EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000062/2022

Held in Glasgow on 24 – 28 July 2023

Employment Judge P O'Donnell
Tribunal Member R Taggart
Tribunal Member J Ward

Interpreters Ms D Veneziano [24 July 2023] and Ms Marshal [24 – 27 July 2023]

Mrs Mariana Nijiloveanu	**Claimant** **In Person**
Vigilant Security (Scotland) Limited	**Respondent** **Represented by:** **Mr T Muirhead -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Employment Tribunal is that:

1. The claims of direct discrimination, indirect discrimination and harassment relying on the protected characteristic of religion/belief are not well-founded and are hereby dismissed.

2. The claims of direct race and sex discrimination are not well-founded and are hereby dismissed.

3. The claim of wrongful dismissal (notice pay) is not well-founded and is hereby dismissed.

REASONS

Introduction

1. The claimant has brought the following complaints against the respondent as identified at a preliminary hearing held on 27 March 2023:

    a. Religion/belief discrimination.

        i. Direct discrimination – being made to wear a bracelet at the Eden Festival event.

        ii. Indirect discrimination - being made to wear a bracelet at the Eden Festival event.

        iii. Harassment – being told by a supervisor that she should wear the bracelet.

    b. Sex discrimination.

        i. Direct discrimination – men were given more work hours.

    c. Race discrimination.

        i. The claimant is a Romanian national.

        ii. Direct discrimination – not being given as much work as others.

    d. Wrongful dismissal (notice pay).

        i. The claimant asserts she is entitled to notice pay which was not paid.

2. It is worth noting that the bracelet which forms the focus of the religion/belief claims was described in the Note of the March preliminary hearing as “biometric”. However, the evidence heard at the final hearing was that the bracelet in question was not biometric but simply a plastic band that indicated the areas of the festival site which the wearer could access. Further, it was the wearing of the bracelet (rather than its nature) which went against the claimant’s beliefs.

3. The claimant had also brought a claim of unfair dismissal but this was dismissed at the March preliminary hearing as she did not have the two years' continuous service required for the Tribunal to hear such a claim. The claimant had sought to add a claim relating to holiday pay by way of amendment and this amendment was refused. The amendment application also included the claim for race discrimination which was allowed.

Case Management

4. An interpreter had been arranged for the final hearing as had been done for the March preliminary hearing. The interpreter was sworn in at the start of the hearing and the Tribunal dealt with any preliminary issues (other than the addition of one document to the joint bundle there were no issues) before retiring to read the claimant's witness statement. During that short break, the clerk informed the Tribunal that the interpreter had left the Tribunal building alleging that the claimant had spoken to her in a rude and aggressive manner, threatening to complain about the interpreter. The claimant denied behaving in this manner; she explained that she had said to the interpreter that the interpreter should have introduced herself to the claimant while parties were waiting in the hearing room for the hearing to start.

5. The Tribunal was not in a position to determine which version of events was correct. However, it was explained to the claimant that an interpreter was not attending the hearing to be the claimant's friend, support or adviser. The interpreter was in attendance to assist both parties and the Tribunal to ensure that there was clear communication. The claimant was warned about any future conduct, in particular that she should not engage in discussions with the interpreter beyond those necessary in the course of the hearing.

6. A new interpreter was sourced by the Tribunal administration and the hearing was able to proceed with only a short delay which did not prevent the hearing concluding in the time allotted.

7. During the course of Mr Muirhead's cross-examination of the claimant, he indicated that he was planning to ask questions about mitigation of loss. The Tribunal questioned why this was necessary given that the unfair dismissal

claim had been dismissed and none of the discrimination claims relate to termination of the claimant's employment or any other matter seeking compensation for loss of earnings to which the duty to mitigate would apply. It was noted that there was a schedule of loss which included loss of earnings but this had been prepared before the March preliminary hearing when the unfair dismissal claim was dismissed and not been updated to reflect that change. Mr Muirhead did not proceed to ask questions about mitigation in these circumstances.

8. The claimant then indicated that she did want to pursue a claim about loss of earnings. It was explained to her that none of the claims before the Tribunal were related to any action by the respondent which caused a loss of earnings and that she would need to make an application to amend to add such a claim. The Tribunal explained that the fact that she was making such an application very late in the proceedings (at the end of her evidence) would likely weigh against the application being granted. It was explained that it would also mean that the hearing would have to be delayed in order for the application to be dealt with and, if granted, the hearing would have to be postponed to allow the respondent time to address any new claim. The claimant did not pursue any application to amend.

Evidence

9. The Tribunal heard evidence from the following witnesses:

    a. The claimant.

    b. Blair Mason (BM) – an operations supervisor with the respondent.

    c. Greg Boyd (GB) – an operations supervisor with the respondent.

    d. Cory McGuigan (CM) – an operations supervisor with the respondent.

    e. Conor Grieve (CG) – an operations supervisor with the respondent.

10. CM and CG gave evidence remotely by way of Cloud Video Platform (CVP). In relation to CM this had been arranged in advance of the hearing. CG had been intended to attend the hearing in person but the hearing had progressed

faster than anticipated and so to avoid a delay while he travelled to the Tribunal office it was agreed (with no objection by the claimant) that he would give evidence remotely. The other witnesses gave evidence in person.

11. This was a case where it had been directed that evidence-in-chief was to be given by way of witness statements. After reading the claimant's statement, the Tribunal took the view that the statement was not adequate and that she should give oral evidence in order that she was given the opportunity to fully set out her case.

12. This is not intended as a criticism of the claimant but rather the Tribunal recognising that she was a party litigant who may not be aware of what a statement required and, further, was having to provide the statement in English when this was not her first language. The Tribunal considered that the Overriding Objective, particularly the requirement to ensure the parties were on an equal footing and dealt with fairly, required her to be given the opportunity to give oral evidence with the assistance of the interpreter. To balance any prejudice to the respondent arising from this, Mr Muirhead was given the opportunity to ask supplementary questions of the respondent's witnesses to address issues which arose from the claimant's oral evidence.

13. There was an agreed bundle of documents prepared by the parties. This ran to 231 pages and a reference to a page number below is a reference to a page in the bundle.

