



EMPLOYMENT TRIBUNALS

Claimant: Mrs B Peters

Respondent: Kensington Caffè Ltd

Heard at: London Central (in person)

On: 6-8 June 2023

Before: Employment Judge Woodhead

Ms L Jones

Mr P Sacher

Representation

For the Claimant: Litigant in person

For the Respondent: Mr Nazarian (manager at the Respondent) and Mr Dziabenka

JUDGMENT

It is the unanimous judgment of the Tribunal that the Claimant's claim of direct race discrimination is not well-founded and is dismissed.

REASONS

THE ISSUES

1. This was a claim arising from the termination of the Claimant's employment. The Claimant was employed by the Respondent from 23 August 2022 until 27 August 2022 as a Chef de Partie. The Respondent runs a chain of what they describe as premium restaurants. She was dismissed by Mr Sklyrov who is Head Chef and responsible for a number of the Respondent's restaurants.
2. The issues to be determined were agreed with the parties at a case management hearing on 6 February 2023. At the start of the hearing, the Tribunal checked that there were no changes and the parties confirmed that there were not. The issues are attached as an appendix to this judgment.

3. At that case management hearing the claim was listed for a full merits hearing to be heard in person on 6-8 June 2023 to determine liability and remedy.
4. The Claimant says that her dismissal was because of her race and she is Black British.
5. The Respondent denies race discrimination and at the Case Management Hearing was permitted to add to its response that the Claimant was dismissed by Mr Sklyrov when it became clear that the Claimant's skills and her expectations about work demands were unsuited to the role.

THE HEARING

6. On the first day of the hearing, Tuesday 6 June 2023, the Claimant was not in attendance in person, she joined via cloud video platform which had been sent to the parties in the eventuality that an at that time unidentified witness for the Respondent would need to give evidence from overseas. It transpired at the hearing that the witness who the Respondent thought might need to give evidence from overseas was a Ms N Gurung. The Respondent confirmed that it had not been able to make contact with Ms Gurung (who we accept had left the Respondent's employment to return to Nepal following a bereavement). On this basis and because she confirmed that she was willing to and could get to the Tribunal without difficulty, we asked the Claimant to attend the hearing in person. She travelled in while we were reading the papers.
7. The Claimant confirmed that she had not prepared a witness statement and had not exchanged any such statement with the Respondent (which had sent her four typed witness statements before the hearing as directed). We explored this with the Claimant and she said that she had not understood this requirement from the case management orders. The case management orders record:

12. The Claimant and the Respondent must prepare witness statements for use at the hearing. Everybody who is going to be a witness at the hearing, including the Claimant, needs a witness statement.
8. We find this to be clear as to the requirements on the Claimant. In further discussion of this with the Claimant she said that, even had she prepared a witness statement, it would have said no more than what she had included in her claim form submitted to the Tribunal. On that basis it was agreed in the interests of the overriding objective that the Claimant's witness statement would be taken to be the details included in 8.2 of her claim form [7].
9. The parties had agreed a bundle of relevant documents running to 134 pages. During the hearing the Claimant asked to refer to an audio recording. It transpired that the recording was inadmissible as relating to without prejudice discussions. The Claimant also sought to refer to an email, which she had not located and a WhatsApp message/call record which she had

not disclosed and which she did not have available at the hearing for the Tribunal to consider. She did not apply for time to obtain the documents and, in any event, they did not appear from what she said to be material to the case.

10. As the parties were not legally represented, we explained the Tribunal process to them and what would be required of them at each stage. We recapped this during the hearing for the parties and checked during the hearing if they had any questions or needed more time.
11. We then took remainder of the morning of the first day to read the papers. The parties returned at 13:30 (as referenced above, from this point on all parties being in person), discussed next steps and a broad timetable for the hearing. We then heard the Claimant's evidence which finished at 16:04.
12. On Wednesday 7 June 2023 we heard evidence from the Respondent's witnesses in the following order and the Claimant cross examined each witness:
 - Mr A Dziabenka - General Manager of Leto Caffè
 - Mr P Bartczak - Sous Chef
 - Mr A Sklyarov - Head Chef
 - Ms M Doe - Location Manager
13. The Respondent's evidence concluded at 15:50 and it was agreed with both parties the Respondent would return the next day with evidence relating to potential comparators in the case and that this would be adduced as evidence by Mr Dziabenka. The parties were also asked to prepare their written or oral submissions.
14. On Thursday 8 June 2023 we were provided with a second bundle of 18 pages (Bundle B) with details of the other comparators. The Claimant was given time to review the bundle and it was sworn into evidence by Mr Dziabenka. He was asked open questions by Mr Nazarian, the Claimant cross examined him on the evidence and we also asked questions.
15. The parties then made oral submissions until 12 :34. We asked the parties to come back at 13 :34 when we explained that we needed to reserve our decision.
16. We spent the remainder of Thursday 8 June 2023 deliberating.
17. During the hearing we took breaks as needed and made clear that the parties could ask for breaks. Neither party nor any witnesses needed adjustments. During breaks witnesses were warned that they could not speak about case while on oath. Parties were given guidance on what required at each stage including re how to cross examine and re-examine and were given the opportunity to ask questions.

FINDINGS OF FACT

18. Having considered all the evidence, we find the following facts on a balance of probabilities.
19. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.
20. As made clear above, the Claimant was employed by the Respondent from 23 August 2022 until 27 August 2022 as a Chef de Partie. The Respondent runs a chain of what they describe as premium restaurants. She was dismissed by Mr Sklyrov who is Head Chef and responsible for a number of the Respondent's restaurants.
21. In light of its brevity, we repeat the Claimant's grounds of complaint (which also constituted her evidence in chief to the Tribunal). For the avoidance of doubt, in the Claimant's grounds of complaint, Nishma is Ms N Gurung who we refer to above and who the Respondent had hoped to call as a witness to give evidence from overseas (most likely Nepal), Peter is Mr P Bartczak (Sous Chef), Anton is Mr Sklyarov (Head Chef):

My first day to work for Leto cafe started on the 23rd of August. All seem well on the first day as I worked with Peter the assistant head chef.

