



# EMPLOYMENT TRIBUNALS

**SITTING AT: LONDON CENTRAL**

**BEFORE: EMPLOYMENT JUDGE F SPENCER**

**MEMBERS: MS S CAMPBELL  
MR P MADELIN**

**CLAIMANT MS E HODZIC**

**RESPONDENT THE EMBASSY OF THE UNITED ARAB EMIRATES**

**ON: 22-24 and 27-30 March 2023**

**Representation:**

**For the Claimant: In person**

**For the Respondent: Mr L Davies, solicitor**

## RESERVED JUDGMENT

The Judgment of the Tribunal is that:

- (1) The Claimant's claim that her dismissal by the Respondent was an act of direct race discrimination and harassment related to sex and/or race does not succeed and is dismissed.
- (2) The Claimant's claim that the Respondent failed to provide her with an accurate statement of particulars of her employment does not succeed and is dismissed.
- (3) The Claimant's remaining claims of direct race discrimination and harassment related to sex and/or race are out of time and are dismissed.

## REASONS

### Background and Issues

1. The Claimant, Ms Edina Hodzic, worked for the Embassy of the United Arab Emirates from 1 October 2004 until her dismissal, ostensibly for redundancy, on 30 June 2020.
2. Following her dismissal, the Claimant contacted ACAS on 20 August 2020, received an ACAS certificate on 20 September 2020 and issued a claim on 30 October 2020. Her claims were for unfair dismissal, pregnancy or maternity discrimination, sex discrimination, sexual harassment, a redundancy payment, notice pay, holiday pay and a claim for failure to provide a statement of employment particulars.
3. The Claimant's claim was originally combined for hearing with that of Mr Burke, who was made redundant at the same time as the Claimant. However those claims were then separated, and Mr Burke's claim has been heard separately.
4. The Respondent has relied on state immunity and the Claimant's UKbased claims were subsequently dismissed on withdrawal. The Claimant also withdrew her claims for pregnancy/maternity discrimination and holiday pay. The remaining claims were identified as (i) failure to provide a statement of employment particulars, (ii) direct sex discrimination, (iii) sex harassment, (iv) direct race discrimination, (v) race harassment and (vi) failure to make payment in lieu of accrued but untaken holiday. An application to amend her claim to include a new claim of victimisation was refused at a preliminary hearing before Employment Judge Brown on 24 September 2021.
5. A further preliminary hearing took place on 19<sup>th</sup> November before Employment Judge Lewis to consider various time issues. Employment Judge Lewis found that her claims which predated August 2017 were out of time; and it would not be just and equitable to allow those claims to proceed out of time.
6. In relation to the claims from August 2017 onwards Employment Judge Lewis found that the Claimant could show a reasonably arguable case that those claims, as pleaded, formed part of a course of continuing acts culminating in her dismissal, so that those claims could proceed to a full hearing. It was left to this Tribunal to consider whether those matters did form part of a continuing course of conduct ending with the dismissal, (such

that all those claims were in time) or, if her claims were not part of a continuing course of conduct, and therefore prima facie out of time, it would be just and equitable to allow them as late claims.

7. Following that hearing the remaining issues were identified and agreed and are set out in the case management order issued by Employment Judge Lewis (164). Those issues (slightly amended at the request of the Claimant) are set out at 201 of the bundles and appear below.
8. Put broadly, the surviving complaints relate to (i) being paid less than the Claimant's comparator, Ms Khashogji, because of her Bosnian race (ii) being demoted in 2019 (iii) being forced to sign a contract with a salary reduction (iv) comments made by Ms Al-Qaiwani, Mr Al Mazmi and the Ambassador, Mr Abulhoul in 2017, 2019 and 2020 respectively and (v) her dismissal for redundancy in June 2020.

### The Issues

#### Harassment (EA s 26(1)) (related to race and sex)

7.1. Was the Claimant subjected to alleged unwanted conduct by:

7.1.1. On 2 August 2017, did the Claimant complain to Ambassador Sulaiman Hamid Almazroui about the fact that her salary did not match what was stated in her contract; and that it was apparently half of Lina Khashogji's?

7.1.2. About a week after 2 August 2017, did Ms Alqaiwani state to the Claimant that she was paid less than Ms Khashogji because she is Saudi and the Claimant is Bosnian?

7.1.3. On 10 August 2017, was the Claimant forced to sign a contract which included a salary reduction?

7.1.4. On 10 July 2019, did Mr Al Mazmi tell the Claimant she could not use her new job title, and make derogatory comments about the Claimant as a woman (see paragraph 36 of the Grounds of Complaint)?

7.1.5. On 11 July 2019, did Mr Gaber issue a final written warning against the Claimant "for not taking the job and acting disrespectfully"? Did she revert to her former job duties afterwards?

7.1.6. On or before 2 March 2020, did someone from the Respondent (the Claimant does not know who) misinform the Ambassador that the Claimant had worked at the Bosnian embassy (which was untrue)?

7.1.7. On 2 March 2020 did the Ambassador express puzzlement as to why the Claimant worked in the Embassy when she was "not an Arab"?

7.1.8 On 30 June 2020 by the Respondent dismissing the Claimant purportedly on the ground of redundancy?

7.2. Was the conduct in each case at 7.1.1 related to the Claimant's race and (in the case of issues 7.1.3, 7.1.4, 7.1.5, and 7.1.8) was it additionally or alternatively related to sex?

7.3. Was the action unwanted?

7.4 Did this conduct have the purpose or effect of violating the Claimant's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. (In deciding whether conduct has the effect referred to, each of the following must be taken into account - the perception of the Claimant; the other circumstances of the case; whether it is reasonable for the conduct to have that effect. ) Direct Race Discrimination (s. 13 EA)

8.1. Further and in the alternative, was the Claimant treated less favourably because of her race by the following alleged conduct:

8.1.1. From August 2017 to date, did the Respondent pay the Claimant less salary than her comparators because of her Bosnian race?