14. This was not a case where there was a significant dispute about the relevant facts. The broad sequence of events was consistent between the claimant and the respondent's witnesses with any dispute only arising in relation to some of the details. However, even where there was a dispute of fact then it was often not something that impacted on the Tribunal's decision. For example, there was a dispute between the claimant and CM as to whether the claimant, when attending the control room on or around 16 June 2022, threw a bag containing her uniform and badge on the floor (CM) or left it on a chair in the kitchen (claimant). The relevant fact, however, was that the claimant

left the bag behind when she left the control room, not the manner in which it was left.

15. The Tribunal considered that all witnesses were giving their honest recollection of events and were not seeking to mislead the Tribunal. However, for the following reasons, the Tribunal, for the most part, preferred the evidence of the respondent's witnesses where there was a dispute of relevant fact. There was one matter where the Tribunal preferred the claimant's evidence and that will be set out in the findings of fact below.

16. The first reason why the Tribunal preferred the respondent's witnesses was that the claimant was not willing to accept matters which might adversely affect her case despite evidence contradicting her assertion. For example, the claimant was taken, in cross-examination, to exchange of emails between her and BM on 31 May 2022 (pp69-79) regarding the shift rota for June 2022. It was put to her that she was not happy with the rota and did not like it. She denied that this was the case despite the fact that she used the words "which I do not like" in an email on 31 May 2022 at 7.43am (p76) to described how she felt about the rota.

17. The second reason why the Tribunal did not prefer the Claimant's evidence in any dispute is that her evidence at the hearing did not always accord with contemporaneous documents. For example, she stated in her evidence that she never received a response to her grievance email (p81-82) when, in fact, there was a grievance meeting held on 1 July 2022 (p92-98) and BM sent a letter on 7 July 2022 with an outcome to the meeting (p99).

18. The respondent's witnesses, on the other hand, gave evidence which was consistent with the contemporaneous documents. The Tribunal considered that their recollection of events was more reliable than that of the claimant.

Findings in fact

19. The Tribunal made the following relevant findings in fact.

20. The claimant is of Romanian national origins.

21. The claimant is an orthodox Christian. As part of her faith, she holds the belief that the accepting and wearing of a bracelet is a sign of the devil. She was taught this as a child by her family, in particular her parents, and has held this belief for all of her life. She understands that this belief stems from something said in the Bible but does not know the specific part of the Bible which relates to this.

22. The respondent is a business providing a range of security services such as door security, CCTV monitoring and the patrolling of client premises.

23. The claimant commenced employment with the respondent as a security officer on 18 January 2022. She was employed on a variable hours contract (pp61-67) which she signed electronically on 21 January 2022 (p67). The term of the contract relating to hours appears at p63 which states that the hours of work are variable to meet the operational needs of the business with no guarantee of any hours being provided in any given week.

24. The respondent has a group of employees on similar contracts who are used to cover the needs of the business. They also have employees on fixed hour contracts.

25. Employees on variable hours are provided with a roster of the shifts they are booked to work on a monthly basis. The respondent aims to issue these by the 12th of the preceding month but this is not always possible. The roster can change where shifts have to be filled at short notice due to other staff being off sick, taking holidays or leaving.

26. The shifts available to be filled in any given month will depend on the demand of clients (for example, there may be a one-off event such as the Eden Festival described below where security officers are required) as well as issues such as staff sickness, holidays or staff leaving. The allocation of variable hours staff will depend on their availability, experience, qualifications and flexibility (in relation to matters such as travel).

27. A copy of the rosters of the variable hours employees for January – June 2022 were produced at pp147-151. A summary of the total number of shifts worked by the claimant and each of the male employees was produced at pp152-157.

28. These documents show the following shifts were worked in each month. The Tribunal has identified the other employees (all of whom are male) by initials only as their names are not relevant to the issues to be determined.

    a. January 2022

        i. RH – 0

        ii. MW – 1

        iii. SZ (one of the named comparators for the race discrimination claim) – 2

        iv. LMcC – 2

        v. DH – 3

        vi. CT – 3

        vii. WS – 4

        viii. DG – 4

        ix. CB – 6

        x. CF – 6

        xi. RT – 8

        xii. Claimant – 12 (It is noted that she started part way through the month)

        xiii. AG – 13

        xiv. AJ – 14

        xv. JK – 17

        xvi. GT – 18

xvii. MV – 18

xviii. AD – 25

b. February 2022

i. CB – 2

ii. CT – 3

iii. EH – 4

iv. LMcC – 5

v. Claimant – 5 (It is noted that the claimant was out of the country from 5-17 February 2022 and not available for work)

vi. AJ – 6

vii. WS – 6

viii. RT – 7

ix. SZ – 12

x. MV – 12

xi. GT – 12

xii. AG – 13

xiii. JK – 13

xiv. AD – 22

c. March 2022

i. LMcC – 0

ii. AJ – 0

iii. CT – 3

iv. WS – 3

v. Claimant – 4

vi. SZ – 9

vii. RT – 9

viii. JK – 12

ix. MV – 12

x. GT – 17

d. April 2022

i. WS – 2

ii. LMcC – 2

iii. DB – 4 (This is one of the two named individuals in the race discrimination claim).

iv. RT – 4

v. KH – 5

vi. GF – 8

vii. MMcC – 8

viii. CT – 9

ix. RM – 10

x. JK – 11

xi. MV – 11

xii. AG – 12

xiii. SZ – 15

xiv. Claimant – 15

xv. GT – 21

xvi. AD – 23

e. May 2022

i. WS – 0

ii. RT – 0

iii. LMcC – 1

iv. CM – 8

v. MV – 8

vi. CT – 11

vii. KH – 12

viii. GF – 13

ix. JK – 14

x. AG – 16

xi. DB – 16

xii. RM – 19

xiii. SZ – 21

xiv. Claimant – 22

xv. AD – 30

f. June 2022 (up to 10 June 2022)

i. DH – 0

ii. WS – 0

iii. ST – 1

iv. BR – 2

v. AM – 2

vi. RM – 3

vii. CT – 3

viii. JK – 3

ix. GF – 6

x. SZ – 6

xi. AG – 7

xii. Claimant – 7

xiii. MV – 8

xiv. AD – 9

xv. DB – 9

29. During the course of her employment, the Claimant was working with two male colleagues on a shift. She could not recall the date of the shift or the names of male employees involved. These male employees stated that they were tired because this was the seventh shift in a row which they had worked. In that particular week, the claimant had worked only one shift.

