted that initially the claimant did not accept that she had been sent the SSP1 form. The SSP1 form was one of the documents sent to the

claimant which had been omitted from the joint bundle. The respondent lodged this. Eventually the respondents were permitted to lodge a copy of the email sending the document to Jules and to the claimant and the claimant accepted that she had received the SSP1 form. The claimant's position was that she believed that the form was incorrect in that if one averaged out her pay over the 8 week period she did meet the lower earnings limit. The claimant was simply not prepared to taken on board the fact that as at the date she went off sick she had not received anything in pay from the respondent and therefore averaging out her pay over the period would make absolutely no difference. She had not received anything.

91. Despite hearing the clearest evidence from the respondent's Finance Manager Erica Lupocz. Her position is that she must have conspired in some way with the respondent to refuse to pay her sick pay.

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92. Having finally accepted that she did receive the SSP1 form the claimant's evidence then was that there was a 28 day time limit on claiming any replacement benefit and that the respondents ought to have given her this form earlier or told her at the time that she would not be receiving SSP. I should say that the Tribunal accepted the evidence of the respondent's management that they were entirely unaware of any such 28 day time limit. Their position was that the issue of SSP was dealt with with their management system which was computerised and essentially they had no knowledge of or input to it. If the computer said yes an employee would get SSP and the computer would calculate this. If the computer said no they would not.

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93. The claimant initially denied having received the payment of £413 in her third payslip in respect of her contractual sick pay. Eventually she accepted that she had received this. Her position was that she had not known that this was contractual sick pay and the respondents at no time had told her this. The Tribunal did not consider it to be at all likely that the claimant would have received this amount in her pay and not either known what it was for or made enquiry about it.

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94. The claimant gave extensive evidence herself and led various witnesses through a number of Whatsapp and Deputy messages which had passed between her and other members of staff whilst at Carfraemill. At the end of the day the Tribunal found this evidence to be of absolutely no assistance to us. We were prepared to accept that the claimant had sometimes answered the phone and took messages whilst at home. We accepted that the claimant had been involved in many aspects of trying to manage the Hotel and Restaurant during a difficult period. We accepted that on a number of occasions she had done things which were very helpful. We accepted that on a number of occasions she had had to come into work to cover for people who had for whatever reason been unable to turn up for her shift. The claimant's view clearly was that she was the best employee in the business and despite being cautioned on this several times she continued to lead evidence which appeared to be directed at answering the criticisms made by the respondents in the Tribunal proceedings rather than discussing the merits of her claim. For what it is worth the Tribunal accepted the position of the respondent's management was that she was a perfectly good employee but had some weaknesses in areas which they found surprising. Her strengths were in administration rather than in customer facing skills. The claimant appeared to believe that certain tasks (such as arranging for the fryers to be fixed) were outside her remit and she was exceptional for carrying these out but we accepted the evidence of all of the respondent's witnesses that such things were in fact well within the remit of an assistant manager.

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95. With regard to the issue of the fire alarm the Tribunal were in absolutely no doubt that Mr Reeley accurately summarised matters in the letter he sent to the claimant on 8th January following the termination of her employment. The claimant was very much at fault for failing to comply with the respondent's standard procedures. The claimant's position in evidence was that the Fire Officer had never mentioned this and that the sole issue the Fire Officer was concerned about was the fact that there was no member of staff on the premises. It was clear to the Tribunal that the claimant was simply deluding herself and that this was an example of the claimant simply not being

prepared to accept anything which contradicted her world view and in particular her high opinion of herself.

5 96. With regard to the claimant's general assertion that she was poorly supported during her period with the respondents we found that this was probably the case. The respondents themselves accepted that this had been an incredibly difficult time for them just after Covid. They had made various attempts to obtain a General Manager but had been unsuccessful. This had absolutely nothing to do with the claimant's nationality.