8.1.2. On 30 June 2020 did the Respondent dismiss the Claimant for redundancy due to her race?

8.2.2. The Claimant relies on the comparators stated at paragraphs 43-44 of the Particulars of Claim as her actual comparators. The Claimant does not rely on a hypothetical comparator. [NB For ease of reference the comparators in the Claimant's particulars of claim are Ms Alamedi, Mr Youseef Hassane, an economic researcher who is Moroccan/British and Mr Sulafa Najwati, political researcher who is Syrian/British.]

Direct sex discrimination

9. Further and in the alternative, was the Claimant treated less favourably because of her sex contrary to section 9 and 13 of the Equality Act 2010 by the following alleged conduct :

in July 2019 was the Claimant demoted?

The Claimant relies on a hypothetical comparator.

Time issues arise.

10. Did the alleged conduct take place more than three months less one day from the claim being registered with ACAS for early conciliation? (In that respect conduct extending over a period is to be treated as done at the end of that period.) If so, would it be just and equitable to extend time?

Failure to provide a statement of employment particulars.

11. The list of issues also contained a complaint of failure to comply with EU law Council directive 91/53553 EC. This was an unnecessary complication. That

right is contained in UK law (see section 1-4 of the Employment Rights Act 1996), and is an EU derived right, the Claimant is entitled to rely on those sections directly. It is the Claimant's case that the Respondent has not complied with section 1, or section 4 (the obligation to provide a statement of changes) because her written contract does not

reflect her correct job title. She asks the tribunal to state what her correct job title should be.

Remedy.

12. If the Claimant is successful what should be the appropriate remedy?

Evidence .

13. The tribunal had a bundle of documents extending to over 1,400 pages. We heard evidence from the Claimant and, on behalf of the Respondent, from Ms Alamedi, the Claimant's colleague in the media department and a comparator. We had a witness statement from Mr Al Mazmi, Head of the Administration and Finance at the Embassy but he did not attend to give evidence.
14. The tribunal has been much hampered in this case by the Respondent's failure to call witnesses to give evidence. The Claimant's case involves complaints about Ms Al-Qaiwani, Mr Al Mazmi and the Ambassador, but none of them have attended Tribunal to give evidence. In relation to Ms AlQaiwani and the ambassador we have had no explanation for their non attendance, (although Ms Al Qaiwani was made redundant in early 2020). Mr Al Mazmi is now based in Germany, and tells us that he is unable to leave Germany because of his diplomatic duties, and does not have permission to give evidence via video link.
15. The Claimant was initially represented but has for some time been acting in person. Witness statements had only been exchanged on the morning of the hearing. The original case management order required exchange to take place on 21 March 2022 – although latterly the Tribunal had agreed the Claimant's application to delay exchange of witness statement until 20 February 2023. In the event the Claimant was not ready to exchange witness statements until the morning of the first day of the hearing. Nonetheless there was no application to postpone. We spent the first day engaged in case management and reading of witness statements and key documents, while the parties considered the witness statements.
16. On the second day of the hearing Mr Davies, for the Respondent, applied to the Tribunal to strike out large parts of the Claimant's witness statement on the basis that it dealt with (i) factual matters which had been struck out as being out of time and (ii) new factual allegations which were not contained in her particulars of claim. The Claimant objected. We adjourned to consider these matters.
17. It is correct that the Claimant's witness statement did deal with many matters which had been struck out as being out of time. It also contained new acts

of harassment and discrimination which had not been pleaded. It also sought to claim victimisation, even though victimisation was not a matter before us.

18. However, with the exception of paragraphs 107 – 111 the Tribunal declined to strike out parts of the Claimant’s witness statement. It would not have been a good use of the Tribunal time to go through the Claimant’s witness statement and decide whether this paragraph, or that line, should be struck out or retained as background evidence. However,  
  
as we explained to the Claimant, while we read (and admitted into evidence) the whole of her witness statement, we would not be dealing with matters which had been dismissed as out of time, or matters where an amendment application had been refused. The Tribunal would only adjudicate on the issues before us (as set out above) and it was not for us to make findings in respect of matters that did not assist us to decide those issues. New factual matters not contained in the particulars of claim were not before us, and we would be making no findings in respect of those matters.
19. The Claimant is clearly very aggrieved by what has happened to her but found it hard to focus on the issues which were before us, rather than the more historic matters (pre 2017) which had been struck out at the earlier hearing. She is also concerned that the Tribunal should identify her correct job title as she does not agree that it should be “Media Researcher”.
20. We did not find the Claimant’s evidence to be wholly reliable. We do not say that the Claimant was not telling the truth as such – only that her perception of events was often not based on an objective analysis of what happened and that her perception or memory does not accord with that of others. At times she made assertions which did not appear to be based on any evidence, such as that, since she had been dismissed Ms Alamedi had been promoted to “senior Media Researcher”, (which was stoutly denied by Ms Alamedi), that all Saudis and Emiratis were paid more than other nationalities, that a warning which appeared in the bundle had been fabricated for the purposes of this litigation and/or that the Respondent had put pressure on Ms Alamedi to give false evidence knowing that her brother lived in the UAE.
21. In her witness statement the Claimant refers to a campaign of harassment against her which was started by Mr Al Harbi in 2015, and continued by subsequent managers such as Mr Al Mazmi, Mr Al Jarman, Ms AlQaiwani, Ms Alotaiba, Mr Abdooli. We were not concerned with events prior to 2017, but we do not accept that there was any such campaign from 2017 onwards.
22. The Claimant relies on, and produced for the Tribunal, a lengthy word document into which, she says, she cut and pasted extracts from her contemporaneous diary, which she had created on One Note. For a number of reasons we doubted if that diary was entirely contemporaneous. It reads more like a witness statement than a private diary. It reads as if it was written to be read by a third party (for example all the players are referred to by their full names and job titles). Ms Alamedi (who we regarded as a truthful

witness) had no recollection of several of the incidents set out in the diary which involved her. We allowed the Respondent to inspect the properties of the original one note from which the word document was created but they were unable to track the history.