30. On 30 May 2022, BM sent the claimant an email (p77) with an amended roster which included shifts at the Eden Festival (being held outside Dumfries) on 9-13 June 2022.

31. This email triggered an exchange of emails between the claimant and BM on 31 May 2022 as follows:

a. 7.43am – the claimant asks BM if he has amended the previous rota stating that she does not like this and prefers the previous shifts at a hotel (pp75-76).

b. 11am – BM responds explaining the reason for the change is that he needs SIA officers (this is a reference to a particular type of licence for people employed in the security business) at the Eden festival as well

as female officers due to the numbers due to attend the event and appreciates her assistance in staffing this event (p74).

c. 12.14pm – the claimant replies complaining that the company did not assist her when she needed help, making reference to the fact she had not been given a permanent contract when she asked for one. She states that as a casual employee she is not obliged to accept work. She also makes reference to costs which she says she incurred when the company sent her daughter (who also works for the respondent) for training (pp72-73).

d. 1.32pm – BM replies noting that he has already addressed the issues raised by the claimant. He explains that all he needs is confirmation that the claimant and her daughter will carry out the work on the roster. He states that the claimant has said she wants as much work as possible and he believes that he is providing this. He goes on to address the fact that there is not a permanent position available in Dumfries and notes that she turned down a permanent position in Edinburgh. He explains that she works according to the needs of the company and that she is correct that she can turn down work. He notes that he has asked for her help in staffing the Eden event twice and states that he will not ask a third time. He also addresses the issue about the training provided to the claimant's daughter but this is not relevant to the issues in determination in this so the Tribunal has not set out the details of this (pp70-71).

e. 1.49pm – the claimant replies accepting the shifts offered (p70).

f. 8.58pm – BM contacts the claimant in response to a recorded call made at 6.50am to the respondent's control room in which it was understood that she had resigned. BM asked the claimant to confirm her intentions as to her future employment with the respondent and gave her a 7 day cooling off period. He asks her to return her uniform if she does intend to resign.

32. The claimant continued to work with the respondent after 31 May 2022 and it was common ground that she did not resign on 31 May 2022.

33. On 10 June 2022, the claimant attended at the Eden Festival to work a shift. The respondent had been sub-contracted by another security company to provide staff to work at the event.

34. Everyone attending the festival, whether as staff or a member of the public, had to wear a bracelet to show that they were entitled to be on the festival site. These are plastic bracelets which are sealed when they are put on and have to be cut off with scissors. The bracelets are colour-coded to indicate which areas of the site an individual can access; members of the public can only access public areas whereas band members or support staff can enter backstage areas. Security staff had an access all area bracelet as they needed to be able to go to any area of the site as required.

35. The purpose of the bracelets is ensure safety and security of those attending the site and prevent people from entering areas where they should not be. It was not a decision of the respondent to use the bracelets; it was either the event organisers or the main security contractor (nothing turns on which of them it was) who imposed the requirement.

36. Prior to the event, the claimant had not expressed any issue with wearing a bracelet to anyone within the respondent's organisation. She had indicated that she was an orthodox Christian on her job application but given no more detail of her religious beliefs than that.

37. The claimant attended on 10 June 2022 and was advised of the requirement to wear a bracelet in order to enter the site and start work. She did not raise any issue with anyone, either a supervisor/manager in the respondent or anyone who worked for the main security contractor, that she had a religious objection to wearing the bracelet.

38. There was a dispute about whether the claimant actually wore the bracelet on 10 June 2022; the claimant said she did not and put it in her pocket; BM and GB considered that the claimant did wear the bracelet. The evidence of BM

and GB was not that they specifically recall seeing the bracelet on the claimant's wrist but more that she must have worn it because she would not have been able to access the site and enter secure areas if she did not wear it. The Tribunal prefers the claimant's specific recollection that she did not wear the bracelet on 10 June 2022.

39. On 11 June 2022, the claimant attended the festival site to begin her shift. As she was entering the site, she and the other employees of the respondent were asked by an employee of the main security contractor to show their bracelets. The claimant stated that her bracelet was in the pocket of her vest but then realised that she was wearing a different vest.

40. The security officer would not permit the claimant to enter the site without a bracelet. This led to an altercation between the claimant and this security officer. There was some dispute as to the precise details of this altercation; the claimant alleged that the security officer was aggressive towards her saying that she was not fit to be a security officer although she accepted that she also raised her voice; GB says that the security officer spoke to him alleging that it was the Claimant who was rude and aggressive. However, nothing turns on the precise details of the interaction between the claimant and the officer of the main security contractor.

41. What is relevant is that the claimant was required by the security officer to obtain a new bracelet before being allowed to enter the festival site. She went to a kiosk where bracelets were issued by event staff (again, these were not employees of the respondent) and a bracelet was put on her wrist by one of the event staff.

42. The claimant felt that the bracelet was too tight and went to the medical tent where one of the staff in the tent removed the bracelet with scissors.

43. The claimant approached GB who was one of the respondent's supervisors at the site to complain about the bracelet and the fact that it had been too tight. She did not explain to him that she had any religious objection to wearing the bracelet. He replied to her that it was a requirement to wear the bracelet in order to enter the site.

44. In response, the claimant stated that she was going to walk home rather than working her shift. GB asked her to wait and he would drive her home in the company van which he had been using to transport staff to and from the festival site.

45. The claimant did not return to the festival to work the remaining shifts which she had been rostered to work.

46. On or around 16 June 2022, the claimant attended the respondent's premises in Dumfries. These consist of an administration building and an operations building. The claimant went to the premises because she had had no contact from anyone at the respondent since 11 June. She attended with a bag containing her uniform and badge.

