



EMPLOYMENT TRIBUNALS

BETWEEN: Mrs M Jabeen **and** EC4 Hotel Limited
Claimant t/a Cedar Court Hotel
Respondent

Heard at: Leeds **on:** 30 October to 3 November 2023

Before: Employment Judge Cox
Members: Mrs J Hiser
Mr M Brewer

Representation:

Claimant: Mr Ahmad, husband and lay representative
Respondent: Mr Underwood, consultant

REASONS

1. The Claimant used to work for the Respondent as a Commis Chef. She presented a claim under the Equality Act 2020 (EqA) alleging various acts of direct discrimination and harassment.
2. The claim relates to the Claimant's treatment during her employment with the Respondent at a hotel in Bradford, one of a group of four hotels operated by the Respondent company. She worked as a Commis Chef, from 21 March to 29 July 2022. The Claimant alleged that during this time she was subjected to various acts of direct sex and race discrimination and harassment related to sex and race and harassment by conduct of a sexual nature. For the purposes of her race discrimination claim, she describes her racial group as Asian.
3. Direct sex and race discrimination is where an employer treats an employee less favourably than it treats, or would treat, employees of the other sex or a different race in not materially different circumstances, and does so because of the employee's sex or race (Section 13 and 23(1) EqA).

4. Harassment is where a person engages in conduct that relates to sex or race and the conduct has either the purpose or the effect of violating another person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them (Section 26 EqA). In cases where the Tribunal accepts that the purpose was not to harass and it has to decide whether the person's conduct nevertheless had that effect, the Tribunal must take into account three things: the perception of the person who is alleged to have been harassed; the other circumstance of the case; and whether it is reasonable for the conduct to have that effect. It is also harassment where there is conduct of a sexual nature that has this purpose or effect.
5. The claim was originally due to be heard on 17 to 20 July 2023 but the Hearing had to be postponed to enable the Claimant and her husband, Mr Ahmad, who is representing her in this claim, to arrange childcare. The Hearing was rescheduled for dates at the end of October/beginning of November.
6. At a Preliminary Hearing for case management on 20 December 2022 the Claimant had been ordered to provide further details of her allegations. Some time was spent on 17 July clarifying the allegations and the Claimant was given leave to amend them accordingly. The finalised allegations, as checked and confirmed by the Claimant, were set out in a numbered list in the Annex to an Order made on 12 September 2023. That numbering and text are used in these reasons.

The evidence

7. For the Claimant, the Tribunal heard oral evidence from: the Claimant herself; Mr Ahmad, her husband and her representative in this claim; and Mr Chris Carr, who worked alongside the Claimant in the kitchen at the relevant time, as a Chef de Partie. He attended under a Witness Order.
8. After the Hearing on 17 July, Mr Ahmad applied for leave to rely on a witness statement from himself. He said that he had not realised before the case management discussion on 17 July that he was able to provide evidence himself. The Tribunal gave him leave, on condition that the statement was limited to evidence directly relevant to whether the alleged acts of discrimination and harassment had occurred and/or to the injury that it had caused to the Claimant's feelings. Because the Hearing was now some way off, the Respondent would have adequate time to consider its response to the statement. In the event, the witness statement that Mr Ahmad provided contained a large amount of material that did not relate to his own direct witnessing of events relevant to the allegations but amounted to him recounting what the Claimant had told him when she came home from work. These matters could and should have been included in the Claimant's own witness statement. Further, the statement contained evidence about how one of the Claimant's former colleagues, Mrs Kalsoom, was said to have approached him for help in bringing the harassment she had

experienced to the attention of the Respondent's owner. Mrs Kalsoom, who was due to give evidence for the Respondent in any event, had prepared a supplementary witness statement to rebut these allegations. It was not necessary to consider that statement because the Tribunal decided that, if these events had in fact happened, they could and should have been included in the Claimant's own witness statement. The Tribunal permitted Mr Ahmad to give evidence only about those matters of which he had direct knowledge and could not properly have been included in the Claimant's witness statement. Much of his statement was therefore excluded.