Day 2, was the lady Nishma. I notice she commands me about rudely but I had to still watch and the next day was the same. I complained to Peter the assistant head chef that this lady talks to me rudely but he said he would address it but did not. Same day all was Okay when Peter worked with myself and Nishma and finished his shift. Nishma fell the customers bread on the floor and picked it up and still used that same bread from the floor to make the customers food, Nishma picked her nose and don't wash her hands and when orders come she just goes making the food without washing her hands. And when I asked if she is OK she says yes.

Nishma went into the bin to bring a ticket and asked why I didn't ask Peter questions. I said Peter allowed me to make the food and would correct me where I am wrong. And Nishma carried on talking that I was asking her questions regarding different bread to much. I replied I am here to learn the menu and I must ask questions. That's because the previous day she told me not to ask her any questions. And if I am telling to say please as she commands me about, that because we are from different culture she doesn't need to say please. I told her please don't talk to me in that rude manner and she cried on the phone to Anton the Head and who didn't didn't investigate and just terminated my employment because of my colour. If I were a colour like Nishma, I would have been given the chance to explain what happened but Nishma did mention that because of our different cultural backgrounds she couldn't say please when ordering me about. And after she cried to Anton and I was dismissed without no

reason or investigation or hearing my side of the matter. I have been discriminated against because of my colour if I were a different colour I would have been treated differently or at least given the chance to explain and Nishma who is in charge of the kitchen has said that because we are from different culture and Nishma was the one who make the phone call to Anton and I immediately received a phone call from Anton that my employment is terminated.

22. Chef de Partie is the same as Chef. The chain of command with respect to the Claimant as a new Chef was that Mr Sklyrov was her ultimate manager as Head Chef, below him was Mr Bartczak as Sous Chef and when neither of them were in the kitchen the Claimant was managed by another Chef (Ms Gurung) who worked for the Respondent for between 6 and 10 months ending in September 2022 when she returned to her home country of Nepal following the death of her father around the time of the events in question in this claim. Given her longer service Ms Gurung was more experienced in the Respondent's menu and other ways of working at the Respondent's restaurants and so was more senior than the Claimant.
23. We accept that the Respondent has a diverse workforce employing people from a range of nationalities and ethnic backgrounds. In terms of the witnesses, we do not recall Mr Dziabenka telling his us his race or ethnicity; Mr Sklyarov told us that he was born in Russia and at the age of 17 move to Greece where he began his career in hospitality as an entry level chef; Ms Doe described herself as mixed race Black-Filipino. Ms Doe also described Ms Gurung as Nepali and "Brown-Asian" and Mr Sklyarov as White Eastern European.
24. The Claimant was not issued with a contract of employment or with a staff handbook because her employment lasted for less than a week. Mr Dziabenka explained (ws 17) "*The signed contract of employment should be provided within 1 month. As the Claimant was only employed within the business for 5 days, she did not reach these milestones and was not issued with these documents*". Had she remained employed for longer she would have been issued with a contract including the following terms (included in a template provided in the Tribunal bundle (59 – 62) together with a copy of a L'Eto Staff Handbook (63 – 79). We accept that had she been employed for longer, then the Claimant would have had a written contract that would have included the following terms:

Place of Work

2.1 Your normal place of work is at L'ETO, 174 Westbourne Grove, London, England, W11 2RW. However, you will be expected to undertake such travel as it is necessary to fulfill your job to the satisfaction of Kensington Caffè Ltd. or L'ETO affiliated companies.

2.2 You may be required to work at or transfer to another United Kingdom location according to the needs of the business. This means that, without notice and at total discretion, you may be sent to different locations and are expected to work at different locations of different group companies.

4. Trial Period

4.1 *When you start your employment with Kensington Caffè Ltd. you will be subject to a Trial Period, which expected length from your Start Date is set out in The Staff Handbook.*

4.2 *This Trial Period is subject to extension by Kensington Caffè Ltd. at any time up to 7 days before its end date. An extension on the Trial Period may not be for more than the original length of the Trial Period. Should you receive such notification and be in disagreement, such notification shall be deemed as written notice of termination of your employment contract in accordance with the provisions for notice set out below.*

4.3 *During your Trial Period certain employee rights (e.g. in respect of Notice and Holiday Entitlement) are not the same as for a full employee. Where there are differences, these are set out in this document within the relevant Clause.*

4.4 *On completion of your Trial Period you will become a full employee of Kensington Caffè Ltd.*

[...]

7.2 *Kensington Caffè Ltd. reserves the right to terminate your employment:*

- During your Trial Period (or any extension to it): no notice or disciplinary procedure is applied.*
- Once the Trial Period has ended: a minimum period of two weeks or any statutory requirement of notice (whichever is the greater), subject to disciplinary procedure.*

7.3 *By mutual agreement, these notice periods may be waived.*

7.4 *Kensington Caffè Ltd. reserves the right to require you not to carry out your duties or attend your place of work during the period of notice.*

14. Disciplinary rules and procedures

14.1 *These are outlined in The Staff Handbook. The Staff Handbook does not form part of your contract of employment.*

25. Had her employment continued the handbook that she would have been issued includes the following provisions (Mr Sklyarov w/s27):

3. EQUAL OPPORTUNITIES POLICY

3.1 *The Company is committed to a policy of equal opportunity and aims to ensure that no job applicant or employee receives less favourable treatment on grounds of race, age, sex, sexual orientation, colour, ethnic or national origin, marital status, disability or religion/belief. We also believe that all employees have a right to work in an environment, which is free from discrimination, harassment, victimisation or bullying.*

3.2 *Breaches of our Equal Opportunities policy and practice will be regarded as a disciplinary offence and could lead to disciplinary action. The Company will therefore take disciplinary action against any staff whose actions are unsatisfactory in these aspects.*