10 97. With regard to the disparity in pay with the claimant and Rebecca Craig the claimant's evidence was that the mere existence of this discrepancy was prima facie evidence of racial discrimination. The Tribunal accepted the evidence of the respondent's witnesses that Rebecca having had 12 years' experience and having been known to them was seen by them as a much better prospect than the claimant. They had been prepared to offer her a substantial sum to come as General Manager. She was not able to commit to that but was prepared to agree to come in on an hourly paid basis. They took her on on an hourly paid basis which would have equated to her salary as General Manager. They still had in mind that they might manage to inveigle her into the business and eventually agree to be General Manager. This did in fact happen. The tribunal found it telling that the respondent's witnesses gave evidence that whilst they believed Rebecca could do the general manager role they were unanimous that the claimant was not ready
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25" for it.

30 98. With regard to the amount of holidays taken by the claimant and the hours worked the Tribunal accepted the evidence provided by the respondents from the Deputy system. It was clear that this was a fully auditable system which was based on the actual times the claimant had been in the building. If alterations were made then they were made by the claimant herself. In actual fact the respondents led evidence that the only alterations made by the claimant were generally adding in shifts where for some reason she had forgotten to sign on or instances where she had subsequently altered her

leaving time to say she had left later than she had. The claimant's explanation for this was that she would sometimes clock out and then get drawn back into working for a further short period of time. The tribunal considered this explanation was probably correct. We did not accept the claimant's contention that the system was set up so as not to record additional days she had worked.

99. The claimant contended at various points in her evidence that she had worked longer hours than the 45 hours per week which she was supposed to. The respondent's position was that they had calculated this out from the Deputy system and that (including the timesheets which she had altered so as to increase her hours) the claimant had worked an average of 45.7 hours per week. The claimant refused to accept this and said that in her view it was around 50 but she did not produce any calculation or justification of this.

100. With regard to holidays it appeared that the initial claim made by CAB on her behalf was that she had been unaware of the closure of the business in January 2022 until shortly beforehand. When cross examined the claimant denied that she had been unaware of the closure and denied telling CAB that she had been unaware. In any event, it was clear from the system that the closure had been on the system from September onwards. The Tribunal considered that on the balance of probabilities the claimant was definitely made aware of the closure then. Later on in cross examination the claimant claimed she had only known of the closure from November. Even if this date were taken this would still have been sufficient time for the respondent to be able to impose these holiday dates on the claimant. With regard to the holidays from 15th January onwards it was clear from the computer records produced by the respondent that the claimant had authorised these holidays herself. The claimant's position was that she had asked Bella about these holidays some time previously and that at some stage in December she had mentioned to Bella that the holidays had still not been approved. It was her position that Bella had told her to go ahead and approve them herself. The Tribunal did not accept this evidence. From the system it appears quite clear that whilst the claimant had requested some of the holiday on 30th October

she had added to this on 1st January and the claimant's own evidence was that she had approved the holidays herself on 1st January. The Tribunal accepted the respondent's evidence as to how the system works and considered that the claimant could have been in absolutely no doubt that she was not permitted to authorise her own holidays.

101. During the course of the hearing the claimant and her partner appeared to seek to develop an argument that the "Deputy" system penalised salaried employees by not ensuring that holiday days were given in addition to the normal days off they would be entitled to. There was also an assertion by the claimant that days which were shown on the system as holidays were actually days she had worked. The tribunal did not accept this evidence. For the reasons given above we considered the "Deputy" system worked properly and was accurate.

102. With regard to the claimant's other witnesses we found their evidence to be extremely limited. Her partner gave evidence which did little more than repeat the claimant's own assertions regarding how good an employee she was. He also indicated that he had been ill with Covid at the same time and that his employers had paid SSP whilst he had been with them for a similar period. The Tribunal did not consider this was in any way sufficient to lead to an inference that the reason for the different treatment was in any way due to nationality. We felt his evidence was extremely unreliable being based purely on what he had been told by the claimant. We also found that in one respect we were suspicious that he may have changed his evidence during the course of giving it in order to assist the claimant's case. By the time he was giving evidence it was clear that part of the claimant's position was that the respondent's system penalised salaried employees. As discussed above if an employee wanted to guarantee a certain day off they required to book this as annual leave. They could not make an arrangement that this be treated as their day off that week. The claimant's position was that if the claimant took holiday during a week she would then lose the 2 days off which she could normally expect to obtain in the week. The claimant's partner was asked about a holiday the claimant and he had taken and initially said that they had

5 been away for 5 days. There was then a break over lunch time and he then said that he couldn't remember if it was 3, 4 or 5 days. The claimant had taken 3 days annual leave and clearly if they had been away for 5 days this would confirm the respondent's position which was that overall the respondents would try to ensure that salaried employees kept to their 45 hours per week. Although the tribunal could not be certain the witness had deliberately changed his evidence we felt the incident added to our view that his evidence was not reliable. The claimant's partner also gave speculative evidence critical of the way the respondent paid the two io Portuguese nationals they employ whose details were given by Mr. Reeley. It was clear that he had absolutely no factual basis for his assertions as he accepted he did not have details of how much they were paid.