9. For the Respondent, the Tribunal heard oral evidence from:
 - a. Miss Amy Hainsworth, Sous Chef, who was the Claimant's direct line manager.
 - b. Mr Jamie Sibbald, Head Chef for the Group of hotels of which the Bradford hotel was part, who was Ms Hainsworth's direct line manager.
 - c. Mr Wayne Topley, Group Managing Director.
 - d. Mr Andrew Jones, Hotel Manager of the Bradford hotel with day-to-day responsibility for the operation of the hotel, including the kitchen.
 - e. Mrs Allison Papaicovou, Group Head of Talent, Culture and Wellbeing, a member of the Group senior management team with responsibility for human resources and health and safety issues.
 - f. Ms Nazia Akhtar, Guest Service Manager with responsibility for ensuring that there is sufficient staffing and that conference and events requests are met. This role includes ensuring that meals are served on time, which involves liaising with kitchen staff. She is often also the Duty Manager with responsibility for dealing with issues that might arise and that might also involve her speaking to the staff in the kitchen.
 - g. Mrs Roomi Kalsoom, who works part-time, mainly involved in serving breakfast and lunch.
10. In addition, the Tribunal considered the contents of a witness statement from Mr Paul Varley-Fox, breakfast chef, who died shortly before the Hearing was due to take place in July. A witness statement was also submitted from Mr David Todd, an agency worker who worked alongside the Claimant in the kitchen but was not employed by the Respondent. He did not attend the Hearing. When considering what weight to give these statements, the Tribunal took into account that these witnesses had not been subject to any questioning about their evidence.
11. The Tribunal was also referred to various documents in a Hearing file.

12. On the basis of this evidence, the Tribunal made the following findings on the allegations. The numbering of the allegations corresponds to that given to the allegations in the Annex.

Background findings

13. The Bradford hotel where the Claimant worked is one of four hotels in the Group. The hotel offers a restaurant and bar service as part of its normal hotel business. It is a conference and events venue and the kitchen therefore also caters for weddings and conferences midweek and at weekends. It is catering for the restaurant and events and conferences that was the most time-consuming part of the kitchen's work at the relevant time. The Respondent also had a contract with the Ministry of Defence to provide Afghan families with accommodation until they were rehoused. There were around 130 of these Afghan guests.
14. Miss Hainsworth had day-to-day responsibility for the work of the kitchen. The staff whom she managed at the relevant time were the Claimant, Mr Fox, Mr Todd, Mr Carr, two apprentice chefs and three kitchen porters. Two of the kitchen porters were Asian but all the chefs other than the Claimant were white. All the kitchen staff other than Miss Hainsworth and the Claimant were men. Mr Sibbald had responsibility for all four hotels in the Group but he was based at the Bradford hotel so was there for around 75% of the time. He covered for Miss Hainsworth in the kitchen on her days off.
15. The hotel wanted to provide the Afghan guests with food with which they were familiar. Lunch was usually salad, yoghurt and pre-prepared bought-in frozen food such as burgers, chips and chicken thighs which just needed re-heating, but on one or two days a week it might be curry. On those occasions the meat used was chicken, which cooked relatively quickly compared with meats such as lamb. 40% of the Afghan guests were children and they were offered bought-in food for lunch, such as chicken nuggets, that again just needed re-heating. The evening meal was a hot meal, typically of curry and rice.
16. Before the Claimant's arrival, the kitchen team was having difficulty in providing food that was in accordance with the normal Afghan diet and to the guests' taste. That was why the Claimant was recruited. The Tribunal accepted the evidence of the Respondents' witnesses that the Claimant was recruited specifically to provide food for the Afghan guests at lunch and dinner. The Tribunal did not accept the Claimant's persistent assertion, during her employment with the Respondent and at the Tribunal Hearing, that she was recruited just to prepare dinner. That would be inconsistent with the hours she worked.
17. When she first began working for the Respondent on 21 March 2022, the Claimant worked under a zero-hours contract. In April Mr Ahmad 'phoned Mr Topley and asked on her behalf that she be given a contract with guaranteed

hours. Mr Topley agreed to this, on the understanding that she would need to be flexible about the work she did. The new contract for a 40-hour week was signed on 29 April 2022. Although the nature of the Claimant's contract of employment changed, from the record of when the Claimant clocked into and out of work, it appears that throughout her employment she arrived at work before 11am and worked until 7pm or later. From 8 June onwards, she clocked out at or around 7.30pm. Although the Claimant challenged the veracity of these records (as explained further below), they accord with her own evidence that her working hours were 11am to 7.30pm and, taking into account a 30-minute break, they also accord with her having a contract for a 40-hour week.