Discrimination

3.3 *Discrimination is when unfair treatment is given to a person or group of people on grounds of their race, religion, gender, sexual orientation, marital status, age, disability, colour or national and ethnic origins. The Company is opposed to all forms of discrimination. All full-time and part-time employees and job applicants (actual or prospective) will be treated fairly and selection for employment, promotion, training or any other benefit will be on the basis of aptitude and ability.*

Harassment

3.4 *The European Commission Code of Practice defines Sexual Harassment as “unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of men and women at work”. This can include physical conduct, verbal conduct and non-verbal or written conduct.*

3.5 *It can involve a single incident and may be directed toward one or more individuals. In addition to sexual harassment, harassment can also be on the basis of:*

- *Race*
- *Age*
- *Disability*
- *Health*
- *Social class*
- *Membership or non-membership of a trade union*
- *Religion*
- *Sexual preference*
- *National origin*
- *Employment status*

3.6 *Employees who believe they have been discriminated against or harassed may take up their complaint through the normal grievance procedure. All complaints will be treated seriously and confidentially by the Company and will be fully examined. Depending on the nature of the complaint there are a number of possible outcomes:*

- *If a complaint is upheld, action will be taken to resolve the situation immediately and will be primarily aimed at preventing the repetition of offensive behaviour.*
- *If following the investigation, it has been proven that harassment has taken place, then the individual(s) involved will be subject to the disciplinary procedure.*
- *If an individual makes a malicious or false allegation, he or she could face disciplinary action.*

3.7 *The Company will not tolerate harassment or discrimination of employees, in whatever form. Every individual deserves to be treated the same, it is important that you understand your personal responsibility in achieving this and that you support the Company's effort into putting this into practice.*

4. CODE OF CONDUCT

4.1 *In any organisation it is necessary to have established standards of discipline, attendance, performance and conduct to protect the well-being of both the employee and the employer.*

4.2 *Standards of discipline and conduct have been established under three headings covering minor offences, serious offences and gross misconduct. These lists are not exhaustive or exclusive and offences of a similar nature will be dealt with in the same way.*

Minor Offences – these include the following:

- *Wasting time*
- *Lateness*
- *Improper dress and untidy appearance*
- *Minor cases of bad negligent work*
- *Speaking any other languages but English front of the customers while performing your duties (unless a customer has specifically requested you to speak that language)*

Serious Offences – these include the following:

- *Absence from work without permission or valid explanation*
- *Repetition of minor offences*

- *Persistent bad time keeping*
- *Rudeness to customers*

Gross Misconduct – this covers any action by an employee done deliberately, recklessly or carelessly, which could injure, damage or interfere with the running of the Company’s business or the property of the Company or other employees or customers. Without prejudice to any other rights the Company may have, the Company shall have the right to terminate your employment without any notice or payment in lieu of notice if you commit an act of gross misconduct.

Gross Misconduct includes, but is not limited to:-

- 1. Deliberate damage to the Company’s or colleagues’ property.*
- 2. Deliberate falsification of office records.*
- 3. Drunkenness or being under the influence of drugs.*
- 4. Fighting in Company premises (or disorderly or indecent behavior).*
- 5. Theft of property or money belonging to customers or the Company or to any employee of the Company (including borrowing money from the till).*
- 6. Failure to observe hygiene, safety or fire regulations or any willfully negligent or reckless behavior likely to cause injury to others or likely to cause damage to Company property.*
- 7. Willful refusal to obey instructions and/or Company rules or gross insubordination.*
- 8. Failure to safeguard and account for monies of the Company for which you will be liable.*
- 9. Any conduct which, in the opinion of the Company, may have the effect of bringing the integrity and reputation of the Company into disrepute.*
- 10. Disclosure to any person (subject to the provisions of the Public Interests Disclosure Act) of any information as to the practices, business, dealings or affairs of the Company or of any associated Company or with regard to any of its customers or clients or as to any matters which are secret or confidential and which may come to your knowledge by reason of your employment.*
- 11. Dishonesty.*
- 12. Harassment or discriminatory behavior towards customers or colleagues.*
- 13. Removal of any records of the Company without authorisation.*

14. Undertaking work other than for the Company during your normal working hours or undertaking any work competing or potentially competing with the Company's business or against its interests generally.

15. Contravention of any licensing laws or failure to comply with any Company regulations relating to licensing.

16. Conviction of a work-related offence.

17. Failure to comply with any policies, procedures or rules regarding cash handling and security.

18. Delay in opening and/or early closing of a restaurant, without a substantial and good reason and authority from the Managing Director or General Manager.

B. Disciplinary Procedure

1. This section lays down the procedure applying to all full employees (i.e. once their period has ended), which will normally be followed except in cases of gross misconduct when immediate action may be taken to suspend or dismiss, in order to ensure consistent and fair treatment for all employees. During trial period, immediate action may be taken dismiss without following this disciplinary procedure.

[...]

26. It goes on to set out a disciplinary procedure:

TRIAL PERIOD

At the start of the employment you will be subject to initial trial period detailed below depending on your job title:

Position Probation period

[...]

Chef 1 month

[...]

11.1 *The Company reserves the right to terminate your employment:*

- *During your Trial Period (or any extension to it): no notice or disciplinary procedure is applied.*

- *Once the Trial Period has ended: a minimum period of two weeks or any statutory requirement of notice (whichever is the greater), subject to disciplinary procedure.*

TERMINATION OF EMPLOYMENT

17.1 *Except as otherwise provided under your Contract, your employment may be terminated by mutual consent or by you giving the Company the period of notice specified for your role in your Contract.*

17.2 *During your trial period, the Company reserves the right to terminate your employment without notice or disciplinary procedure. Once your trial period has ended and you are a full employee, the Company reserves the right to terminate your employment with at least two weeks notice, subject to disciplinary procedure.*

17.3 *The Company reserves the right to make a payment in lieu of notice at its discretion or to require that You remain away from work during the notice period ('garden leave'). You may be required to pay compensation in lieu of notice should You decide not to serve the notice period.*

27. We accept Mr Dziabenka's evidence (w/s 22) that:

- "Section 5 of the handbook [68–69] is the disciplinary & grievance procedure;
- the grievance procedure is an internal process for current employees.
- A full procedure was not required in the case of the Claimant who was short serving and in her probation period;
- The procedure was not applied to others whose employment was terminated in the probation period and that had the grievance procedure been applied to the Claimant's complaints the result would have been the same.