15 103. The other witnesses cited by the claimant did little more than indicate that they did not like the way that the respondent's business was run. Both of them had decided to leave.

20 104. Rebecca Craig in her evidence did consider that she was doing much the same job as the claimant. It was her view that the claimant should have been paid the same as her. At the end of the day she did not give any evidence which contradicted the respondent's own view of her value. She confirmed that she had worked in her parents' business in Grand Cayman for 12 years and she was a known quantity to the respondent. She also confirmed that following the claimant's departure she had for a time taken on the job as 25 General Manager although she had subsequently left and it is clear that now relations between her and the respondents is extremely strained.

30 105. With regard to the respondent's witnesses the 3 family members all gave evidence which was in line with our findings above. The Tribunal noted that they all made appropriate concessions and generally stuck to their evidence despite extensive questioning by the claimant. Mr Reeley was quite frank in saying that he probably should have responded sooner to the claimant when she asked him for a meeting. He noted however that he was extremely busy and that Carfraemill was not on his list of priorities since he felt that this was

being dealt with by his wife and daughter. He was clearly shocked by the allegation of race discrimination. It was his view that the claimant had simply put this in her form once she realised that there was a period of qualifying service before she could claim unfair dismissal. The original letter from CAB
5 does not mention this and indeed the sole claim made was one which the claimant disavowed at the hearing.

106. Jules Reeley was an impressive witness who spoke of her extensive experience within the hospitality industry. She indicated that her background
10 was in training and that she saw it as her role to keep standards up. She accepted that her presence in the Hotel would probably be a source of stress to employees however the Tribunal could not see anything untoward in any of the interactions which the claimant described. The Tribunal were satisfied that the fact that Ms Reeley on occasions referred to the claimant as the
15 Portuguese girl or on other occasion described her as the one who is always wearing a jumper did not come anywhere close to amounting to the facts from which an inference of discrimination could be drawn.

107. Much of the evidence which Bella gave was in relation to specific points
20 raised by the claimant. These were generally matters where the claimant made the point that she had been cooperative, coming in when someone was off sick or carried out her duties particularly well. Generally Bella accepted that on occasion the claimant had been helpful and that in general she considered her to be a good employee. She confirmed she had brought the
25 claimant chocolates prior to going on holiday in December. She was extensively cross examined by the claimant about various minor issues which had arisen. One was in relation to a £100 surcharge which had been placed on a client's bill by the claimant. Bella had subsequently reversed this. The claimant felt that she was unfairly blamed for this since Rebecca had also
30 suggested that the customer be surcharged. Bella's point, which despite repeating this on around a dozen occasions to the claimant, the claimant failed to grasp was that (1) Bella had sent an email to the customer and thereafter the surcharge of £100 had been put on without the customer having responded in any way and (2) the sum of £100 was a ludicrously large

amount for a cleaning surcharge in the circumstances. As with the incident regarding the Fire Officer the claimant's position was that her conduct was entirely irreproachable and that others were to blame. Similarly Bella was cross examined at length about the issue over the booking.com virtual card payments being taken. She maintained her position which was that the claimant was simply doing her job by putting through these card payments in respect of the payments where the customer had already stayed in the Hotel. She maintained her position that what she was bothered about was the claimant taking payments for people who had yet to stay in the Hotel since this was contrary to the Hotel's published policy.