47. She went to the operations building where CM was on duty in the control room. The control room is a secure area where security officers monitor CCTV from client premises and take calls from staff or clients. It can be a very busy environment which can involve dealing with urgent matters. CM was the only supervisor on duty that day.

48. The claimant had attended without making any prior arrangement and was asked to wait in the kitchen in the operations building until CM was free to speak. The claimant waited for about half an hour when she saw a woman going into the control room. She entered behind this woman and spoke to CM. She complained about having to wait and CM explained that he was dealing with urgent matters. The claimant stated that she was "leaving". She then left the building leaving behind her the bag containing her uniform and badge. There was a dispute between CM and the claimant about the manner in which the bag was left but nothing turns on that.

49. On her way out of the building, the claimant met another female employee who asked her what was wrong and, when the claimant explained, this employee told her to put her grievance in writing.

50. As a result of what the claimant had said on 16 June as well as the fact that she had left her uniform and badge behind, CM was unsure if the claimant

had resigned. He therefore wrote to her by letter dated 17 June 2022 (p80) asking her to confirm in writing if she was resigning. The letter gave the claimant a cooling off period until 23 June 2022 and explained that if she did not reply to the letter then her absence would be treated as unauthorised. The claimant did not directly reply to that letter.

51. On 17 June 2022, the claimant sent an email setting out a grievance (pp81-82). The grievance related to the incident at the Eden Festival on 11 June 2022 with the claimant alleging that she was insulted and threatened by the security officer at the entrance to the site. She went on to complain that GB did not defend her or intervene on her behalf. The grievance states that she could not wear the bracelet but makes no reference to this being on religious grounds, simply making a reference to the bracelet being too tight. It goes on to say that she has been waiting to be notified of her shifts for the rest of June and that she went to the control room but that CM was too busy and would not deal with her.

52. The grievance was passed to BM to deal with and he met with the claimant on 1 July 2022. A minute of the meeting is at pp92-97. It was during this meeting that the claimant, for the first time, stated that the issue with wearing the bracelet related to her religion. At p94, the minute records an exchange between the claimant and BM in which he is asking why the claimant was unwilling to wear the bracelet. He asked a number of times and eventually the claimant stated that “in my opinion and my religion, I don’t have to wear it”. At a later point (p95), the claimant stated that she did not want to wear the bracelet for religious reasons. She did not, however, say more than that.

53. At the end of the meeting (p97), the minute records BM asking the claimant what she wanted as an outcome to the grievance. The claimant replied “nothing, I don’t need anything”. BM asks her to confirm that she does not need anything and the claimant replies that she did not need anything other than to continue with her work and hope this would not happen again.

54. As a result of what the claimant said at the meeting, BM considered that she did not want to proceed with the grievance and he wrote to her on 7 July 2022

(p99) setting out his understanding of the position, explaining that no further action would be taken. The letter is wrongly dated "7 June 2022" but it was not in dispute that it was sent in July. The claimant did not reply to this letter disputing that she had said she did not wish to proceed with the grievance.

55. The claimant has not been offered any further shifts with the respondent since June 2022.

Respondent's submissions

56. The respondent's agent produced written submissions and supplemented these orally.

57. In relation to the discrimination claims relating to religion/belief, the primary submission by Mr Muirhead was that the respondent was not liable for the actions of anyone who was not their employee. This was important because the requirement to wear the bracelet at the festival was a requirement imposed by the event organiser and not the respondent.

58. In respect of the direct discrimination claim, it was submitted that the claimant would have to prove that she was singled out by the respondent to wear the bracelet in circumstances where those who did not share her belief were not required to wear the bracelet. Mr Muirhead submitted that this was not supported by the evidence which showed that everyone had to wear the bracelet at the insistence of the event organiser (not the respondent) and the claimant did not tell the respondent at the time that wearing the bracelet offended her beliefs.

59. In relation to the indirect discrimination claim, it was accepted by the respondent that those who held the same particular belief as the claimant would be disadvantaged by the requirement to wear a bracelet. However, again, it is submitted that it was not the respondent who applied the PCP relating to the wearing of the bracelet.

60. Mr Muirhead goes on to submit that, even if there was an ostensible act of indirect discrimination by the respondent, the requirement to wear the bracelet was a proportionate means of achieving a legitimate aim. There were two

aims; to uphold the security requirements of a client; to uphold safety, security and crowd management at a large public event.

61. Turning to the harassment claim, it was submitted that it was not clear whether the allegation of harassment related to the actions of the respondent's staff or the actions of the event staff.

62. Mr Muirhead submitted that there was nothing to suggest that being required to wear the bracelet (which was said to be a reasonable request in the circumstances) would have the effect described by the claimant given that she did not raise her religious objections to wearing the bracelet at any time on the day.

63. In relation to the claim for sex discrimination, Mr Muirhead made reference to the evidence of BM as to how shifts were allocated as well as the rotas produced in the bundle and the summary of the shifts worked. It was noted that the claimant's case was based solely on her discussion with two male employees about how many shifts they worked.

64. It was submitted that the Tribunal should prefer the evidence of the respondent's witnesses that the claimant was less flexible than others in the work she would take on.

65. Mr Muirhead submitted that the evidence showed that the number of shifts worked by the claimant were broadly consistent and, in some cases, higher than her male colleagues throughout her employment. Where it was less then there was an explanation such as the claimant's holiday in February 2022.

66. On this basis, it was submitted that there was no basis to the claim of sex discrimination.

67. Similar submissions were made in respect of the race discrimination claim and the Tribunal does not intend to repeat matters for the sake of brevity.

68. The claimant did make reference to two specific individuals in respect of her race discrimination claim who were said to have worked more shifts than the

claimant throughout her employment. It was submitted that this was not borne out by the evidence.

69. Finally, in relation to the wrongful dismissal claim, it was submitted that the claimant accepted at the hearing in March 2023 that she was not dismissed and confirmed in her further particulars that she had not resigned. In these circumstances, there was no termination of the claimant's employment and so she was not entitled to notice pay.

70. To the extent that it might be said that the claimant was dismissed by not being provided with further shifts then it was submitted that the terms of the contract does not oblige the respondent to offer her any shifts.