18. The Tribunal accepted Miss Hainsworth's evidence that the work involved in preparing lunch and dinner for the Afghan guests should take someone with experience in a commercial kitchen only 5 to 5.5 hours to complete. Mr Sibbald considered that it would take an experienced chef no more than 4 or 4.5 hours. He had not been involved in recruiting the Claimant but suspected that she might not have had as much experience in a commercial kitchen as some of the other chefs. (From the CV the Claimant submitted with her job application, it appeared that her commercial catering experience was in fact limited. She had worked for three months as a trainee in a hotel catering department, eight months as a kitchen assistant in a hotel where she helped to prepare food for guests, serving food and clearing up, and seven months in a café as a kitchen assistant helping the chef in food preparation, serving and clearing up.) Even taking that into account, Mr Sibbald believed she should easily have been able to complete what was expected of her within 5.5 to 6 hours. Although there were around 130 Afghan guests, the evening meal was one-pot cooking, prepared in special equipment called brat pans built into the kitchen surfaces. For lunch, the hot food was bought-in pre-prepared and just needed to be re-heated on trays in the oven. If a curry was being offered, another chef would start the cooking of that before the Claimant arrived at work. Curries were made with meat that was bought in ready-diced. Apart from cooking the curry and rice, the only other task that took any time was preparing salads and vegetables for the following day, which could be done whilst the dinner curry was cooking or after the evening meal was ready to be served at 5.45 pm.
19. Taking all of this into account, the Tribunal accepts that the hotel managers had reasonable grounds for believing that there was ample time for the Claimant to complete all the tasks involved in preparing food for the Afghan guests during her normal working hours. There were only a very small number of occasions when the Claimant was asked to help with any other tasks in the kitchen.
20. Mr Todd was assigned to work at the Respondent by an agency. He had no direct contract with the Respondent. He worked four days a week and would cover the Claimant's work on her two days off and do other kitchen work on the other two days. The Tribunal accepted Mr Sibbald's evidence that when Mr Todd

was covering, he completed the Afghan work well within his shift and had time to assist the other chefs with other work for at least a couple of hours.

21. Mr Fox was primarily involved in preparing breakfasts but if he had time at the end of his shift he would assist with other tasks, including preparation for the Afghan guests' lunches.
22. The Tribunal accepted the evidence of Miss Hainsworth and Mr Sibbald that for a commercial kitchen to operate successfully, all food preparation needs to be done ahead of time. That involves kitchen staff preparing food for the following day, even if that is their day off. The Tribunal accepted Miss Hainsworth's evidence that she had to intervene more than once in disputes between the Claimant and Mr Todd about the preparation of salads for the following day. Mr Todd and the Claimant were both responsible for preparing salads for the following day on each other's days off but they were failing to help each other and Miss Hainsworth had to intervene.
23. Staff in a commercial kitchen also need to work to strict deadlines, based on the time when meals are due to be served. It was Miss Hainsworth's responsibility to ensure that these deadlines were met in the hotel kitchen, and she routinely checked with staff as the day went on whether they were on schedule to meet the deadlines.
24. The Tribunal accepts Mr Sibbald's evidence, which Miss Hainsworth endorsed, that she is a mild-mannered person who does not raise her voice. She could be criticised for not managing people under her supervision as directly as she should. As Mr Sibbald put it, one of her weaknesses is that she is far too tolerant of staff and does not manage them as closely or "instruct" them as she should if she wants to progress to higher levels of management.

Clocking records

25. The Claimant alleged that the clocking time records covering the entire period of her employment that the Respondent produced during the Hearing were inaccurate or had been falsified. The Tribunal did not accept that. Staff were required to clock in and out by using a fingerprint and that would be very difficult to falsify. The only evidence that the Claimant gave to indicate that the records were inaccurate was that she had not clocked out on her final day at work, because she had been so upset after the meeting she had with Mrs Papaicovou, referred to further below under Allegation 17, and so the record of her clocking out at 7.32pm on that day must be false.
26. According to an agreed transcript, at 7.25pm that evening the Claimant sent her husband a voice message asking him to pick her up from work in 20 minutes because she had a meeting. She said she would message him when she came

out of it. The timing of that message would be consistent with her clocking out at 7.32pm before she went to the meeting, as reflected in the clocking record.