108. The Tribunal listened carefully to the evidence of Erica Lupocz. It was absolutely clear to us that she simply processed the pay of the claimant and the respondent's 100 odd other employees through the computer system. We accepted that the claimant had not been paid SSP because "computer says no". We also accepted that the claimant had been properly paid in her final payslip for the proportion of her salary which she had earned and we accepted that she was not due any additional holiday pay. We accepted that in fact the claimant would appear to have been paid 3 days additional sick pay to which she was not entitled.

Discussion and Decision

Issues

109. Initially the claimant claimed that she had suffered discrimination on grounds of sex and that she had been unfairly constructively dismissed. These claims were withdrawn by the claimant at the initial Preliminary Hearing before Employment Judge Macleod. They were not formally dismissed at that stage and it is appropriate that this be dealt with in this Judgment. The remaining claims made by the claimant were as follows:

(1) A claim of race discrimination based on her Portuguese nationality. The claimant's position was that she as a foreigner had been treated less favourably than others who were not

foreign. Although this claim was not well particularised by the claimant the Tribunal understood the claims being advanced by her at the Tribunal were (1) a general complaint that she was picked on and blamed unfairly for things where a non foreign employee would not have been blamed; (2) that she had not been paid SSP whilst non foreign workers were paid SSP; (3) that the email sent out by Jules to staff at the start of her employment had humiliated her (4) that she had been harassed by David in relation to her nationality when she had joined the business; (5) that she had been paid less than Rebecca Craig for doing substantially the same job and that this was due to her nationality; (6) that she had been asked to do more work and that she had been unsupported in general terms and that this was due to her Portuguese nationality. (7) that she had not been permitted to work her notice;

110. In addition to this the claimant claimed that she had suffered an unlawful deduction of wages. We understood that this related to her not having been paid in respect of leave accrued but untaken as at the date of termination of her employment. We also understand that in general terms the claimant did not accept that she had been paid the proper sums due to her although this claim was not well particularised by her. We also understand her Wages Act claim included a claim that she ought to have been paid SSP.

25 Discussion and Decision

111. It is probably as well to deal with the issue regarding holiday pay and unlawful deduction of wages first. The Tribunal was satisfied that the claimant was engaged as a salaried employee on a salary of £25,000 per annum. They accepted that, as is usual with salaried posts there was no provision for the claimant to be paid overtime. There was an expectation that, taken over a period, the claimant would work an average of 45 hours per week. The claimant did not seek to lodge any calculation showing what she claimed that she had worked but she asserted on several occasions that she had worked

longer hours. The Tribunal did not accept this for the reasons as set out above.

5 112. It was clear that the claimant's entitlement to salary had been worked out by the respondent's Finance Manager using a computerised system. It was clear to us that the deduction made from the first month's salary was correct. The claimant had not worked a full month. The claimant had then gone off sick and was not entitled to SSP. The Tribunal's view was that the SSP1 form had been correctly given to the claimant.

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113. The Tribunal noted that subsequently the respondents noticed that the claimant was entitled to 5 days sick pay at full salary in terms of her contract and this was subsequently paid to her.

15 114. With regard to entitlement to holidays the claimant did not lodge any counter calculation to that of the respondents. The Tribunal considered that the entries in the Deputy system were correct and that the claimant had taken her full entitlement to holidays by the time she left. She was therefore not entitled to any balancing payment. The Tribunal considered the claimant had in fact
20 been overpaid since she had been paid full salary for 3 days she was off sick once her entitlement to sick pay had been used up. The Tribunal noted that the respondents were not pursuing this and would simply leave the matter there.

25 115. With regard to the issue of notice pay the Tribunal's view was the claimant resigned on 5th January. She required to give one month's notice. She worked part of her notice until 14th January. The claimant was paid for the days she worked and was also paid for the days she was on holiday since part of this period coincided with the Hotel's annual closure. Thereafter the
30 claimant went on unauthorised leave. The Tribunal accepted the respondent's position that it was unacceptable for the claimant to authorise her own leave in the Deputy system. There was no doubt in the Tribunal's mind that the claimant had done this because she knew that her leave would not be authorised and she wanted to go to Portugal for a family birthday.