Claimant's submissions

71. The claimant also produced written submissions and supplemented these orally.

72. A significant proportion of the claimant's written submissions set out the legal provisions on which she relies and the Tribunal have noted these but do not propose to set these out in detail for the sake of brevity. Much of the rest of it was devoted to the issue of remedies and, for reasons which will be clear below, the Tribunal does not consider it necessary to set these out.

73. The written submissions do not particularly address the issues in the case beyond asserting that the claimant should succeed. Reference was made to the fact that an alternative could have been found to wearing the bracelet (although not what this would be) and that wearing the bracelet was not a legal obligation. It was submitted that there was evidence sufficient to draw inferences about how a hypothetical comparator would be treated in relation to the allocation of shifts.

74. The claimant went through the written submissions lodged on behalf of the respondent to set out the matters with which she did not agree:

    a. She disputed that she wore the bracelet on the first day of the festival.

b. She said that she informed the respondent of her religion when she applied for the job.

c. She should not be expected to explain the whole Bible.

d. She was told by GB to wear the bracelet.

e. She disputed that there was a legitimate aim in the requirement to wear the bracelet but did not explain why. When asked by the Judge to explain why she said the aims relied on by the respondent were not legitimate, she said that it was legitimate for others but not for her.

f. She asserted that the respondent was liable for the actions of the other events staff but did not explain the basis for this.

g. She was never asked for the reason why she would not wear the bracelet.

Relevant Law

75. The Equality Act 2010 protects individuals from discrimination on the grounds of various protected characteristics. These include, for the purposes of this case, race, sex and religion/belief.

76. The definition of direct discrimination in the 2010 Act is as follows:

13 Direct discrimination

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.

77. These provisions do not stand on their own and any discrimination must be in the context of the provisions of the Act which makes it unlawful to discriminate in particular circumstances. The relevant provision in this case is s39(20(d).

78. The burden of proof in claims under the 2010 Act is set out in s136:

136 Burden of proof

> *(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

79. The burden of proving the facts referred to in s136(2) lies with the claimant. If this subsection is satisfied, however, then the burden shifts to the respondent to satisfy subsection 3.

80. Although the test for direct discrimination forms a single question, the caselaw indicates that it is often helpful to separate this into two elements; the less favourable treatment and the reason for that less favourable treatment.

81. In order for there to be less favourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether "by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work" (*Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL*).

82. A claimant can rely on an actual or hypothetical comparator for the purposes of establishing less favourable treatment. There must be no material difference in the circumstances of the claimant and comparator (s23 of the Equality Act 2010). In deciding how a hypothetical comparator would have been treated, the Tribunal is entitled to have regard to the treatment of real individuals (see, for example, *Chief Constable of West Yorkshire Police v Vento [2001 IRLR 124*).

83. However, a difference in treatment and a difference in protected characteristic is not enough to establish that the difference in treatment was caused by the difference in protected characteristic; "something more" is required

(*Madarassy v Nomura International [2007] IRLR 246*). The Tribunal needs evidence from which it could draw an inference that race was the reason for the difference in treatment.

84. It is important to remember that unreasonable or unfair behaviour is not enough to allow for an inference of direct discrimination (*Bahl v The Law Society [2004] IRLR 799*).

85. It is a well-established principle that Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in *Igen v Wong [2005] ICR 931* (as approved by the Supreme Court in *Hewage v Grampian Health Board [2012] IRLR 870*).

86. The Igen case was decided before the Equality Act was in force but the guidance remains authoritative, particularly in light of the Hewage case.

87. The definition of indirect discrimination is found at s19 of the Equality Act:-

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice (PCP) which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

88. There is no definition of PCP in the Act; the EAT has held that the words 'provision, criterion or practice' must not be given a narrow meaning and that the PCP need not be an 'absolute bar' but can allow for exceptions to be made (*British Airways plc v Starmer [2005] IRLR 862*).

89. There have been a number of cases which have considered how the issue of group disadvantage should be addressed in cases of indirect discrimination relating to the protected characteristic of religion/belief. This follows the decisions of the European Court of Human Rights in *Eweida and others v the United Kingdom [2013] IRLR 231* and *SAS v France [2014] EqLR 590*.

90. In *MBA v Mayor and Burgesses of the London Borough of Merton [2014] IRLR 145*, the Court of Appeal held that a tribunal need not consider whether the matter said to give rise to the disadvantage (in that case a belief in not working on Sundays) was a 'core component' of the faith of the claimant but that a claimant did have to show was that there was some group of believers, including themselves, who were or would be put at a disadvantage by the relevant PCP. The court decided that the provisions of the Equality Act could not be read in such a way as to remove the requirement for group disadvantage set out in s19 of the Act.

91. In *Trayhorn v Secretary of State for Justice [2018] IRLR 502*, EAT, the EAT followed MBA and held that a group disadvantage could be established if it were shown that some individuals of a claimant's religion are disadvantaged by the relevant PCP. In effect, what is being said is that the threshold for establishing a group disadvantage is not a high one but it is one that still needs to be met.

92. A similar conclusion was reached in *Page v NHS Trust Development Authority UKEAT/0183/18* (19 June 2019, unreported) where it was held that some cogent evidence of group disadvantage is required.

93. In terms of justification, the EAT in *MacCulloch v ICI [2008] IRLR 846* set out four principles to be applied by the Tribunal. These have since been approved by the Court of Appeal in *Lockwood v DWP [2013] IRLR 941*:

"(1) The burden of proof is on the respondent to establish justification: see Starmer v British Airways [2005] IRLR 862 at [31].

(2) The classic test was set out in Bilka-Kaufhaus GmbH v Weber Von Hartz (case 170/84) [1984] IRLR 317 in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures must "correspond to a real need … are appropriate with a view to achieving the objectives pursued and are necessary to that end" (paragraph 36). This involves the application of the proportionality principle, which is the language used in reg. 3 itself. It has subsequently been emphasised that the reference to "necessary" means "reasonably necessary": see Rainey v Greater Glasgow Health Board (HL) [1987] IRLR 26 per Lord Keith of Kinkel at pp.30–31.

(3) The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: Hardys & Hansons plc v Lax [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60].