28. The contract of employment that would have been issued makes clear that the Claimant was required to work at the Respondent's Notting Hill branch and it became clear from her cross-examination of the Respondent's witness that she wanted really to be based in the Brompton Road Branch. However, the Respondent had the right to require chefs under their contracts to work at other branches.

23 August 2022 – first day of employment

29. On 23 August 2023, the first day of her employment, at the Notting Hill branch the Claimant was working in the restaurant with Mr Bartczak. Ms Gurung was not in the kitchen. Mr Bartczak noted that the Claimant's communication style was "polite, and heavy with pleasantries and niceties". It is clear that the Claimant is someone who likes to be asked politely and she likes people to use the word 'please'. However, in the Respondent's kitchens a more "*efficient, direct, and intense communication style is used*" (Bartczak w/s15). It is not seen as rudeness if individuals do not use the word 'please' and we accept the Respondent's evidence that this is not specific to L'ETO and is common across the premium hospitality industry, of which the Respondent sees itself as part.

30. On her first day the Claimant asked Mr Bartczak several times to say 'please' when he asked her for things or set her tasks. Each time he

explained to her that he was speaking in a normal, professional way for a kitchen and she stopped challenging him on that.

24 August 2022

31. On this day the Claimant was working in the Notting Hill branch with Ms Gurung and she felt that Ms Gurung was giving her instructions in a rude way because she was not saying 'please' (claim form).

25 August 2022

32. On this day the Claimant was again working in the Notting Hill branch with Ms Gurung (CF) and she again felt that Ms Gurung was giving her instructions in a rude way because she was not saying please (claim form).

26 August 2022

33. On the third day of the Claimant's employment both Ms Gurung and Mr Bartczak were in the Notting Hill kitchen. We accept Mr Bartczak's evidence that Ms Gurung had recently suffered a bereavement in her family with the death of her father in Nepal, but that she was still at work because she needed to keep working and wanted to keep herself occupied and that she was being professional with her head down, focused on work.
34. We also accept his unchallenged evidence that he delicately explained the situation to the Claimant and suggested that, where possible, she should come to him rather than Ms Gurung with questions or requests for help and that the Claimant seemed to accept this and at the beginning of the shift she followed his suggestion.
35. We also accept that, as the shift went on, Mr Bartczak noticed that the Claimant was increasingly trying to engage with Ms Gurung and that from what he could hear this was both about work and attempting general conversation. He noticed Ms Gurung was ignoring her, but the Claimant kept bombarding Ms Gurung with questions.
36. We accept Mr Bartczak's evidence that at some point in the day he became aware that Ms Gurung was crying in the changing room and that he went to check on her and that she complained that the Claimant was not leaving her alone and that, at that time, she needed some space. In her claim the Claimant accepts that Ms Gurung the previous day had asked her not to ask her questions.
37. We also accept that Mr Bartczak then returned to the kitchen and spoke with the Claimant privately at which point the Claimant complained that Ms Gurung was not speaking to her and that when she did speak to her about food orders and preparation she was being rude and not saying please. From the Claimant's comments Mr Bartczak understood that the Claimant was complaining about Ms Gurung not saying please on previous shifts too.
38. Mr Bartczak once again explained Ms Gurung's personal situation and suggested that someone in that position might prefer space and not want to chat. With respect to Ms Gurung's communication style, he reminded the

Claimant about their previous conversation on 23 August 2023 when she had asked him to say please and told the Claimant again that the communication style in the kitchen is direct and efficient, and that this is not personal or rudeness, it is just professional and industry standard and she should not expect that the word 'please' follows every request. We accept that this was the normal practice in that working environment. We also accept that in this way Mr Bartczak, particularly given the nature of the working environment and the way in which the concern had been raised by the Claimant, was an appropriate way of dealing with the Claimant's complaint. We also find that on the balance of probabilities and after hearing the Claimant's responses to cross examination on the point that Ms Gurung spoke in the same way to the Claimant as she did to her other work colleagues, including her managers.

39. It is clear that the Claimant is capable of asserting her views and we accept Mr Bartczak's evidence that he tried to keep the Claimant's focus on him and away from Ms Gurung by working with the Claimant and that the Claimant continued to speak about not liking the way Ms Gurung was speaking to her. We accept his unchallenged evidence that the Claimant told him that nobody is above her except God and that she then spoke to him at length about religion.
40. Mr Bartczak finished his shift at 5.30pm. Ms Gurung and the Claimant's shifts ended later and it was for them to close the restaurant at 6:30pm. After Mr Bartczak left the restaurant a dispute arose again between the Claimant and Ms Gurung. We accept the Respondent's evidence in cross-examination that, as indicated by the fact that the Case Management Orders of February 2023 record, it anticipated that it might need a witness to give evidence remotely via cloud video platform. We also accept that it had hoped to call Ms Gurung as a witness to the claim but following her leaving the Respondent's employment and the Respondent's understanding that she had returned to Nepal, the Respondent was not able to get in touch with her, despite trying, to secure her agreement to give evidence at the hearing.
41. A kitchen porter was also in the kitchen with the Claimant and Ms Gurung at the time and we accept the Respondent's explanation for not calling him as he does not have good English and, whilst he understood that there had been a dispute between the Claimant and Ms Gurung, he did not understand what it was about (Ms Doe w/s 18). The Claimant did not seek to call him as a witness and we accept that the Respondent made clear only that he could be made available to give evidence – not that the Respondent had decided to call him as a witness for their case (p16).
42. The Claimant's position, as set out in her Claim form (which also served as her witness statement), is that:

"[Ms Gurung] carried on talking that I was asking her questions regarding different bread to much. I replied I am here to learn the menu and I must ask questions. That's because the previous day she told me not to ask her any questions. And if I am telling to say please as she commands me about, that because we are from different culture she doesn't need to say please. I told her please don't talk to me in that rude manner and she cried on the phone

to Anton the Head and who didn't didn't investigate and just terminated my employment because of my colour.”