Withdrawn allegations 8 and 9

27. Allegations 8 and 9 related to Mr Todd. In allegation 8, the Claimant alleged that on two occasions on unknown dates he struck her on the buttocks with spoons. This was alleged to be sexual harassment. In allegation 9 the Claimant alleged that on four occasions between May and July 2022 Mr Todd pulled her hair from behind. This was alleged to be harassment related to sex and/or race.
28. The Claimant accepted that Mr Todd worked for the Respondent through an agency. On the first day of the Hearing the Tribunal explained the difficulty with establishing that the Respondent was liable for Mr Todd's actions when he was not in its employment (Section 83(2) EqA). It gave Mr Ahmad time to consider the position. The following day, the Claimant withdrew allegations 8 and 9 and they were dismissed.

Allegation 1: From 4 April 2022 onwards, Miss Hainsworth took advantage of the Claimant's weak English to bully and intimidate her by using body language and gestures to suggest she could not understand what the Claimant was saying, so that Miss Hainsworth would not have to address the underlying issues the Claimant was raising. Alleged to be harassment related to race or direct sex discrimination. Ms Hainsworth had no difficulty understanding the poor English spoken by the dishwashing staff, who were all male.

29. As mentioned above, two of the kitchen porters, who were responsible for dishwashing, are Asian.
30. The Tribunal accepted Miss Hainsworth's evidence that she understood the Claimant. The Claimant's first language is Urdu, not English, and she had the assistance of an Urdu interpreter at the Hearing. However, the Tribunal accepts that her spoken English is sufficiently fluent for her to have communicated everything she needed to communicate with the other kitchen staff, including Miss Hainsworth, in her everyday work. Had she not, the Respondent would have needed to give her access to someone to interpret for her in the kitchen, and that did not happen.
31. The Tribunal also accepted Miss Hainsworth's evidence, which was clear, straightforward and credible, that she did not use body language or gestures to suggest she could not understand the Claimant when she in fact could.
32. This allegation therefore failed and was dismissed.

Allegation 2: From mid-April 2022 onwards, Miss Hainsworth, Mr Fox and Ms Akhtar routinely criticised and mocked the Claimant. Alleged to be harassment related to sex and/or race.

33. The Claimant's evidence was that Miss Hainsworth and Mr Fox started criticising her work when they realised that the Afghan guests were appreciative of her cuisine. They were envious of her success and started to look for ways of discrediting her and finding fault with her work. They falsely claimed that her food was late or that she had not prepared enough food.
34. The Tribunal did not accept that it was likely that Miss Hainsworth or Mr Fox would resent the Claimant's success, given that she was recruited precisely in order to improve the food offering to the Afghan guests. The Tribunal accepted Miss Hainsworth's evidence that the only time on which she directly criticised the Claimant was in July 2022 when she failed to put the pre-prepared chicken joints into the oven in time to be ready for lunch. (This incident was later referred to in an email that Miss Hainsworth sent to Mr Jones, set out in full in paragraph 86 below). The Claimant went to remove the chicken from the oven before it was fully heated through and Miss Hainsworth had to intervene and put it back in the oven. Miss Hainsworth was also concerned, however, that the Claimant was resistant to Miss Hainsworth's instructions, particularly in relation to lunches. She raised a particular concern about this on 24 July in an email to Mr Jones, explaining that on that day the Claimant had refused to co-operate with getting lunch ready or preparing vegetables for the following day's lunch and Miss Hainsworth had had to ask for Ms Akhtar's assistance to speak to her. In addition, Miss Hainsworth had to intervene when the Claimant was failing to prepare salads on the day before her days off.
35. The Tribunal did not accept that Miss Hainsworth mocked the Claimant on any occasion. There was nothing in the Claimant's witness statement to say she had.
36. Further, the Tribunal did not hear any evidence to establish that Miss Hainsworth interactions with the Claimant related in any way to the Claimant's sex or race. They all arose from Miss Hainsworth's responsibility to manage the Claimant and the way she was doing her work in order to ensure that food was prepared properly and on time.
37. The Claimant's evidence included no detail about Mr Fox's actions, about what exactly he was said to have done or said and when. The Tribunal did not accept that the Claimant had established that it was more likely than not that he routinely mocked and criticised her. Mr Fox was not at the Hearing to give evidence but in his witness statement he confirmed that when the Claimant started work he helped her by explaining how the kitchen equipment worked and where things