Findings of relevant fact

23. The Claimant began work for the Respondent in October 2004. She was not given a contract of employment for some time, and the first one she was given was in Arabic, which she could not understand. In 2016 (and on subsequent dates) the Claimant was given a contract in English, in which her title was described as a “media researcher”.
24. Initially the Claimant reported direct to the Ambassador. Earlier documents in the bundle refer to her job as “Executive manager information and resources”. In 2009 the Claimant completed a job description in which she said her job was to manage and run the Information and Resources department. At some stage she joined the media department. From 2015 onwards her emails and business cards identified her as “Government and public relations specialist”.
25. The head of Media was usually a diplomat, initially Dr Sara Al Mahri, then Mr Al Jarman. From July 2017 to 31 December 2018, Ms Al-Qaiwani, Senior Political Researcher, was “acting head” of the department (as she was not a diplomat). She was succeeded as head of the department by Mr Alabdooli. Ms Al-Qaiwani was herself made redundant in March 2020.
26. The Claimant’s colleague Ms Alamedi joined the staff of the Embassy in December 2014. Ms Alamedi was initially employed as a secretary/translator but moved into the Media department in late 2015 or early 2016. Her contract also describes her as a “Media Researcher”. During the period with which this tribunal is concerned they both worked in the Media department. Their jobs were not identical. The Claimant’s job was to deal with public enquiries sent to the info email, to monitor printed and social media for topics of interest to the UAE and prepare periodic reports, to run the embassy’s website, Twitter and other social media accounts, to conduct research when asked, and to organise and attend various events. She also looked after the embassy library. A fuller description appears at p472.
27. Ms Alamedi’s job was to prepare the Notes Verbales, and she helped to organise external events which occurred 3 or 4 times a year, plus some events at the Embassy. She translated things into Arabic for the diplomatic bag, often with a covering memo in Arabic, translated letters from MOFAIC from Arabic into English. She took calls from British media about what was happening in the UAE to take forward internally. She translated press releases.
28. The Claimant in her evidence, suggested that Ms Alamedi’s job was inferior to her own. She described Ms Alamedi as a PA and a translator but then put it to Ms Alamedi that she did no translation work. In her witness statement the Claimant described Ms Alamedi’s Arabic as poor. Ms Alamedi denied both that her job was that of a PA or that her Arabic was poor. The Claimant

spent a considerable time in cross-examination of Ms Alamedi putting to her that the Claimant's job was superior to hers. The Claimant also stated that Ms Alamedi had been promoted to Senior Media Researcher after the Claimant left – but we are satisfied that this was not the case.

29. We mention this not because it is particularly relevant to the issues that we have to decide but because it illustrates that the Claimant was often inconsistent and that her perception of matters did not always accord with the way others saw things, particularly when it came to the importance of her role at the Embassy. Ms Alamedi is Lebanese. Her first language is Arabic. She came to this country at the age of 30. She has a master's degree from Westminster University in bilingual translation. It was most unlikely (and we do not accept) that her Arabic was very poor as the Claimant says.
30. The Claimant complains that she was not a media researcher, and that she does not know what her correct job title is. She asks the Tribunal to state what should have been contained in her employment particulars. She refers to the descriptor in her business cards and under the Claimant's signature in emails and correspondence in which she is referred to as a "government and public relations specialist".
31. Dr Khashoggi joined the staff of the Embassy in 2017. Her title was Media Researcher. She is a Saudi national. Her contract (1420) provides that she would be paid £48,194 gross p.a. (i.e. more than the Claimant). Dr Khashoggi was bi-lingual with a doctorate. The Respondent says that she had a good understanding of Gulf politics, had to relocate from Saudi and had therefore negotiated a higher salary/package than that paid to the Claimant or Ms Alamedi. (In its Grounds of Resistance the Respondent alleges that Ms Khashoggi had been in the Media researcher role longer than the Claimant which is clearly incorrect.)
32. The Embassy is not subject to the PAYE obligations. Prior to 2016 all Embassy staff were paid in cash and employees were required to declare that income, and to account for their tax directly to HMRC. HMRC believed that most embassy staff were not paying income tax or NI as required. It asked the embassies to operate PAYE on a voluntary basis. The Respondent agreed to do so.
33. When initiating the PAYE system the Respondent decided to treat the amount of pay that each employee received as a net amount. They therefore grossed up everyone's pay and deducted tax on the grossed-up amount so that the net amount received by each employee was the same as had been previously paid in cash. If the Claimant had been paying tax on her then salary (we do not know whether she was or was not) the new regime would have represented a pay increase of over 20%.
34. At this point the Embassy also paid all employees a lump sum. This was to buy them out of an "end of service" benefit to which they had previously been entitled. The Claimant received £14,122.91.



35. On 1<sup>st</sup> July 2016 the Claimant signed a contract, which described her title as Media Researcher, and described her salary as £44,649.66 (gross). Her net monthly salary before and after the new contract remained the same (£2,732). However, her first pay slip in July 2016 (421) showed a gross monthly amount of £3,636 equal to £43,634 annually. The Claimant made no complaint at that time. There was no change to her net salary.
36. In July 2017 the Claimant was provided with a new contract which described her gross pay as £43,908. The Claimant refused to sign because, on her case, it was a reduction in pay. Her previous gross salary had been £44,649. She complained to her head of department (416) about the difference in her gross pay. She also noted the discrepancy between her 2016 contract and the pay slips and asked for this to be rectified retrospectively.
37. The Respondent says simply that they made a grossing up error in her 2016 contract and that the correct amount is reflected in her 2016 pay slips, and in the contract issued to her on 1 July 2017. We accept that. The Claimant's net pay remained the same before and after the new contract. It is apparent that the Respondent calculated pay for its staff on a net basis. (For example between March and April 2017 (427) the Claimant's gross pay is reduced (we assume to reflect changes in the personal allowance) so as to produce the same net pay. The Respondent's focus was on net (rather than gross) pay.
38. In July 2017 her net pay was (in line with all other employees) increased by £30 net pcm or £360 per year (to £2,762) and this is reflected in the 2017 figures and subsequent pay slips. The 2017 contract simply corrects the grossing up error in the 2016 contract. It follows that we do not accept that the Claimant's pay was reduced in August 2017 as she alleges. In fact in July 2017 her net pay was increased by £30 pcm- as was the net pay of all the other local staff.
39. In July 2017 the Claimant was provided with a job description which described her title as a Media Researcher (472).
40. August 2017 and reduction in pay. On 2 August 2017 the Claimant wrote to the then ambassador to request a 20% increase in her wages. She referred to her role and responsibilities and length of service. She complained that (i) she had had a pay reduction in 2017 and (ii) she was paid half of what Ms Khashoggi was paid. (453). She also complained that her job title had changed in 2015 to "Government and public relations specialist" and that this title had now been withdrawn. She complains that she had not been given an "Employee of the Year Award presented to 23 people in 2016 and that she felt that there was "inequality amongst employees and possible discrimination in our workplace".
41. Unfortunately no one at the embassy appears to have had the courtesy to respond to that memorandum in writing. However the Claimant did not get the requested 20% pay rise.