43. Mr Sklyarov gave evidence which remained consistent under cross-examination that (w/s 15/16):

On 26th August, Bridgette [the Claimant] was on shift at Notting Hill with both Piotr [Mr Bartczak] and Nishma [Ms Gurung]. At some point towards the end of the day, I received a call from Nishma. She was emotional and crying and apologising to me about crying. I could understand that she was in a bad way. I was shocked. I had never heard of Nishma breaking down emotionally at work; she is known at Leto for being very calm and collected.

I tried to calm Nishma down and asked her to explain what was happening. Even though she did not have the best English conversation skills, I understood from her that she was having an issue with Bridgette. She said that during their shift that day Bridgette had constantly accused her of being “the rudest person”. She gave an example of asking Bridgette many times to put bread on the grill, but Bridgette was ignoring this request. According to Nishma, when she asked Bridgette why, Bridgette told her it was because she wasn’t saying please, and was the rudest person, and didn’t have manners. Nishma did not mention Bridgette’s race or anything about her ‘background’.

44. On the balance of probabilities we accept Mr Sklyarov’s account of this call. We also accept the Respondent’s consistent witness evidence in respect of Ms Gurung summarised by him as follows:

[...] Despite her limited English language skills, she was a very capable and dependable chef at Leto, first at the King’s Road location and then Notting Hill. I did not work alongside Nishma very often, but there was never any issue with her work or attitude. She made a great impression and had a reputation for being kind and pleasant, which is all I ever saw from her. She left the business in September 2022 to spend time in Nepal following a family bereavement.

45. Ms Doe for the Respondent gave evidence that (w/s 17):

Not only did I think that Nishma would not have racially insulted Bridgette in that way, but I also had serious doubts over whether Nishma would have been able to formulate the claimed sentence in English. Nishma’s professional kitchen communication was fine, but she would struggle in general English conversation. This strengthened my view that, if anything, there had been a misunderstanding.

46. In cross-examination Ms Doe clarified she thought Ms Gurung could not have formulated the sentence “*that because we are from different cultures she doesn’t need to say please*”. Ms Doe said that this was because Ms Gurung did not have the language skills to put together that phrase. In her witness statement Ms Doe added: “*Nishma’s professional kitchen communication was fine, but she would struggle in general English conversation. This strengthened my view that, if anything, there had been a*

misunderstanding". We do not find that this is a complex sentence but accept the evidence of the Respondent that Ms Gurung did not say this to the Claimant.

47. If we are wrong and Ms Gurung did in fact say "*that because we are from different cultures she doesn't need to say please*" we nonetheless do not find that it would have been an indication that Ms Gurung was racially prejudiced towards the Claimant. This is because we both do not consider that referencing cultural backgrounds in this way indicates that Ms Gurung was prejudiced towards the Claimant because of her colour or race and because we find that Ms Gurung, on the balance of probabilities, spoke the same way to everyone.
48. We accept that it was common practice at the Respondent for people in the kitchen, including Ms Gurung, not to say please and to be direct in their communication style – reflective of the working environment. It consequently follows that to the extent that Mr Sklyarov was influenced by what Ms Gurung told him and, if she had in fact used this sentence, it would not have tainted Mr Sklyarov's decision with unlawful discrimination of the nature alleged.
49. It is clear on the Claimant's own case that she did not think that Ms Gurung was polite enough to her in the requests that she made of the Claimant and did not say please as the Claimant expected. As referenced above, we accept Mr Bartczak's evidence that she had made the same comment to him. We therefore find that the Claimant had been complaining as alleged to Ms Gurung that Ms Gurung was rude and not saying 'please' enough and we find on the balance of probabilities that the Claimant was not doing as Ms Gurung asked when Ms Gurung made requests of her without saying 'please'. We accept that in that work environment that was not rudeness, it was a matter of practicality.
50. Having received the call from Ms Gurung, Mr Sklyarov did carry out some limited investigation. He called Mr Bartczek whose opinion he trusted as one of his two Sous Chefs. Mr Bartczek confirmed to Mr Sklyarov (Sklyarov W/S 18-19):
 - that there had been difficulties between the Claimant and Ms Gurung through the shift;
 - that it was about the Claimant being offended by Ms Gurung's communication style and language, leading to the Claimant claiming that Ms Gurung was being rude to her;
 - that the Claimant had repeatedly demanded that Ms Gurung use the word please;
 - that Ms Gurung had been in tears earlier in the shift as a result (prior to her tearful call to Mr Sklyarov);
 - that on her first shift on 23 August 2023 the Claimant had also raised a similar point with Mr Bartczek but that she had stopped complaining after he

explained that it was a necessary facet of communicating in a busy kitchen and was not rudeness;

- that the Claimant was basically OK from a skills perspective but nothing extraordinary.

51. We accept that Mr Sklyarov asked this last point because he was balancing the benefits of retaining the Claimant against the challenges of her being a disruptive influence in the workforce dynamic in the kitchen. We accept his evidence that (and, in the interests of clarity, we repeat here (Sklyarov w/s 20)):

[the Claimant's] performance during week 1 would have been irrelevant if there had not been the conflict issue: there have been plenty of probationers who start slowly and then blossom. But the same cannot be said about conflicts: in my experience if somebody is having conflicts right at the start, it is a red flag, and it is going to get worse. So, I wanted to understand whether Bridgette was showing any star quality that might potentially justify excusing her behaviour and working on it at Leto.