116. The claimant was evasive about when she actually returned from Portugal but in any event the Tribunal accepted the respondent's position that it was entirely unacceptable for the claimant to go off on unauthorised leave and claim that she would be entitled to return and continue to work the rest of her notice whenever she felt like it. Mr Reeley's letter of 8th January clearly sets out the respondent's position. The claimant denied receiving this at the time but the Tribunal did not accept her evidence in relation to this. We believe she did receive it. Accordingly the Tribunal's position is that none of the claimant's claims about underpayment of wages due have any merit and the claims of unlawful deduction of wages and holiday pay are dismissed.

117. With regard to the allegation of race discrimination the Tribunal understood the claimant to be making claims under section 13 and section 26 of the Equality Act 2010.

118. The claim under section 13 is often referred to as direct discrimination. The definition contained in the Equality Act is:

"(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.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others."

Section 26 states:

"(1) A person (A) harasses another (B) if-

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(a) A engages in unwanted conduct relating 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

5 (4) In deciding whether conduct has the effect referred to in sub-section (1)(b) each of the following must be taken into account

(a) the perception of B

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(b) the other circumstances of the case

(c) whether it is reasonable for the conduct to have that effect."

15 119. The law on discrimination recognises that it is rare for discriminators to openly state that they behaved in a discriminatory way based on a protected characteristic. The law acknowledges that in order to recognise discriminatory conduct the Tribunal will usually require to draw inferences from the facts. The burden of proof provisions contained in section 136 of the
20 Equality Act 2010 apply. The correct approach which Tribunals should take in relation to the burden of proof provisions has been set out in a number of cases including **Igen Limited v Wong** [2005] IRLR 258 CA and **Barton v Investec Henderson Crosthwaite Securities** [2003] IRLR 332. The EAT set out the guidance in short form in the Barton case. It is as well to repeat
25-----this below.— The Barton case was a case of sex discrimination but the approach is the same in cases of race discrimination. The guidance states:

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“(1) The initial burden of proof rests on the employee to prove on the balance of probabilities facts from which the Tribunal could conclude that an act of discrimination has occurred.

(2) It is unusual to find direct evidence of sex discrimination and it will therefore usually require the Tribunal to draw such inferences from the facts and findings that are just and equitable.

(3) If the Tribunal draws such inferences the employer must then discharge the burden showing that the act complained about did not occur or that gender played no part in the reason for the act.

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(4) The Tribunal will usually require cogent evidence from the employer to discharge the burden of proof and will need to examine carefully the explanations for failure to adhere to Codes of Practice.”

io 120. It is clear from the above that the initial burden of proof is on the claimant to prove on the balance of probabilities facts from which the Tribunal could conclude that an act of discrimination has occurred. In this case it was the Tribunal's view that the claimant had singularly failed to provide cogent evidence about any facts from which any inference of discrimination could be
15 drawn.

121. It was clear from the claimant's evidence and her conduct of the case that she believed that she was overworked, underappreciated and under supported whilst working for the respondent. The respondent's position was
20 that there were a number of instances where the claimant was complaining about things which were perfectly standard, normal parts of her job. The respondent accepted the business was struggling following the Covid closure and in particular the respondents were finding it very difficult to obtain staff. As a result there was some general truth in the claimant's view that things
25 had been difficult. There was absolutely no evidence to suggest that any of the difficulties had been connected in any way with the claimant's nationality. The claimant's experience and skills were on the admin side of the business whilst the respondents wanted someone who was primarily dealing with front of house. There appeared to be a number of areas where there was a
30 mismatch between what the claimant expected and what the respondent expected. This was particularly evident in cross examination when the claimant would mention specific things and the respondent's witnesses (primarily Jules and Bella) would respond that that was simply the job of the Assistant Manager. The claimant appears to the Tribunal to be basing much

of her complaint on matters which are absolutely standard and normal in the hospitality industry. As duty manager she would be expected to sort things out. She would be working a variable rota and may have to change shifts at short notice.

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122. With regard to the specific points raised by the claimant which the tribunal considered to be allegations of harassment the Tribunal did not find that the claimant was at any point subject to an intimidating, hostile, degrading, humiliating or offensive environment. The claimant gave very little detail about the issues she claims to have had with David. In any event these interactions would appear to have ceased by the time David left the business in or about October 2022. The claimant did not start early conciliation until more than 3 months after this and therefore any issues she had with David would be time barred. The Tribunal could see no just and equitable reason for extending the time limit and therefore strictly speaking it is not necessary for us to reach any conclusion into these matters. That having been said the Tribunal could find nothing in the evidence to suggest that the conversations with David were other than the normal interactions which take place between employees in the hospitality industry. The Tribunal did not consider that describing the claimant as a Portuguese girl in any way supported her contention that this created a hostile environment for her. There was nothing to link any interactions with David with the claimant's Portuguese nationality.