(4) It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no "range of reasonable response" test in this context: Hardys & Hansons plc v Lax [2005] IRLR 726, CA."

94. Harassment is defined in s26 of the Equality Act 2010:-

26 Harassment

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

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

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

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

(2) A also harasses B if—

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

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

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

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

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether 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.

(5) The relevant protected characteristics are—

age;

disability;

gender reassignment;

race;

religion or belief;

sex;

sexual orientation.

95. In *Hartley v Foreign and Commonwealth Office UKEAT/0033/15* (27 May 2016, unreported) it was held that the question whether there is harassment must be considered in the light of all the circumstances of the case. Where the claim is based on things said it is not enough only to look at what the speaker may or may not have meant by the wording.

96. However, even where certain elements of the test for harassment are met (for example, unwanted conduct and the violation of the claimant's dignity), the Tribunal must still consider the *"related to"* question and make clear findings as to why any conduct is related to a protected characteristic (*UNITE the Union v Nailard [2018] IRLR 730*; *Tees, Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495, EAT*).

97. An employee is entitled to notice of the termination of their employment. The amount of any such notice can be found in the contract of employment or by way of the minimum statutory notice to be found in section 86 of the Employment Rights Act 1996 which is based on length of service.

98. Where an employer does not give the correct notice of dismissal then an employee can recover damages for this breach of contract equivalent to the salary they have lost for the relevant period.

99. The Tribunal was given the power to hear breach of contract claims by the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994.

100. The general rule is that unambiguous words of dismissal (or resignation) should be taken at face value with no need for analysis of the surrounding circumstances (*Sothern v Franks Charlesly & Co [1981] IRLR 278*).

101. Where there are ambiguous words or conduct then an employee should investigate further before jumping to the conclusion that they have been dismissed (see, for example, *Leeman v Johnson Gibbons Tools Ltd [1976]*

IRLR 11). The same principle applies where an employer relies on ambiguous words or conduct in arguing that there has been a resignation.

Decision – Religion/belief discrimination

102. The primary difficulty for the claimant in all of the claims relating to religion/belief is that the matter giving rise to the claims (that is, the requirement to wear a bracelet at the Eden Festival) was not an act or decision of the respondent. It was either the event organiser or main security contractor who insisted on everyone attending the site (whether the public or staff) required to wear a bracelet to show which areas of the site they were entitled to enter.

103. To put it another way, it was not the respondent who treated the claimant less favourably (direct discrimination), applied a PCP (indirect discrimination) or engaged in unwanted conduct (harassment) in relation to the wearing of the bracelet. It was another person entirely and the respondent had no control over this decision. They cannot, therefore, be liable for any discrimination which might be caused the requirement to wear a bracelet.

104. This, on its own, is enough for the Tribunal to decide that the claims relating to religion/belief are not well-founded and to dismiss those claims.

105. However, even if it had been the case that the decision to require the wearing of the bracelet was a decision of the respondent then the Tribunal would have found that each of the claims were unsuccessful for the following reasons.

106. In relation to the claim of direct discrimination, it was quite clear that the requirement to wear the bracelet had nothing to do with the claimant's religion or belief. Rather, the reason why all attendees at the festival had to wear the bracelet was to ensure security at the festival and to be able to identify who was entitled to enter different areas of the festival site. This has nothing to do with the claimant's religion/belief whatsoever.

107. The claimant has, unfortunately, fallen into a common error in direct discrimination claims of putting the cart before the horse. It may well be the case that the claimant's religion/belief is why she did not want to wear the

bracelet but a claim of direct discrimination requires the claimant to show that the act of discrimination was done because she held the belief in question. In this case, the clear evidence (which the claimant did not dispute) was that the reason for the need to wear the bracelet was for security purposes and nothing connected to the claimant's belief.

108. Further, no-one (whether the employees of the respondent or other event staff) had any knowledge of the claimant's belief regarding the wearing of bracelets until she raised it in the grievance meeting with BM several weeks later. It is difficult, if not impossible, to see how anyone requiring the claimant to wear the bracelet could be doing so for a reason about which they had no knowledge.

109. Finally, the claimant was not, in fact, being treated less favourably than anyone else attending the festival. Everyone attending the site required to wear the appropriate coloured bracelet and so the claimant was being treated exactly the same as everyone else. Direct discrimination requires a difference in treatment and there was none.

110. For these reasons, the claim for direct discrimination is not well-founded.

111. Turning to the indirect discrimination claim, assuming that the respondent had applied the PCP of requiring their staff to wear a bracelet at the festival, the first question is whether this created a group disadvantage for people sharing the same religion/belief.

112. The respondent accepts that there was group disadvantage and the Tribunal considers that they were right to do so. Although the claimant idenitified her religion/belief as orthodox Christian during the case management process, it was quite clear, once she had given evidence, that the belief in question was a more specific one relating to the accepting and wearing of the bracelet. The respondent quite correctly accepts that people sharing this belief would be disadvantaged by a PCP requiring them to wear the bracelet at the festival.

113. The Tribunal would pause to note that it would have come to a different view had the religion/belief remained only that the claimant was an orthodox

Christian and she had not gone on to set out the more specific belief related to the wearing of the bracelet. There was no evidence led by the claimant that being required to wear a bracelet was something which would disadvantage other orthodox Christians. Whilst there does not need to be evidence that the belief was a tenet of the orthodox Christian faith, there still needs to evidence of group disadvantage for the test of indirect discrimination to be met.

114. The Tribunal does not agree with the submission on behalf of the respondent that there needs to be evidence of some basis for her belief in the sense of a religious text supporting her view. The theme running through cases such as Eweida and MBA (above) is that the Tribunal does not need to be satisfied that any belief is a core component or commonly held tenet of any particular faith which would include any question as to whether there is some religious authority for the belief.

115. In this case, the Tribunal has no reason to doubt that the belief in question is one which is genuinely held by the claimant. The fact that the claimant cannot recall the authority for that belief does not undermine that. It is undoubtedly the case that there will be many people of all religions who will not know the precise source of every component of their belief system especially where, as in this case, it is something taught to them as a child. This does not mean that they cannot rely on that belief in Tribunal proceedings.