52. It would have been preferable for Mr Sklyarov to have then called the Claimant to get her perspective, but he did not do so. We suspect that Ms Gurung's upset might have been more pronounced because of her sad personal circumstance.

53. Whilst not best practice we accept that Mr Sklyarov trusted the staff that he already knew and that he genuinely felt that he had sufficient information to make a decision, taking into account that the Claimant had been employed for so little time and the negative impact that he understood that she was having on employee relations. She had already complained about lack of politeness not only to Ms Gurung but also to Mr Bartczek. We accept his evidence that this was, as he described it, a huge red flag. We also take into account that the Respondent's policies for a more formal process do not apply to individuals who have short service, such as the Claimant, and who are in the probation period. We accept the Respondent's evidence, as we will describe, that other employees had been dismissed (including one by Mr Sklyarov) in recent years with similarly short service, without process and without giving a reason. As Mr Sklyarov described in his witness statement (para 24) *"it came down to the fact that the C's attitude and expectations were unrealistic for the Respondent, and her skill level did not justify making an exception or allowance for that"*.

54. Having made this decision, what Mr Sklyarov did was very swift and not best practice in that at 18:00 (29) that evening he sent a WhatsApp message to the Claimant as follows, terminating her employment:

Hello again Bridgette. I am sorry for writing to you again. But I just received a call from Nishma and she was crying over the phone saying that you had some arguments with her and named her as a rude person. And brought me example of a bread when she is not saying the word "please". I don't want to be rude as well as we have a nice chat with you. But Nishma she is basically in charge of the

kitchen in NH and she is the nicest person I have ever seen. Yes her manners (way of expressing might not be that "sweet" but this doesn't mean that she is rude. Please you shouldn't take it personally in the end we are in the kitchen and all of us we have stressful moments I am not saying that we should not be polite to each other but if she is not saying please to every single thing it doesn't mean that she is rude.

I am sorry to say it Bridgette with all my respect to you but I think you are not the right person we need at the moment.

Company of course will pay you all your working days. Really sorry to tell you that but I think it will be better for both sides.

Thank you and I am wishing you good luck in future.

Any questions you have you can let me know no problems.

Thank you

55. The Claimant then called Mr Sklyarov a short time later and disputed Ms Gurung's version of events. We accept Mr Sklyarov's evidence that the Claimant did not during that call assert that Ms Gurung:
- had made any reference to their respective cultural backgrounds or allegations of racism;
 - was not maintaining hygiene standards (as referenced in the Claimant's claim form).
56. We accept that the Claimant, in that call, simply said that Ms Gurung had been rude to her and had exaggerated being upset. Mr Sklyarov then made clear that he had sought to verify the position with his Sous Chef, Mr Bartzcek. The Claimant then asked Mr Sklyarov for the Respondent's grievance procedure and we accept his explanation for not providing it to her in that he felt entitled to terminate her employment in the circumstances and that under their policies there was nothing more that he needed to do.
57. On 26 August 2022 at 19:17 Mr Sklyarov sent the Claimant an email as follows (30):

Subject: Termination of employment

Dear Bridgette Peters,

This notice is to formally inform you that your employment with Leto company will end as of 27/08/2022. You'll be paid until 26/08/2022. You'll also receive your p45 along with your payment in the beginning of September.

Thank you.

58. At 19:18 Mr Sklyarov sent a WhatsApp message to the Claimant saying:
Hi Bridgette. Just sent you an official email.
Thank you.
59. The Claimant replied to the WhatsApp message at 19:21 saying:
Good evening Anton, I was asking for your company grievance procedure. Please I will like to see to know what to do. Thank you
60. He decided not to give the Claimant the grievance procedure because at the point that she asked for it she was no longer an employee, and what she was asking for is an internal company document. We accept his evidence that ideally, he would have asked HR for guidance but their HR advisor had unexpectedly resigned earlier in the summer and the business had not yet replaced her.
61. The following day, Saturday 27 August 2022, at 10:22 the Claimant sent the following email to a central Respondent office email address (31):
Subject: From Anton
Good morning, below is the message from Anton. Please read where Anton is saying as well that Nishma expressing herself isn't sweet so what have I done wrong by telling someone to stop being rude to me.
62. Beneath this paragraph she repeated Mr Sklyarov's dismissal WhatsApp message. She did not make any allegation of discrimination in this email.#
63. Ms Doe was away on leave at this time. The Claimant made some attempts to call her while she was away. We do not know the date of her return but when she got back to work she was told of the Claimant's attempts to speak to her (Ms Doe w/s para 15/16/17).
64. Ms Doe returned the C's call and spoke with her. Ms Doe's recollection of that call was not clear but we conclude that the Claimant did tell Ms Doe at that point that the Claimant considered that Ms Gurung had referenced cultural backgrounds in explaining why she would not always say please to the Claimant and that the Claimant considered that, had she not been Black British, she would not have been dismissed. The Claimant in cross-examination of Mr Sklyarov put it to him that had she had the same ethnic or racial background as Ms Gurung then she would not have been dismissed. Mr Sklyarov denied that robustly.
65. We accept that Ms Doe did not believe that Ms Gurung would have made a racist comment to the Claimant.
66. Ms Doe provided the Claimant with the Respondent's back-office email address as well as her own email address. She suggested that she should raise any complaint with the Respondent's back-office team. We accept Ms Doe's evidence that a few days after speaking with the Claimant on the

phone, she called her to follow up and that the Claimant did not pick up her call.

67. On 6 September 2022 at 7:31 (33) the Claimant sent an email to Ms Doe as follows:

Subject: Discrimination

Unfair Dismissal because of my colour

Good Morning Mindy, I trust you are well. I have not been able to get back to you as this issue has been so depressing for me.

This email is to whom it may concern as you are the manager of the Nothing Hill Leto Cafe where I worked. And would deal with this matter or direct it to HR or the right person. I was employed as a Breakfast Chef, in the nothing hill branch.

My first day to work for Leto Cafe started on the 23rd of August. All seem well on the first day as I worked with Peter the assistant head Chef.