could be found. He routinely helped her by getting the rice pans down off the shelf that was too high for her to reach. He accepted that on one occasion, when the Claimant complained that he had not prepared salads for the Afghan families, he told her that he did not believe that was his job and that if he prepared the salads, she should come in at 5.30am to prepare the breakfasts. He told her that he believed the preparation of salads was part of her job. He did have a discussion with the Claimant about how to prepare curries, because they disagreed about how that should be done. His evidence was inherently credible as to the sort of interaction that might be expected in a commercial kitchen. Mr Fox was helpful to the Claimant. Bearing all this in mind, the Tribunal did not accept that there was any evidence to indicate that Mr Fox's interactions with the Claimant related in any way to her sex or race.

38. The Claimant's evidence in relation to what Ms Akhtar was alleged to have done was also very general and lacking in specifics. She was said to have "joined in the slurs", made fun of the Claimant and bullied her by shouting at her routinely. The Claimant said that Ms Akhtar made decisions about what to cook in the kitchen and enjoyed being bossy and nasty. She tried to harass the Claimant in every possible way. The Tribunal found Ms Akhtar to be a very clear and credible witness. The Tribunal accepted her evidence that in fact she did not criticise or mock the Claimant on any occasion. She did not shout at her ever. It was no part of her job to decide what was cooked. In fact, Ms Akhtar, as an Asian woman herself who is fluent in Urdu, had made clear to the Claimant from the outset of her employment that she was happy to assist the Claimant and even gave her her mobile 'phone number to call her if she needed to. The Tribunal was provided with no evidence to indicate that any of Ms Akhtar's interactions with the Claimant related to her sex or race.

39. This allegation therefore failed and was dismissed.

Allegation 3: From around third week in April 2022 onwards, Miss Hainsworth instructed and forced the Claimant to prepare trolleys for other staff members for the following day but never asked other staff to do the same for the Claimant. Alleged to be direct race discrimination.

40. The Claimant's evidence was that Miss Hainsworth would force her to prepare food trolleys for the next day to be used by other chefs, particularly Mr Fox. She would do this even on days when the Claimant was not due to be at work the following day.

41. The Tribunal accepts Miss Hainsworth's evidence that she expected and required all staff to co-operate in doing whatever task was necessary. That included preparing food for the following day, even if the following day was their

own day off. That included the Claimant. As already mentioned above, Miss Hainsworth did need to intervene when she found that the Claimant and Mr Todd were not co-operating with each other to prepare salads for the other person's return after a day off. But there was no evidence that anything in the way she dealt with this in any way related to the Claimant's race.

42. This allegation therefore failed and was dismissed.

Allegation 4: On 23 April 2022 Mr Fox told the Claimant that she should wear blue lipstick to attract men and that she should consider that an order. Ms Akhtar said to the Claimant that she should start dating certain chefs because they were handsome. Alleged to be harassment related to sex.

43. The Claimant's evidence about this was that Miss Hainsworth and her team "commented I was wearing a certain shade of lipstick to attract various men". In her own evidence, therefore, she did not specify that Mr Fox made the comments she alleged. Mr Fox's evidence was that he never made any comment to the Claimant about lipstick, albeit that she always wore bright lipstick at work, which he considered unusual in a kitchen environment. On the evidence it heard, therefore, the Tribunal did not accept that the Claimant had established that Mr Fox had made the alleged comment.

44. The Claimant's evidence about Ms Akhtar's comment was only that Ms Akhtar "joined in the slurs" being made by Miss Hainsworth and the team. She did not say that Ms Akhtar had made the alleged comment. Ms Akhtar denied in her evidence ever having made such a comment and the Tribunal considered her evidence on this point to be entirely credible.