116. The Tribunal simply needs to be satisfied that there is a group of people who hold the same belief who would be disadvantaged by the PCP and, in this case, the Tribunal heard evidence that there would be others such as the claimant's family.

117. The respondent also accepted that the claimant would be disadvantaged by any PCP requiring the wearing of the bracelet.

118. In these circumstances, there would have been, on the face of it, an act indirect discrimination and so the Tribunal would turn to the consideration of whether any PCP was objectively justified.

119. The Tribunal considers that there was clearly a legitimate aim in the requirement to wear a bracelet at the festival. There needed to be a way of identifying who was entitled to be in any particular area of the festival site in order to ensure the safety and security of attendees and staff. The respondent also had to comply with the requirements of its client.

120. As to whether the wearing of the bracelet was a proportionate means of achieving this aim, the claimant did not identify any alternative that could have been used. She did suggest that the respondent could have sent her to a different job on the days in question but there are two difficulties with this. First, there was no evidence led before the Tribunal that there were any other jobs available to which the claimant could have been assigned on the days in question. Second, this would have required the respondent to have knowledge of the claimant's belief in order to know that she could not be assigned to a job involving the wearing of bracelets and they did not have any knowledge of her belief until after the event. In these circumstances, the Tribunal does not consider that assigning the claimant to another job was a viable alternative.

121. The Tribunal would pause to comment on the issue of the respondent's knowledge. The claimant made a number of the comments during the hearing to the effect that she should not have needed to disclose her belief and the respondent should somehow have known about this. In the Tribunal's view, it was entirely the responsibility of the claimant to inform the respondent and not the other way round. Whilst she would not have known of the need to disclose her issue with wearing the bracelet in advance of the festival job, she would have been aware of it on the first day and could have raised it then. The belief in question is not one which the Tribunal considers the claimant could have reasonably assumed was commonly known; none of the respondent's witnesses were aware of it and the Tribunal panel had never heard of this particular belief.

122. The Tribunal has given consideration to whether there could have been any other alternative to wearing the bracelet. Again, the difficulty is that this was not within the control of the respondent and they could not have, for example,

unilaterally allowed the claimant to wear some form of badge to show her right to access areas of the site. This would have required consultation with the event managers and the other security company to agree this alternative and cascade the decision to other security staff. All of this requires the respondent to have known of the need for this so that arrangements could have been made in advance and they did not have the necessary knowledge as set out above.

123. In these circumstances, assuming that the respondent had applied a PCP to the claimant in relation to the wearing of the bracelet, the Tribunal considers that this was a proportionate means of achieving a legitimate aim.

124. In relation to the claim of harassment, the Tribunal bears in mind that any unwanted conduct has to be related to the Claimant's belief and that this is a broader matter than just the reason for any conduct as would be the case in a claim of direct discrimination.

125. However, even applying that broader test, the Tribunal considers that the requirement to wear the bracelet was not related to the claimant's belief. The claimant's belief was certainly not the motivation for the conduct for the reasons set out above in relation to the direct discrimination and there is no evidence, other than being the reason for the claimant's objection to wearing the bracelet, of the conduct being related to the claimant's belief.

126. The Tribunal considers that the lack of knowledge about the claimant specific belief is important in assessing whether the conduct was related to this belief. No-one involved in the events at the festival had any knowledge of the claimant's belief nor did they know, at the time, that this was what was motivating her objections to wearing the bracelet. The lack of knowledge makes it very difficult to see how the conduct of the respondent, its officers or anyone else in respect of wearing the bracelet could have been related to the claimant's belief.

127. It is difficult to see how, viewed objectively, the conduct could have any connection to the claimant's belief. This is not a case where the conduct in question was something which was clearly connected to any religion or belief

and, rather, the claimant was being asked to do something which many people attending festivals of this nature are asked to do on a regular basis. The claimant was not being asked to do something which an employer could reasonably suspect someone might have a religious objection to doing.

128. In any event, the Tribunal considers that the requirement to wear the bracelet did not have the purpose or effect prohibited by s26 of the Equality Act. It certainly did not have the prohibited purpose; the purpose of requiring event staff to wear the bracelet has been set out above and it has nothing to do with any of the matters prohibited by s26.

129. Although the claimant gave evidence at the Tribunal that the requirement to wear the bracelet had the prohibited effect on her, the Tribunal does not consider that it was reasonable for it to have this effect; the claimant had not objected to the bracelet on the first day of the festival; she did not raise her religious objections to wearing the bracelet at any point even when complaining to GB about the bracelet being too tight; the claimant's upset on the day related more to the fact that she had been challenged on entering the site and that GB did not support her in her dispute with the other security officer; her only complaint about the bracelet was that it was too tight. These are the matters which form the basis of her grievance set out in her email of 17 June 2022 (p82) which makes no mention of any religious objection.

130. For all these reasons, the Tribunal considers that the claim of harassment is not well-founded.

131. In summary, the Tribunal does not consider that the matter which gives rise to the claims of discrimination relying on religion/belief (that is, the requirement to wear a bracelet at the Eden Festival) was something which was an act or decision by the respondent as set above. For that reason alone, the claims of direct discrimination, indirect discrimination and harassment fail and are dismissed. However, even if it could be said that there was some act, omission or decision of the respondent then these claims would fail for the reasons set out above.

Decision – Sex and race discrimination

132. The Tribunal will deal with the sex and race discrimination claims together as they relate to the same matter (that is, the number of shifts being offered) and involve very similar considerations.

133. The claimant does not identify an actual comparator or comparators for the purposes of her sex discrimination claim. In respect of the race discrimination claim, she does make reference to two specific employees but the Tribunal has not restricted its consideration of comparators to only these individuals given that the claimant is a party litigant.

134. The claimant led very little evidence about any potential comparators that would allow the Tribunal to assess whether they were in the same or similar circumstances. Other than the fact that they were all men, there was no evidence about what shifts they worked, whether those were shifts which the claimant could have worked (and would have agreed to work) or the qualifications and experience of the other security officers.