123. In more general terms the claimant's complaint appears to be that she was underappreciated and that she was criticised for things which were not her fault because of her Portuguese nationality. The claimant did not give any specific details about incidents other than the Fire Officer incident. In their response however and in their evidence the respondents mentioned a number of matters where the claimant had not performed as well as they would have liked and where their evidence was that far from being subject to excessive criticism the respondents were prepared to simply advise the claimant of their position and let the matter go.

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124. The fact of the matter is that the claimant was not subject to any formal disciplinary process. The first part of the respondent's disciplinary process was an informal discussion and the claimant did not even get to the stage of having an informal discussion.

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125. It was clear from the evidence that the respondent's perception of the claimant was that she was a perfectly good employee albeit she still had some things to learn. There had been a number of incidents where they felt she had not done what they would have expected of her but nothing more than would be the case for most recently hired employees and certainly nothing which would merit them taking any action. The claimant's position during the Hearing was that absolutely none of these very minor criticisms were justified. The claimant cross examined witnesses heavily in relation to these matters which is why the Tribunal has had to make Findings of Fact in relation to them. Overall the Tribunal's view was that there was nothing in any of the evidence which suggested that the respondents were "picking on" the claimant or treating her in any way different from any other employee.

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126. With regard to the Fire Officer incident the Tribunal's view was that the respondent had behaved fairly tolerantly. It also appeared to us from general observation of the claimant during the Hearing that the claimant was someone who did not take at all well to being told that she was not in the right and that she would defend an indefensible position rather than do this. The respondents do appear to have noticed this but again this was not something which they dealt with in any particular way and had nothing to do with her nationality.

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127. We understood the claimant's claim relating to the welcome message sent to all staff by Jules set out in paragraph 30 above to be a claim of direct discrimination as well as harassment. The claimant's evidence was that she saw this email as:

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'the most humiliating thing ever'.

The tribunal's view was that this was a perfectly innocuous communication.

David was singled out for praise because he was in a different situation from

the claimant. He had been with them some time and was being promoted. On the other hand the claimant had just joined the company. The tribunal felt this was an example of the claimant's hyper sensitivity to perceived criticism. It was in no way evidence from which we could infer race discrimination.

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128. With regard to the SSP incident we understood this to be pled as direct race discrimination with the claimant comparing her treatment with Chloe. There is no doubt that the reason the claimant was not paid SSP had nothing whatsoever to do with her nationality. She was not paid SSP because she was not entitled to it. The respondents in no way interfered with the computerised system which they used for calculating whether or not someone was due SSP. Her comparator, Chloe was in a different situation and was entitled to SSP. She had previously been paid by the respondent. When Ms Lupocz entered her details into the computerised system it worked out that she was entitled to SSP and paid it.

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129. Similarly, we have advised above why we consider the claimant's various challenges to the amount of her pay being unjustified. It appeared to us the claimant was paid the correct amount and there was no less favourable treatment in this regard. In any event even if the claimant had not been paid the correct amount there was no evidence this had anything to do with her nationality.

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130. The claimant spent a great deal of time trying to establish that she was doing the same work as Rebecca Craig. The Tribunal accepted that on a day to day basis the claimant was doing the same work as Rebecca Craig. The Tribunal were not however prepared to take this as prima facie evidence of race discrimination as the claimant suggested. There can be many many reasons why employees doing the same job can end up being paid differently. The law prescribes that men and women must receive equal pay for doing work of equal value, like work or work rated as equivalent. Otherwise employers and employees are free to negotiate their own rate of pay. Within any organisation there will be many people who are paid differently and have different protected characteristics. A difference in pay

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coupled with a difference in protected characteristic is simply not enough to create an inference that discrimination must have occurred.