42. As to her complaints, as we have said, there was never any reduction in her net pay. When this was explored with the Claimant in evidence, she said that in 2016, before she signed the 2106 contract, Mr Al Mazmi had promised her an increase in her net pay. This was different to the evidence set out in the Claimant's witness statement (and in her diary). The memo to the ambassador does not refer to any promise to increase net pay but asks them to honour the gross pay in the 2016 contract. We do not accept that she was promised an increase in net pay.
43. As the Claimant had refused to sign the 2017 contract setting out her gross pay, she was provided with a new contract in early August which set out her net monthly pay (unchanged at £2,762) which the Claimant signed on 10<sup>th</sup> August 2017. It was her evidence that she was told that if she did not sign it, she should not "come back tomorrow". We accept that this might have been the case but there was no evidence to suggest that this was in any way related to her race or her sex. She was also provided with a letter (for mortgage purposes) which stated her gross pay was £43,908, (as had been originally set out in the unsigned 2017 contract).
44. The Claimant also complained that Ms Khashogji was paid twice what she was paid. She said Ms Khashogji was paid £3,500 in cash pcm, plus a further £3,000 through the PAYE system (or vice versa) and that "everyone knew this ". The Respondent had produced Ms Khashogji's contract which provides (1420) that in January 2017 her gross salary was £48,194.28, some £4,000 more than the Claimant. (There was no evidence before us to support the Claimant's assertion that Ms Khashogji was also paid an additional amount in cash.)
45. The Claimant says that after she had complained to the ambassador about the fact that Ms Khashogji was paid more than her, Ms Al-Qaiwani said to her that (i) the ambassador and Mr Al Mazmi would not do anything about her pay and (ii) "Lina is paid more than you because she is Saudi and you are Bosnian. You will never get paid like her because Saudi and Emirati nationals are always paid more." It was the Claimant's evidence that Ms Al-Qaiwani said that she (Ms Al-Qaiwani) then told Mr Al Mazmi that this was discrimination and he responded to the effect that he did not care and to let the Claimant resign. The statement by Ms Al-Qaiwani is pleaded as an act of harassment related to sex and race and in cross examination the Claimant said that Ms Al-Qaiwani deliberately said this to humiliate her.
46. The Claimant believes that the failure to increase her pay was an act of direct race discrimination because she is Bosnian, and that from August 2017 onwards she was paid less than Ms Khashogji because of her Bosnian race. When asked the basis of that belief the Claimant said that this was because the Respondent had reduced her contractual pay, breached her contract and because they had told her that she would not be paid as much as Ms Khashogji. As we have said there was no reduction in net pay, just a grossing up error, so the Claimant is clearly mistaken as to that. As to the latter, the Claimant's case is that Ms Khashogji was doing the same, or

materially the same work as her, and that she was paid less than Ms Khashogji because she is Bosnian. In support of that is the (alleged) statement by Ms Al-Qaiwani.

47. In his witness statement Mr Al-Mazmi says that Ms Khashogji was paid more than the Claimant because she had a more senior role than the Claimant, and the recruitment market was different when she was recruited, that Dr Khashogji's experience and qualification were better – she had a doctorate –and she had the benefit of a relocation package. Mr Al-Mazmi says that he doubts that Ms Al-Qaiwani would have told the Claimant that Dr Khashogji was paid more than her because she was Saudi, as it was not true.
48. Ms Alamedi said that she understood that Ms Khashogji was more senior than either herself or the Claimant. She told the Tribunal that Ms Khashogji “completely understood the culture and subtle politics and differences of etiquette between Saudi Arabia, the UAE and their neighbours. On such matters she was an expert, and many senior managers sought her counsel.”
49. Ms Alamedi, who is Lebanese, was paid slightly less than the Claimant.
50. Although we have not heard directly from Ms Al-Qaiwani we doubt that she told the Claimant this. Ms Al-Qaiwani was not a diplomat and was not responsible for, or involved in, the setting of salaries. If she did say this, it can only have been her perception. In any event any claim that the Respondent discriminated against the Claimant in respect of her pay, or that this statement by Ms Al-Qaiwani was an act of harassment related to sex and or race is considerably out of time. Ms Khashogji left the Respondent in June or July 2018. Ms Al-Qaiwani was made redundant in March 2020, before the Claimant herself was made redundant. The claims are weak, and we do not consider it is just and equitable to extend time in respect of those complaints.
51. As we have said the Claimant was unusually concerned with what her job title was. When she was recruited, she was provided with a business card which identified her as “Executive Manager Information and Resources.” However, Media Researcher is a corporate grade within the embassy which equates to a particular salary band. That is why Ms Alemadi, the Claimant and Ms Khashogji all had the same job title even though their jobs were not identical. In 2017 when she complained to the Ambassador about her salary (see above) the Claimant complained about the job title in her contract, asking that it be changed to Government and Public Relations Specialist or Senior Media Researcher, which she said better reflected her duties. However, this does not seem to have elicited any reply from the Respondent.
52. Demotion and change in job title July 2019. It is the Claimant's case that on 3 July 2019 she was telephoned by the deputy head of the Embassy, Ms Alotaiba, who offered her a new role with the title of Public Engagement and Events Manager. This would involve having responsibility for organising Embassy events including its National Day celebrations.