45. This allegation therefore failed and was dismissed.

Allegation 5: After a meeting with the Claimant's husband on 25 April 2022, and contrary to what he had agreed, Mr Jones failed to provide lids for the cooking pots or a stand/pedestal on which the Claimant could stand to work in a proper ergonomic environment. Alleged to be direct race discrimination.

46. Mr Ahmad had contacted Mr Topley to raise concerns on the Claimant's behalf about health and safety matters and Mr Topley arranged for Mr Ahmad to meet Mr Jones to discuss this. Mr Ahmad raised in particular that the Claimant was having difficulty with the height of the work surfaces in the kitchen, because she is not very tall, and with the lack of lids for the pans in which she cooked the rice, causing the cooking time to be longer than it needed to be. Mr Ahmad's evidence was that Mr Jones promised to resolve these matters quickly after speaking to Mr Sibbald. He did not say that Mr Jones had promised to provide lids and a

pedestal or stand and Mr Jones's evidence, which the Tribunal accepted, was that a pedestal or stand was not mentioned.

47. In his evidence, which the Tribunal found credible, Mr Jones confirmed that he had discussed the lack of lids with Mr Sibbald. Mr Sibbald said that the cling film and silver foil that was being used for the pans was sufficient and that there was no need to incur the expense of buying lids and Mr Jones accepted that. He discussed with Mr Topley the Claimant's difficulty with the height of the work surfaces but they agreed that this could not be altered and so nothing could be done about that.

48. The Tribunal accepted that Mr Jones agreed with Mr Ahmad that he would follow up on the matters Mr Ahmad had raised at the meeting. The Tribunal also accepted that he did so, although, as Mr Jones accepted in cross-examination, he never gave any feedback to Mr Ahmad or the Claimant on what he had done. With hindsight, he accepted he should have done so. There was no evidence that Mr Jones had agreed to provide lids or a stand or pedestal, nor was there any evidence to indicate that anything Mr Jones did or did not do was related in any way to the Claimant's race.

49. This allegation therefore failed and was dismissed.

Allegation 6: From May 2022 onwards on a daily basis and in order to pressurise the Claimant, Miss Hainsworth reminded the Claimant of pending deadlines for food serve-out: almost every day at 4.30pm she said that the Claimant was to serve food out at 6pm. She always said: "remember I am your boss - this is my order". Alleged to be direct race discrimination or harassment related to race.

50. The Tribunal accepted that Miss Hainsworth routinely checked with the Claimant during the course of the day whether she was ready for dinner to be served at 6pm. That was part of Miss Hainsworth's job and she did it with all her staff. The Claimant's witness statement makes no mention of the alleged comment "remember I am your boss – this is my order". Miss Hainsworth denies ever having made such a comment and the Tribunal accepted her evidence as credible, given her mild management style.

51. There was no evidence that Miss Hainsworth treated the Claimant less favourably than other staff nor that anything she did was because of, or related in any way to, the Claimant's race.

52. This allegation therefore failed and was dismissed.

Allegation 7: From mid-June 2022 onwards, Miss Hainsworth overloaded the Claimant with work by instructing her to not only prepare dinner but also be responsible for lunch preparation for 120 guests, to be served at 12.30pm even though the Claimant's shift did not start until 11am. Alleged to be direct race discrimination.

53. As already mentioned above, the Tribunal found that the Claimant was recruited to provide the food for the Afghan guests. From the outset, this covered their lunch and dinner, as reflected in the Claimant's start time of 11am. If lunch preparation was not part of her duties, it is difficult to see why her start time would have been 11am, since that would assume she needed eight hours to prepare one pot of curry and rice for dinner. Miss Hainsworth's evidence, which the Tribunal accepted, was that there was in fact no change in what she expected from the Claimant in mid-June 2022. For the reasons stated above, this did not involve "overloading" the Claimant with work because she had adequate time within her working day to prepare lunch as well as dinner. There was no evidence that any of Miss Hainsworth's instructions to the Claimant were in any way because of her race. Rather, they reflected the Claimant's duties.

54. This allegation therefore failed and was dismissed.

Allegation 10: Miss Hainsworth advised the Claimant to just ignore the spoon hitting and hair pulling by Mr Todd as these were just jokes between co-workers. She refused to take the Claimant's complaint about the incidents seriously or speak to Mr Todd. Alleged to be harassment related to sex and/or race.