5 131. It is also the case that there are swings and roundabouts as to whether an employee may be better off being an hourly paid employee or better off salaried. It is commonplace for salaried employees not to be paid overtime and to occasionally have to work additional hours or change their shifts without receiving extra payment. On the other hand an hourly paid employee is entitled to be paid for every hour they work. An hourly paid employee in
10 the hospitality industry on a zero hours contract may well find that there are periods when they are not offered as many hours as they like. On the other hand a salaried employee is guaranteed that they will receive the same amount during each pay period. As in this case salaried employees may have certain contractual benefits such as paid sick leave which hourly paid
15 employees do not.

132. All of the evidence in this case was that the respondent engaged the claimant as Assistant Manager on a salary following their standard processes which had absolutely nothing to do with her nationality. The tribunal found that the
20 evidence led in respect of the other two Portuguese employees did not assist the claimant's case in an way. All of the actual evidence, as opposed to the claimant's speculation, suggested that these individuals were treated in exactly the same way as any other employee and their pay rates and conditions had absolutely nothing to do with their nationality. The fact that
25 one of them had been promoted to be the most senior chef in the company simply reinforced the respondent's position that they did not treat people differently according to their nationality.

133. There was absolutely no evidence that the claimant was treated in a different
30 way from the way any other Assistant Manager would have been treated irrespective of nationality. The Tribunal accepted that the claimant had had to come into cover other people's shifts when they were unavailable sometimes at short notice. The Tribunal's view was that this was generally something an Assistant Manager would be expected to do. It was also clear

that others had to come in at short notice to cover the claimant's shifts when she was off ill.

5 134. The claimant's position appears to be that there were a number of things about her job with the respondent that she did not like. She does not however appear to have ever raised any of these matters with the respondents till she resigned.

10 135. It would appear that by December she was sufficiently disenchanted that she wished to speak to Mr Reeley direct. The Tribunal accepted Mr Reeley's evidence that he did not see meeting with her as a priority. There was no evidence his decision had anything whatsoever to do with her Portuguese nationality. We accepted his evidence that it was simply that he is not involved in day to day running of the Carfraemill and had many other things to occupy his time. We did not accept, on the evidence, that Bella lied to the claimant about him not coming on 31st December. Bella was telling the truth as she understood it at the time. As with so many things however the claimant developed a very fixed view and was not to be shifted from this. She then resigned her employment on 5th January and at the same time Mr 15 Reeley discovered that she had self-approved holidays for the period beginning 15th January when he and other members of his family will be on holiday themselves. We consider that the respondent's decision not to allow her to proceed as she apparently wanted to by allowing her to go on holiday for an indeterminate time and then return to complete her notice whenever 20 she wanted to was in any way prompted by her nationality. The respondents did not go along with this because it was an entirely inappropriate suggestion and there was no basis for saying that the claimant was entitled to proceed in this way.

25 30 136. At the end of the day the claimant failed to meet the test set out in stage 1 of the Barton guidelines in that she entirely failed to prove facts from which any inference of discrimination could be drawn.

137. We should record that it was the respondent's firm position that the claimant did not herself have any belief that she had been discriminated against on the basis of nationality. It was their position that the claimant had been disgruntled because her calculation of holiday pay and her position regarding notice pay was not one that the respondent agreed with. She had initially contacted CAB who had claimed that the issue was that the claimant had not been told in advance of the Hotel closure and that therefore the respondent could not insist on her taking her annual leave then. It was clear that this claim was unfounded in fact and the claimant had abandoned it by the time of the Hearing stating that she had never told CAB to write in those terms. It was the respondent's view that the claimant had only decided to "tick the box" for race discrimination when she discovered that she did not have sufficient qualifying service to make a claim of constructive dismissal.

138. The Tribunal did not consider that we needed to make a determination on this point. Suffice to say that having heard the evidence over a number of days we were satisfied that there was absolutely nothing to suggest that the claimant had been discriminated against on grounds of nationality or that any of the decisions made by the respondent during the course of her employment had been influenced in any way by her nationality. For this reason the claim of race discrimination falls and is dismissed.

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Employment Judge: I McFatridge
Date of Judgment: 31 March 2023
Entered in register: 03 April 2023
and copied to parties

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