53. In the Claimant's particulars of claim (25) the Claimant says that "*Although there would be no pay increase, the Claimant honestly and reasonably regarded this as a promotion and an increase in her status, and so agreed after ascertaining that her present duties would be taken away. Shortly afterwards Mr Alabdooli, congratulated the Claimant and confirmed that he would instruct HR to change her job title accordingly.*"
54. However, in the extract from the Claimant's diary (1144) (to which the Claimant cross refers in her witness statement) the Claimant says that she was told in terms that this was a promotion to a definitive role, that she would be the only person organising events and that they would talk about a salary increase at a later stage. The Respondent accepts that Ms Alotaiba did suggest to the Claimant that she might be suitable for a new role that the Respondent was thinking of creating, but it was not a promotion and it was not a formal offer- just that, if the Claimant was interested, Ms Alotaiba would take it forward to be authorised. That account is inherently more likely than the Claimant's inconsistent account.
55. The Claimant complains that a week later, on 10 July 2019, during a meeting with Mr Al-Mazmi to discuss the organisation of the National Day events the Claimant asked if she could use her new title of "Public Engagement and Events Manager". She says that Mr Al-Mazmi then shouted at her saying "*no, no no no! what title? do you need a title to do this job?*" and "*look at this woman she thinks she can get a title just like that, I am the one who decides who gets what title from the Ministry. .... You women are headache. If you think you need a title to do this job just leave the files and leave. Go!, leave the office.*" The Claimant then said to him if the new job was not on the table then she could not take on any additional duties and would stay in her old job. Thereafter she did not get involved in the organisation of the National day celebrations,
56. Mr Al Mazmi (in his witness statement) denies this account. He accepts he told the Claimant that she should not use her title until it had been properly approved. All new jobs and promotions had to be recommended locally and approved (or refused) by the UAE government. He says that when he pointed this out to the Claimant, she became disrespectful, continued to argue and that as result he had to ask her to leave so the meeting could proceed. He denied saying "you women are headache" or any of the comments that the Claimant refers to. He says he did not say that he was the one who decided what titles could be used as that was not true. However he did report her to HR for disrespectful behaviour.
57. Although we have not heard from Mr Al Mazmi in person, the Tribunal does not accept the Claimant's account of the conversation. If the Claimant had in fact been offered and accepted a definitive promotion by the Deputy Head as she contends, we find it most unlikely that she would not, after the altercation with Mr Al Mazmi, have gone back to Ms Alotaiba, to ask her to put Mr Al Mazmi right. She was, as we have said, unusually concerned with job titles. Even on the Claimant's own case she did not do this. She cannot

reasonably have understood that her new role was effective immediately following the phone call with Ms Alotaiba, and before anything was in writing.

58. Nor do we accept that Mr Al Mazmi said to the Claimant that “you women are headache”. It may seem surprising that we have preferred the evidence of Mr Al Mazmi, who was not present, to the evidence of the Claimant. However, we have observed during the hearing that the Claimant often recounts events in a way that does not reflect reality. We did not consider her to be wholly credible, not because she was deliberately telling untruths, but because she has a tendency to perceive things in a way which is most favourable to herself. We have no doubt, having heard from Ms Alamedi, that the Claimant could be disrespectful when roused, hence Mr Al Mazmi’s direction that she should get a warning for disrespectful behaviour.
59. After the meeting Mr Al Mazmi gave an instruction that the Claimant should be issued with a warning for her behaviour at the meeting, but the warning was never issued. The evidence around this on both sides has been confused.
60. In her amended particulars of claim (50) that Claimant says that Mr Gaber told her that she “was now on a final written warning for not taking the job and for acting disrespectfully”. The Respondent, in its pleadings says that this was a first written warning but not a final written warning. Mr Al Mazmi says it was not for “not taking the job”, as the Claimant alleged, as at that stage the job had not been authorised.
61. A warning, dated 11 July 2019, said to be a final warning and signed by Mr Al Mazmi appears in the bundle. It relates to “repeated breaches of applicable rules and guidelines (ii) dealing and communicating in a way that is not appropriate with Embassy officials and (iii) continuing to complain about your job title and salary.”
62. However in her witness statement – para 86 (and in cross examination) the Claimant now says that no warning was issued. It was the Claimant’s evidence that Mr Gaber (HR) told her that he had been instructed to give her a warning, but that Mr Gaber had asked Mr Al Mazmi to discuss it with the ambassador first. She says that the Ambassador did not approve the warning, that the Ambassador subsequently spoke to her, and the warning was never issued. It is her case that the Ambassador then telephoned her to ask if she still wanted the role, but she said she did not, and nothing more was done. We accept therefore that no warning was formally issued.
63. March 2020. It is the Claimant’s case that during a routine meeting with the Ambassador and the Deputy Head of Mission, Ms Alotaiba, the Claimant was asked how long she had been working for the Bosnian embassy. She explained that she never had, saying that sometimes she helped with social events in a voluntary capacity because she was originally from Bosnia. She says the Ambassador then asked “but why are you here? You are not an Arab. What is your interest?”. The Claimant said she gave a lengthy explanation, and the subject was changed.

64. This exchange is denied in the Grounds of Resistance but, in the absence of any evidence from the Ambassador, we accept that these exchanges occurred.

The Claimant's dismissal.