55. The Claimant's evidence, which was supported by that of Mr Carr, and which the Tribunal accepted, was that on several occasions Mr Todd hit her on the bottom with a metal spoon. They both said that when she complained to Miss Hainsworth about this, in the presence of Mr Carr, Miss Hainsworth took no action. Mr Carr's evidence was that Miss Hainsworth just shrugged. The Claimant's evidence was Miss Hainsworth told her to ignore Mr Todd's behaviour, he was just joking and not to be taken seriously. When this allegation was put to Miss Hainsworth in cross-examination, she said that she had not told the Claimant that she should ignore what Mr Carr had done. Rather, she told the Claimant she would speak to Mr Todd, find out if it had happened and go from there.

56. The Tribunal saw documentary evidence in the Hearing file that Mr Todd was in fact interviewed by the Respondent's Human Resources (HR) staff in July 2022 about the Claimant's allegation that he had hit her, and he had denied this. It was Mrs Papaicovou's evidence, which the Tribunal accepted, that it was in fact Ms Akhtar who raised these incidents with Mr Jones, presumably because the

Claimant had mentioned them to her, and he raised it in turn with Mrs Papaicovou. She was annual leave at the time so it was Mr Topley who told the two individuals from HR to speak to Mr Todd. He denied the allegations and the Claimant had not made a formal complaint herself. No further action was taken.

57. Miss Hainsworth accepted that she could not remember reporting the issue to HR. She gave no evidence that she herself had ever spoken to Mr Todd.
58. On balance, the Tribunal found that Mr Carr's evidence was most likely to accurately reflect what had happened. The Claimant raised with Miss Hainsworth that Mr Todd had hit her with a spoon on the buttocks but she shrugged and took it no further. The question for the Tribunal was whether her inaction, which was clearly far short of effective management of what amounted to an allegation of assault, related to the Claimant's sex or race. The Tribunal found that it did not. Whilst Mr Todd's actions may have amounted to harassment related to sex or of a sexual nature, there was no evidence that Miss Hainsworth's reaction to the Claimant's complaint about it was itself related to sex or indeed race. She failed to act because she was not willing or able to accept responsibility for having a difficult conversation with Mr Todd. She had inadequate management skills to know how to deal appropriately with what she was being told.
59. The Claimant gave no evidence that Mr Todd had pulled her hair. She mentioned only that Mr Fox had done that.
60. For these reasons, this allegation failed and was dismissed.

Allegation 11: On two occasions in June 2022, Mr Fox knocked off the Claimant's cap in order to ridicule her and disrupt her work. When she showed her displeasure he said it was a joke and banter. Alleged to be harassment related to sex and/or race.

61. In her witness statement, the Claimant said that Mr Fox attacked her repeatedly by knocking her cap off her head and pulling her hair from behind. This was done, she said, with so much force that she would scream in pain. Mr Fox in his witness statement stated that he did on occasion flick the back of the Claimant's cap as he walked behind her, but she would do the same to him. She would smile at him on doing this, as he smiled at her. This was always in good humour. The Claimant denied that she flicked Mr Fox's cap.
62. Even taking into account that Mr Fox's evidence could not be tested in cross-examination, the Tribunal preferred his evidence to that of the Claimant and found that he did no more than flick the Claimant's cap in good humour shared by them both. Mr Carr made no mention in his evidence of seeing Mr Fox

attacking the Claimant in the way she alleged or seeing her in distress or hearing her scream, even though his workstation was only 6 to 10 feet away from her, closer than any other member of the kitchen staff.

63. Given the Tribunal's finding that Mr Fox's actions were good humoured and its finding that he had been helpful to the Claimant in her work, it also found that his purpose in flicking the Claimant's cap was not to create a hostile environment for her. Assuming, but without finding, that the Claimant perceived his behaviour as having that effect, the Tribunal did not accept that it was reasonable for it to do so, given the history of their relationship and the good-humoured way in which he did it.

64. Further, there was no evidence before the Tribunal to indicate that Mr Fox's actions in flicking the Claimant's cap related in any way to her sex or race.