Day 2 , was the lady Nishma. I noticed she commands me about rudely but I had to still watch and the next day was the same. I complained to Peter the assistant head Chef that this lady talks to me rudely but he said he would address it but did not. Same day all was okay when Peter worked with myself and Nishma and finished his shift. Nishma fell the customers bread on the floor and picked it up and still used that same bread from the floor to make the customers food, Nishma picked her nose and don't wash her hands and when orders come she just goes making the food without washing her hands. And when I asked if she is ok she says yes.

*Nishma went into the bin to bring a ticket and asked why I didn't ask peter questions. I said Peter allowed me to make the food and would correct me where I am wrong. And Nishma carried on talking that I was asking her questions regarding different bread to much. I replied I am here to learn the menu and I must ask questions. That's because the previous day she told me not to ask her any questions. And if I am telling to say please as she commands me about, that because we are from different culture she doesn't need to say please. **That all Chefs do that.** I told her please don't talk to me in that rude manner and she cried on the phone to Anton the Head and who didn't didn't investigate and just terminated my employment because of my colour. If I were a colour like Nishma, I would have been given the chance to explain what happened but Nishma did mention that because of our different cultural backgrounds she couldn't say please when ordering me about. And after she cried to Anton and I was dismissed without no reason or investigation or hearing my side of the matter. I have been discriminated against because of my colour if I were a different colour I would have been treated differently or at least given the chance to explain.*

I am writing to request your companies Grievance procedures as I have asked this from Anton and Peter but no response. They ignore me and don't answer my calls. Please kindly

investigate and send me the companies grievance policy.

I look forward to hear from you soon.

Thank you

Bridgette Peters

Sent from my iPhone

68. The words "***That all Chefs do that***" (highlighted in bold for ease of reference by us but not highlighted in bold in the original email) were omitted from the Claim Form submitted by the Claimant in a paragraph that was otherwise very similar. The only other difference is that in the Claim form, after the words "given the chance to explain" she adds "*and Nishma who is in charge of the kitchen has said that because we are from different culture and Nishma was the one who make the phone call to Anton and I immediately received a phone call from Anton that my employment is terminated*". The claim form does not make the request for the grievance policy.
69. In cross-examination of the Claimant the Respondent focused on the fact that the words "*that all Chefs do that*" are missing from the Claim form and put it to the Claimant that she had not included those words in her claim because their inclusion added context to the Claimant's report of Ms Gurung's explanation that it was the workplace culture not to say please with every request made of a colleague. We find that on a natural reading of the Claimant's email she was attempting to quote Ms Gurung and that in her email to Ms Doe (but not in her Claim Form) she was quoting Ms Gurung as having used the words "*That all Chefs do that*". We did not find the Claimant's explanation for the omission of these words in her claim form at all persuasive. She seemed to say that it was not necessary to include this detail in the claim to the Tribunal (having previously confirmed in evidence that she had just cut and pasted her email to Ms Doe of 6 September into her claim form). Her submissions on this at the close of the hearing were equally unpersuasive and unclear.
70. On 21 September 2022 the Claimant sent two further emails (34 and 35) both of which included in their email trail her email of 6 September 2022:

Date: 21 September 2022 at 15:02:48 BST

To: Ms Doe

Subject: Wage slip

Dear Mindy, good afternoon. Please I am writing to request my wage slip for the period I worked for Leto Notting Hill.

Furthermore I didn't get a reply or response to my unfair dismissal discrimination email.

I look forward to hear from you

Thank you

Bridgette

Sent from my iPhone

From: Bridgette Peters

Date: 21 September 2022 at 17:19:26 BST

To: Info at the Respondent

Subject: Fwd: Discrimination

Good afternoon, this is the email I sent to Mindy. The manager where I worked.

71. Mr Dziabenka explained (ws 13) that he could not find any record of a response to either of these emails. He said this would have happened because their HR manager had unexpectedly left the business in mid-August 2022 and they had not yet replaced her. This unfortunately resulted in the Claimant's emails remaining unactioned. Ms Doe explained as follows in her witness statement and we accept this explanation:

20. I did not send Bridgette the grievance procedure that she requested. I spoke with Anton, Bridgette's manager, and his view was that the grievance procedure is an internal document for current employees which Bridgette would have received had she been employed for more than a few days. At this time, our HR [NAME REMOVED BY US] had resigned unexpectedly so there was nobody to ask to clarify this point. It was clear that Bridgette had not complained, or asked for the grievance procedure, prior to being dismissed.

21. I decided to stop communicating with Bridgette and did not respond to her 06.09.2022 email at all. Ultimately, she was kitchen-side team and Anton was her manager. It was clear she had a complaint against the business and – especially in the absence of an HR to take guidance from – I did not want to say or do anything that might prejudice the process.

22. Bridgette emailed me again on 21.09.2022, which is at page 34. She was asking for her wage slip for the days she worked at Leto. I had already addressed this on 29.08.2022, the day that I found out she had been let go. I did this by accessing and completing her new starter form, which is at pages 40–47. I completed this formality so that Bridgette would be added to payroll, be paid, and be issued a payslip for the days she had worked.

When I received her 21.09.2022 email I knew that she would receive what she was requesting in a few days in the next pay cycle. I chose not to respond to her email for the same reason as before.