65. In 2020 the Embassy in the UK had been required Respondent in the United Arab Emirates to make budget cuts. On 1 January 2020 the Respondent had made two (male) drivers redundant. One was British Sudanese and the other was British Egyptian. Two further staff had been made redundant in March 2020 including Dr Al-Qaiwani, whose title was Political Researcher, and who is Emirati.
66. On 27<sup>th</sup> June 2020 Mr Al-Mazmi was told he had to make more significant budget cuts by 30<sup>th</sup> June 2020. He selected 13 staff to be made redundant from different departments. This represented 25% of all local staff employed. Five staff were female and eight were male. 10 were British (including the Claimant) while one was French, one was Italian, and one was Iraqi. Some were of Arab heritage, and some were not. The staff being made redundant were spread across all the departments including drivers, hospitality workers, accountants and researchers. The Claimant (as a media researcher) was selected, as was Ms AL Jaddou, who is Iraqi and was a PA /Economy researcher. Ms Nejwati, a political researcher (British/Syrian) and Mr Hassane, an economic researcher British/Moroccan) were not selected.
67. On 30 June 2020 the Claimant was called to a meeting with Mr Al Mazmi. She was informed that, because of the economic crisis caused by covid19, the embassy had to cut the budget and that she was now redundant, effective immediately. A termination letter (990) dated the same day was given to the Claimant. The bare explanation was that the embassy had been forced to carry out an immediate restructure and downsizing; that her role had been identified as being at risk of redundancy; that there was no suitable alternative employment and it had not been possible to carry out a proper consultation process.
68. The Claimant subsequently called Ms Alotaiba. Ms Alotaiba told the Claimant that she had objected to the Claimant's selection for redundancy and had tried to argue in the Claimant's favour, but that Mr Al Mazmi preferred to keep Ms Alamedi because she spoke Arabic.
69. The Claimant appealed on 7<sup>th</sup> July. (1006). The grounds of appeal were that there had been no consultation process, and the selection criteria were not explained, but there was no reference to discrimination.
70. The Respondent provided a response by letter dated 14<sup>th</sup> July (1012) signed by Mr Alabdooli. The letter is long, but short on detail. It refers to the need to make budget cuts. It states that the Claimant's job was 50% social media, 20% dealing with emails, 20% other admin work and 10% website. The cost cutting decision had removed 50% of her role. Her work covering social media and the website would be transferred to the UAE and that the rest of

her role was to be covered by more junior staff in the embassy. There is no mention of any warnings or any need to speak Arabic.

71. The Claimant's role has not been replaced. Ms Alamedi has taken over the Claimant's task of responding to emails sent to the info mailbox. Her social media and twitter responsibilities have been transferred to the UAE.
72. In his witness statement Mr Al Mazmi says that there was a diminished need for work in the media team because some of the major research work could be centralised and brought back to the UAE. He says that while the head of the media department, Mr Alabdooli, did not wish to reduce his staff further (having in 2018 lost Dr Khashoggi who had not been replaced) Mr Al Mazmi chose Ms Alamedi because she was fluent in Arabic and because the Claimant had received a written warning in July 2019 and had been late on 23 occasions.
73. While the first reason accords with what the Claimant herself had been told by Ms Alotaibi, there is no evidence that Mr Al Mazmi considered the Claimant's attendance records before deciding that the Claimant was to be made redundant. There is no reference to this, or to any warnings, either in the dismissal letter or in the appeal letter. The issue, however, is not whether or not the selection of the Claimant was fair but whether it was discriminatory.

#### The law

74. Time limits Section 123 of the Equality Act 2010 provides that, subject to extensions to allow for early conciliation, complaints of discrimination may not be brought after the end of –  
  
“(a) the period of three months starting with the date of the act to which the complaint relates, or  
(b) such other period as the Tribunal thinks just and equitable.
75. Section 123(3) provides that, for the purposes of section 123, conduct extending over a period is to be treated as done at the end of the period.
76. In considering whether or not to exercise its discretion to allow the claim to proceed out of time the Tribunal has to consider all the circumstances, the onus being on the Claimant to convince the Tribunal that it is just and equitable to extend the time (*Robertson-v-Bexley Community Centre [2003] IRLR 434*). The important issue is the balance of prejudice and hardship, and the possibility of a fair trial. In this context the length of, and reasons for, the delay will always be relevant. In *Adeji v University Hospitals Birmingham NHS Foundation trust 2021 EWCA Civ 23* the Court of Appeal said that the best approach in considering the just and equitable extension was to “assess all the factors in the particular case which it considered relevant to whether it is just and equitable to extend time including in particular the length of, and the reasons for, the delay.”

Discrimination and harassment

77. Section 39 of the Equality Act 2010 prohibits an employer discriminating against its employees by dismissing them or subjecting them to any other detriment. Section 40 prohibits an employer from harassing its employees.

78. Section 13 defines direct discrimination as follows:-

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

Race and sex are protected characteristics.

79. Section 13 focuses on “less favourable” treatment. A claimant must compare his or her treatment with that of another actual or hypothetical person who does not share the same protected characteristic. In determining whether the employee has been treated less favourably than another, section 23 of the Equality Act provides that “on a comparison of cases for the purposes of section 13... there must be no material difference between the circumstances relating to each case.” It is not necessary for all the circumstances to be the same provided that the circumstances are materially similar. In other words for the comparison to be valid like must be compared with like.

80. However (as was noted by Lord Scott in *Shamoon v Chief Constable of the Royal Ulster Constabulary* 2003 ICR 337, HL) the fact that there is a material difference does not prevent the ‘comparator’ having some evidential value for the claimant capable of supporting the requisite inference of discrimination, though the evidential value will be weakened by material differences in circumstances. Such a comparator “may, in conjunction with other material, justify the tribunal in drawing the inference that the claimant was treated less favourably than she would have been treated if she had been the article 7 comparator.”

81. Section 40 prohibits an employer from harassing its employees. Section 26 defines harassment as follows:

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

((4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

82. Not every adverse comment or conduct may constitute violation of a person's dignity etc. Tribunals are warned not to encourage a culture of hypersensitivity by imposing liability on every unfortunate phrase



*(Richmond Pharmacology v Dhaliwal)* or to cheapen the significance of the meaning of the words used in the statute (i.e. intimidating, hostile, degrading etc.) which are an important control to prevent trivial acts causing minor upset being caught in the concept of harassment. Being upset is far from attracting the epithets required to constitute harassment. It is not enough for an individual to feel uncomfortable to be said to have had their dignity violated or the necessary environment created. (*Grant v Land Registry* 2011 IRLR 748). Even if there is conduct which is sufficient to attract the necessary epithets, the conduct must still be related to the protected characteristic. Although isolated acts may be regarded as harassment, they must reach a degree of seriousness before doing so. Context is all important.