135. In relation to the race claim, the claimant led no evidence at all regarding the national origins of the other security officers. All the Tribunal had were the names of the individuals and it did not consider that it could make any assumptions about the national origins of any individual solely on that basis.

136. What was quite clear from the evidence is that, despite what was asserted by the claimant, there was no other security officer who was allotted more shifts than her in every month she worked for the respondent. The number of shifts fluctuated for all employees with the claimant working more shifts than other employees in some months and less in other months including one month when the claimant worked more shifts than every other security officer but one.

137. The Tribunal does not, therefore, consider that there was any actual comparator who was allocated more shifts than the claimant in each month she worked for the respondent.

138. Further, the evidence about the number of shifts being worked by the employees of the respondent does not provide any basis from which the Tribunal could draw an inference that a hypothetical comparator (either a man or someone of a different national origin) would have been treated more favourably than her.

139. Rather, it was quite clear that the number of shifts allocated to staff fluctuated month by month with no-one having the same number of shifts from month to month. This supports the evidence of the respondent's witnesses that shifts were allocated according to the needs of the business each month and the availability of staff.

140. More importantly, there was no evidence whatsoever that the sex or national origin of any employee had any effect on the allocation of shifts.

141. The only evidence led by the claimant in respect of sex discrimination was that she had a conversation with two unidentified male employees on an unspecified date on which they said that they were finishing a series of 7 shifts in a row. This is far from sufficient evidence from which the Tribunal could draw an inference of sex discrimination. It certainly does nothing to suggest that shifts were being allocated on the basis of sex.

142. The claimant did make reference to a female employee in the control office who said she had had enough of how the respondent treated women but gave no details of who this was, when she spoke to them and what was meant by this. The Tribunal did not consider that there was sufficient detail given by the claimant about this for it to draw any inferences from this.

143. In relation to race discrimination, the claimant, when asked by the judge why she considered that her race was an issue in the allocation of shifts, said she did not know but she felt that people from India and Africa (without any reference to who this was) were more accepted (without any explanation as to why she took this view).

144. The claimant had made reference to two specific employees in the context of the race discrimination claim but the evidence showed that these employees

did not consistently work more shifts than the claimant and she worked more than them in certain months.

145. In the Tribunal's view, the truth of the matter was that the claimant was annoyed that these two employees were getting shifts at all rather than getting more than her. She objected to this because she alleged that one of them had some form of unspecified criminal record (with no evidence to support this) and the other was said to be "retired".

146. The Tribunal considers that the claimant was clearly unhappy at the number of shifts she was being allocated and felt that she should have been given more shifts than she was.

147. However, this, on its own, does not give rise to sex or race discrimination and there needs to be evidence of unlawful discrimination or evidence from which the Tribunal can draw an inference of unlawful discrimination. There was simply no evidence at all from which the Tribunal could draw such inferences.

148. Rather, the evidence shows that the number of shifts varied for each employee month-by-month; in some months the claimant worked more shifts than others and in some months she worked less; there were clear explanations why the number of shifts worked by the claimant were less in certain months (for example, in February 2022 when the claimant was out of the country for half of the month); the claimant was, in a number of months, at or near the top of the number of shifts worked.

149. In these circumstances, the Tribunal finds that there is no evidence that the claimant was allocated less shifts than men or people of a different national origin on the basis of sex or race. The claimant has not, therefore, discharged the burden of proving facts from which the Tribunal could conclude that there was direct discrimination (either on the grounds of sex or of race).

150. For these reasons, the claims of sex and race discrimination are not well-founded and are hereby dismissed.

Decision – Wrongful dismissal (notice pay)

151. The claim for notice pay turns entirely on one issue – was the claimant dismissed?

152. The claimant has not clearly identified when and how she considers she has been dismissed. In her ET1, she gives 20 June 2022 as the end date of her employment with the respondent but does not specify why she considers that she was dismissed on that date and none of the evidence heard by the Tribunal makes reference to anything happening on that date at all, let alone that would amount to a dismissal.

153. In response to a request from the respondent for further particulars, the claimant was asked why she believed she was entitled to notice pay (p37). She replies by making reference to an extract from BM's letter of 31 May 2022 (p69) which talks of a cooling off period for her to withdraw what was understood to be her resignation on 31 May 2022. Given that the claimant worked after this date, there can be no basis to say that she was dismissed by this letter.

154. It is recorded in the Note of the Tribunal hearing in March 2023 that the claimant asserted at that hearing that she had not been dismissed (p51).

155. Having heard all the evidence, the Tribunal does not consider that the claimant has been dismissed at all. There were certainly no clear and unambiguous words of dismissal used by BM, GB or any other supervisor. Neither was there any unambiguous actions by those individuals (or anyone else working for the respondent) which dismissed the claimant.

156. To the extent that the claimant relies on the lack of any shifts being offered to her after June 2022, this is entirely consistent with the terms of her contract. The contract clearly states that there is no guarantee of any work being offered and so it cannot be inferred that the claimant has been dismissed solely from a lack of shifts being offered to her.

157. In these circumstances, the Tribunal does not consider that the claimant has been dismissed and so the obligation to give notice has not been triggered.

158. The Tribunal should be clear that, equally, it does not consider that the claimant has resigned. There were certainly no unambiguous words of resignation by the claimant. There was the action of leaving a bag with her uniform and badge in the kitchen at the respondent's offices but that is ambiguous at best which is why CM sent the letter of 17 June 2022 (p80) asking the claimant to clarify her position. Although she did not directly respond to that, the Tribunal considers that her engagement with the grievance process and what she said to BM about wanting to continue her work makes it clear that she did not consider that she had resigned. Any suggestion that the claimant had resigned is at odds with the evidence of BM and GB that they have been unwilling to offer shifts to the claimant because of the restrictions they say she has placed on the work she would do. This clearly suggests that they consider that she is still engaged under the variable hours contract and that shifts could be offered to her.

159. The claimant not having been dismissed by the respondent, the claim for wrongful dismissal (notice pay) is not well-founded and is hereby dismissed.

Employment Judge: **P O'Donnell**
Date of Judgment: **08 August 2023**
Entered in register: **10 August 2023**
and copied to parties