72. The Respondent adduced evidence of five other employees which it said had been dismissed during probation periods. The initial documentation provided did not show whether the employees had been dismissed or resigned themselves but on 8 June 2023 the Respondent adduced further documentary evidence (in what we call bundle B amounting to 18 pages) sworn by Mr Dziabenka in addition to para 32 of his witness statement. We take that evidence to show the following:
73. Employee A/1 (p80 – 89 and B15):
- Passport Photo at p85 described by Mr Dziabenka in para 32 of his witness statement as White Eastern European. The passport indicated Albanian nationality
 - Role - Chef de Partie
 - start date 21 November 2022
 - end date 30 November 2022 p89
 - Employment length - 10 days
 - Dismissed during probation period by Mr Sklyarov who confirmed this in his evidence.
74. Employee B/2 (p90 – p100 (including email exchange with the employee at 99-100 and B3 & B16):
- Passport Photo at p95 described by Mr Dziabenka in para 32 of his witness statement as White British
 - Role – Barista
 - start 23 January 2023
 - end date 16 February 2023
 - Employment Length 25 days
 - Dismissed
75. Employee C/3 (p103 -113 and B6 & B17):
- Passport Photo at p108 described by Mr Dziabenka in para 32 of his witness statement as Brown Asian. The passport evidences that he had Afghan nationality
 - Role – Waiter

- start 25 July 2022
 - end date 6 August 2022
 - Employment Length 13 days
 - Dismissed
76. Employee D/4 (p114 – 125 and B9 & B18)
- Passport Photo at p119 described by Mr Dziabenka in para 32 of his witness statement as White Eastern European. The passport evidences that he was from Ukraine
 - Role – Waiter
 - start 20 January 2023
 - end date 25 January 2023
 - Employment Length 6 days
 - Dismissed (Mr M Andronache saying – but not giving evidence at the hearing that he dismissed this employee because “he had bad attitude issues”
77. Employee 5 (p 126 – 134, B6 (Ms L Badircea Operations Manager) and B17 (Ms Y Kjolsen – Head Accountant email)
- Passport Photo at p131 described by Mr Dziabenka in para 32 of his witness statement as Brown British
 - Role – Waiter
 - start 28 July 2022
 - end date 6 August 2022
 - Employment Length: 10 days
 - Dismissed
78. The Respondent’s case was that the Claimant was treated more favourably than these five other employees because in the Claimant’s case Mr Sklyarov did carry out some investigation into the circumstances. We find that the Claimant was not treated less favourably than these comparators and that the Respondent did take investigative steps that it had not done with others in respect of whom questions of their suitability for employment arose.

THE LAW

Direct Race Discrimination

79. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing him or by subjecting the employee to a detriment. This includes direct discrimination because of a protected characteristic as defined in section 13.
80. Section 13 of the Equality Act 2010 provides that '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'.
81. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.
82. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.
83. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.
84. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as she was.
85. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.
86. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's race. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

87. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd v Wong* [2005] EWCA Civ 142; [2005] IRLR 258 and we have followed those as well as the direction of the court of appeal in the *Madarassy* case. The decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.
88. The Court of Appeal in *Madarassy*, states:
'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 an unlawful act of discrimination.' (56)
89. It may be appropriate on occasion, for the tribunal to take into account the Respondent's explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (*Laing v Manchester City Council and others* [2006] IRLR 748; *Madarassy v Nomura International plc* [2007] IRLR 246, CA.) It may also be appropriate for the tribunal to go straight to the second stage, where for example the Respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).
90. In addition, there may be times, as noted in the cases of *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, where we are in a position to make positive findings on the evidence one way or the other and the burden of proof provisions are not particularly helpful. When we adopt such an approach, it is important that we remind ourselves not to fall into the error of looking only for the principal reason for the treatment, but instead ensure we properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.
91. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach *Qureshi v London Borough of Newham* [1991] IRLR 264, EAT. We must "see both the wood and the trees": *Fraser v University of Leicester* UKEAT/0155/13 at paragraph 79.
92. Our focus "must at all times be the question whether or not they can properly and fairly infer... discrimination.": *Laing v Manchester City Council*, EAT at paragraph 75.

ANALYSIS AND CONCLUSIONS

Direct race discrimination (Equality Act 2010 section 13)

93. It is not in dispute that the Respondent dismissed the Claimant and that it did so without following a disciplinary process. However, we do not find that

this amounted to less favourable treatment of the Claimant. We accept the Respondent's evidence, particularly with respect to the comparators that it pointed to, that the Claimant was treated in the same way that others of different skin colour and racial and ethnic backgrounds had been treated. We also accept that the Respondent did take investigative steps that it had not done with others and in respect of whom questions of their suitability for employment had arisen. We also consider that the actual comparators pointed to by the Respondent were not in a materially different situation to the Claimant. If we are wrong and the Claimant was treated less favourably than others who were not in a materially different situation to the Claimant we do not consider that the Claimant has shifted the burden of proof to the Respondent. We do not find that Ms Gurung's comment on culture (if we have got the fact wrong and she did make this comment to the Claimant), is evidence of discrimination and we are not persuaded by any of the Claimant's other assertions in that regard.

94. If the Claimant has shifted the burden of proof we find that the Respondent has nonetheless satisfied the second stage of the test in showing with cogent evidence that any less favourable treatment was "in no sense whatsoever" because of the protected characteristic. In particular we accept Mr Sklyarov's evidence that he did not know the Claimant's skin colour, race or ethnic origins at the time he took the decision to dismiss the Claimant and we accept that he had good reason to terminate the Claimant's employment (reasons which were entirely unrelated to her skin colour, race and ethnic origins). We accept Mr Sklyarov's explanation that the difficulties that had arisen between the Claimant and existing staff (staff who he knew) so early in her employment were a red flag and warranted the termination of the Claimant's employment in the circumstances (including the fact that the Claimant did not have the right to a fair dismissal under the Employment Rights Act 1996).
95. For these reasons the Claimant's claim is not well founded and is dismissed.

Employment Judge Woodhead

Date 8 June 2023

Sent to the parties on:

31/07/2023

For the Tribunals Office

Appendix
List of Issues

Direct race discrimination (Equality Act 2010 section 13)

1.1 The Claimant's racial group is Black British.

1.2 Did the Respondent dismiss the Claimant?

1.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

1.4 If so, was it because of race?

2. Remedy for discrimination or victimisation

2.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

2.2 What financial losses has the discrimination caused the Claimant?

2.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

2.4 If not, for what period of loss should the Claimant be compensated?

2.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

2.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

2.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

2.8 Should interest be awarded? How much?