83. Proving and finding discrimination is always difficult because it involves making a finding about a person's state of mind and why they have acted in a certain way towards another, in circumstances where that person may not even be conscious of the underlying reason and will in any event be determined to explain their motives or reasons for what they have done in a way which does not involve discrimination.
84. The burden of proof is set out at Section 136. It is for the Claimant to prove fact from which the Tribunal could conclude in the absence of any other explanation that the Respondent has contravened the Equality Act. Once the claimant has shown these primary facts then the burden shifts to the Respondent, and discrimination is presumed unless the Respondent can show otherwise. At the first stage the claimant must prove "a *prima facie* case". However, as was said by the Court of Appeal in *Madarassy v Nomura International* 2007 ICR 867 and approved by the Supreme Court in *Hewage v Grampian Health Board* 2012 ICR 1054, ... "The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude that on the balance of probabilities the Respondent had committed and act of unlawful discrimination.'"
85. It is however not necessary in every case for the tribunal to specifically identify a two-stage process. There was nothing wrong in principle in the tribunal focusing on the issue of the reason why. As the Employment Appeal Tribunal pointed out in *Laing v Manchester City Council* 2006 IRLR 748 "If the tribunal acts on the principle that the burden of proof may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever.
86. An action that is complained of must be either direct discrimination or harassment, but it cannot be both. Equally such an action cannot be both harassment and victimisation. It must be one or the other. (Section 212). This is because the definition of detriment excludes conduct which amounts to harassment,

### Submissions

87. The Tribunal had lengthy submissions in writing from Mr Davies on behalf of the Respondent, largely related to the facts. The Claimant spoke for some time but, despite our repeated guidance, tended to focus on matters which had been struck out or which were otherwise not related to the issues which we had to decide. She refers to the difficult circumstances of her childhood, and how she has overcome many obstacles to achieve what she has achieved. We do not doubt that, and it is a credit to her. She also says, which we do not accept, that since 2015 she had become a target, that there had been a campaign of harassment against her and that the diplomats were ganging up together to get rid of her. The Respondent had forced her to sign an employment contract in 2017 which caused her to see her GP. The Respondent had broken her contract when it reneged on the job offer made by Ms Alotaiba.

### Conclusions

88. The only discrete act that is in time is the Claimant's dismissal. If the conclusion is that the dismissal was not an act of discrimination, then there are no acts which are in time even if the earlier acts can be considered to be part of a continuing course of conduct. For that reason (despite it being chronologically the last act complained of) we start with the dismissal.
89. It is clear that the decision to dismiss the Claimant, (and the others who were dismissed at the same time as her), was unfair. There was no consultation and no real explanation as to the selection process. If the Respondent had not had the benefit of state immunity at the time, the Claimant would have won a claim for unfair dismissal. However this was not a case of unfair dismissal.
90. The issue was whether (i) the dismissal was an act of direct discrimination because the Claimant was Bosnian, or not Arab or (ii) an act of harassment related to the Claimant's race and/or sex. (It is not pleaded as an act of direct sex discrimination.)
91. Was the dismissal an act of direct race discrimination? The Claimant relies on Ms Alamedi, Mr Youseef Hassane, and Mr Sulafa Najwati as actual comparators, none of whom were made redundant and all of whom are of Arabic origin. She submits that she was chosen and Ms Alamedi was not because the Claimant is not Arabic or is Bosnian.
92. As we set out above 17 staff had been made redundant in the first half of 2020. Ms Al-Qaiwani, who headed the Claimant's department for a while and is herself Emirati was made redundant in March 2020, 3 months before the Claimant.
93. We have examined the list of staff who were made redundant. Of the 17 staff redundant in 2017, 13 (including the Claimant) were British. Most however were of Arab origin. In evidence the Claimant accepted all the staff made redundant in June 2020, aside from herself and one other were of Arab origin. They included staff who were of Moroccan, Syrian Jordanian

origin. The Claimant has focused on three comparators who were retained, but looking at the whole picture it does not appear that staff who were of Arab origin fared any better in the redundancy exercise than those who were not. Staff of Asian or European origin were retained. It is apparent that amongst the staff being made redundant there were a wide variety of races and nationalities. In March 2020 Mr Al Mazmi had selected Ms Al Qaiwani, who had previously been the Claimant's acting head of Department for redundancy. Ms Al-Qaiwani is Emirati.

94. The Claimant relies on the statement by Ms Alotaiba to support her case that her selection for redundancy was influenced by her race. However, a decision that an individual should be retained because she spoke Arabic is different to making that decision because someone is Arabic or of Arabic origin, provided that speaking Arabic is a genuine advantage in the performance of the role. We accept that speaking Arabic was an advantage in the media department and we accept that this was at least a significant part of the reason that Ms Alamedi was retained, and the Claimant was not.
95. As we have said, at the time the Claimant was dismissed a decision was taken to dismiss 13 people. 4 people had been made redundant earlier in the year. In total 25% of the total staff of the Embassy were dismissed. Rightly or wrongly the Embassy had concluded that they could do with fewer local staff. We accept Mr Al Mazmi's evidence that he sought redundancies from all departments – that much is clear from the list of those who were in fact made redundant. In the Media department the choice was between the Claimant and Ms Alamedi. Ms Alamedi spoke Arabic. The Claimant did not. In his untested witness statement Mr Al Mazmi says that the Claimant had also been late on 23 occasions and had been given a warning. As to the lateness we have seen no evidence that the Claimant was late on 23 occasions, and we do not accept it. As to the warning, while the Claimant was never formally given the warning, we accept that on the balance of probabilities Mr Al Mazmi would have been influenced by the recent altercation he had had with the Claimant, and his instruction that she be given a warning.
96. As we have said, the process by which the Claimant was dismissed was clearly unfair. However if it was unfair to the Claimant, it was also unfair to the other 12 individuals who were made redundant in June 2020. All were equally badly treated. He did not consult with any of them. The peremptory approach was not confined just to the Claimant. It follows that we cannot infer any discriminatory motive from the unreasonableness of the way in which the redundancy was handled.
97. Given the above evidence Claimant has not shown a prima facie case from which we could conclude that her selection for redundancy was influenced by her nationality or race.
98. Was the Claimant's dismissal harassment related to sex or race? A claim for discrimination requires a comparison with an actual or a hypothetical comparator who does not have the relevant protected characteristic. A claim

for harassment on the other hand requires no such comparison; but the act must be related to the relevant protected characteristic. A dismissal can be an act of harassment (*Urso v Department for Work and Pensions 2017 IRLR 304 EAT*).

99. While it is no doubt humiliating to be made redundant, we do not find that the decision to select the Claimant (and not Ms Alamedi) was related either to her race or to her sex. It is obvious that both were female. The Claimant says that a greater proportion of women than men were made redundant. Of 42 local male staff, 11 were dismissed, whereas of 12 local female staff 7 were dismissed. We cannot draw any conclusions from this bare statistic without understanding more about how those not in the Claimant's department were selected and there has been no evidence about that.
100. For the reasons we have set out above we do not conclude that the Claimant's selection for redundancy related to her race.
101. The Claimant's claim that her dismissal was an act of unlawful discrimination or harassment fails and is dismissed.

#### The remaining claims

102. Time. It follows that all the remaining acts are out of time unless the Tribunal concludes that it would be just and equitable to allow the claims to proceed. It is for the Claimant to establish grounds for why it is just and equitable to extend time. The Tribunal has a wide discretion but there is no presumption that the Tribunal should exercise its discretion to extend time. (*Robertson v Bexley Community Centre 2003 IRLR 434 CA*.)
103. We do not consider that the Claimant has established grounds for the remaining claims to proceed out of time.
104. However, for completeness and because we have heard all the evidence, we record the following findings.
105. The complaints that are closest in time to the dismissal are the allegations, alleged to amount to harassment related to sex and/or race, that on 2<sup>nd</sup> March 2020 (i) someone (unidentified) at the Embassy misinformed the Ambassador that the Claimant had worked at the Bosnian embassy (which was untrue) and (ii) that the Ambassador expressed puzzlement as to why the Claimant worked in the embassy when she was not an Arab. (See paras 7.1.6 and 7.1.7 above.)
106. As to (i) even if the Claimant could identify who had misinformed the Ambassador it is hard to see how that could amount to an act which amounted to harassment in the sense of violating the Claimant's dignity or attracting any of the other adjectives set out in the definition. There is nothing inherently wrong with having worked at another Embassy.
107. As to (ii), the Respondent submits that it is implausible, given the number of non-Arab staff working at the Embassy that the Ambassador would have said something so ignorant. However, as we have not heard from the Ambassador (or been provided with any reason as to his non attendance)

to contradict the Claimant's account, we accept that it was said. However, even on the Claimant's account the context appears to be "what is your interest". In the Claimant's diary she refers to feeling "very uncomfortable". We do not consider that this single comment, which made the Claimant feel uncomfortable, is sufficiently serious to amount to harassment related to race. The Claimant made no complaint about it at the time and did not relay the conversation to her colleague Ms Alamedi. Even had it been in time, that claim would have failed.

108. As to the events of July 2019, we do not accept that the Claimant was demoted. While a new role was suggested to her, it needed to be authorised from the UAE and the Claimant was never formally appointed to it. In any event, even if she had been appointed, this was not a promotion. It was the Claimant who withdrew her interest in the role after the altercation with Mr Al Mazmi on 3 July. On her own evidence the Ambassador rang her and asked if she was still interested in the role, and she said that she was not.
109. We also do not accept that Mr Al Mazmi made derogatory comments about the Claimant as a woman as set out above. While he did say that she could not use her new title, this had nothing to do with her race or sex. It was because the new job had not yet been authorised by the UAE.
110. The Claimant accepts that she was not in fact issued with a warning. The issue at paragraph 7.1.5 falls away.
111. The remaining issues relate to the alleged salary reduction and her complaint that she was paid less than Ms Khashogji because of her race. They relate to matters that took place in 2017 and are considerably out of time. Ms Khashogji left the Embassy in 2018. Ms Al-Qaiwani was made redundant in March 2020. In any event they are not made out.
112. As we set out above in our findings of fact, we could not conclude or infer that the Claimant was paid less than her comparator because of her Bosnian heritage. She was paid more than Ms Alamedi, who is of Arabic origin. We prefer the evidence of Ms Alamedi that it was recognized within the embassy that Ms Khashogji had a more senior role than either herself or the Claimant, and that she had a doctorate, which the Respondent regarded as valuable, and for the reasons identified by Mr Al Mazmi in his statement.
113. Failure to provide a statement of employment particulars. Section 1 of Employment Rights Act 1996 requires an employer to provide an employee with a statement of employment particulars. When the Claimant began work with the Respondent section 1 required those particulars to be provided within 2 months of the start of employment. Those particulars must include the title of the job that the worker is employed to do or a brief description of the work for which they are employed. The Respondent did not do this when the Claimant was first employed.
114. However, the Claimant was issued with a contract in English in 2016 and in subsequent years. They set out her job title as media researcher. The

Claimant says that they are wrong, and she was not a “Media Researcher”. However she signed that contract, and subsequent contracts in 2017 and 2019. It therefore reflects the terms agreed between the parties and it is not now open to her to challenge her title, or to state that the wrong job title was included in her contract. In any event “media researcher” is not an obviously inappropriate title for an individual with the duties described at paragraph 26 above 115. All the claims are dismissed.

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Employment Judge Spencer  
5<sup>th</sup> June 2023.

JUDGMENT SENT TO THE PARTIES ON

05/06/2023

FOR THE TRIBUNAL OFFICE