65. For these reasons, this allegation failed and was dismissed.

Allegation 12: On 11 June 2022 Ms Akhtar physically blocked the Claimant's access to Mr Jones when she attempted to complain to him about being overworked. She told the Claimant to send her problem to Mr Jones in an email. Alleged to be direct sex discrimination.

66. The Tribunal accepts the evidence of Ms Akhtar and Mr Jones, which was clear, mutually consistent and credible, that on the day in question Ms Akhtar saw the Claimant leaving the kitchen in tears and approached her to see what was wrong. Mr Jones was in the area of the hotel into which the Claimant was walking, conducting a business meeting with two or three others. He was not, as the Claimant said in her evidence, "just standing there doing nothing". He was seated at a high table on a bar stool, talking to the others he was meeting, who were also seated on bar stools. He gestured to Ms Akhtar to deal with the Claimant, who he could see was in distress, but Ms Akhtar was already walking towards the Claimant when he did so.

67. Ms Akhtar tried to find out from the Claimant why she was upset but the Claimant said only that she was not happy working in the kitchen. After a few minutes, the Claimant had recovered and calmed herself and was content to return to the kitchen. Ms Akhtar was not blocking the Claimant's access to Mr Jones; she was attempting to assist her and get to the bottom of what had upset her.

68. The Claimant's evidence was that Ms Akhtar told her that she should put any problems to Mr Jones in an email. Ms Akhtar could not remember saying this, but the Tribunal is prepared to find that she did. There was no evidence that this, or any of Ms Akhtar's actions on the day in question, were because of the

Claimant's sex. In her witness statement, the Claimant asserted that Ms Akhtar suggested she put her complaint in writing to Mr Jones because she knew the Claimant's English language skills were weak. The allegation was not, however, of any form of race discrimination.

Allegation 13: Mr Jones and Mrs Papaïacovou failed to take notice of the Claimant being bullied or put in place remedial action to stop the chefs ganging up against the Claimant. Alleged to be harassment related to race.

69. Mr Jones knew that the Claimant was upset on 11 June 2022 but he believed that Ms Akhtar had dealt with this. Ms Akhtar had not reported to him that any further action was needed, not least because the Claimant had not shared with her what had upset her. He also knew about the allegation that Mr Todd had struck the Claimant with a spoon but he referred this on to Mrs Papaïacovou. She was on leave when this reached the HR department but Mr Topley ordered Mr Todd to be interviewed. There was no evidence that any of these responses by management was in any way related to race.

70. In the meeting with Mr Jones and Mrs Papaïacovou on 13 June referred to in allegation 14, the Claimant mentioned that she felt the other staff were not speaking to her or being as friendly to her as they were to each other. The Tribunal heard no evidence that Mrs Papaïacovou or Mr Jones picked up on this. It does not accept, however, that was related to the Claimant's race. It was because Mrs Papaïacovou and Mr Jones were concentrating on the Claimant's complaints about the work she was being required to do. In other words, it was an oversight but it was not related to race.

71. In this context, the Tribunal accepted the evidence of Ms Akhtar, which was supported by Mr Jones himself and not disputed by the Claimant, that on one occasion Ms Akhtar was subjected to racial comments by a guest at a large Christmas function for a significant client of the hotel. Mr Jones had the guest removed from the premises. The Tribunal considered this to be clear evidence that Mr Jones understands the significance of race discrimination and that it needs to be treated seriously and that if anything the Claimant raised could have indicated she was the being the subject of race discrimination, his failure to pick up on this was an oversight and not because of her race.

72. There was no evidence before the Tribunal that Mr Jones or Mrs Papaïacovou had knowledge of any other incidents that could be characterised as the Claimant being bullied or the chefs ganging up against her.

73. This allegation therefore failed and was dismissed.

Allegation 14: On 13 June 2022 Mrs Papaiacovou and Mr Jones called the Claimant to a meeting without warning and without the Claimant having the opportunity to obtain representation. At the meeting they pressurised the Claimant, made false allegations against her and intimidated her. Alleged to be direct race discrimination.

74. The Claimant told Ms Akhtar on a couple of occasions that she felt she was being treated differently to other chefs because of the colour of her skin. Ms Akhtar asked her to give examples but she said nothing other than that she thought she was being treated differently. Ms Akhtar was concerned about this so, even though the Claimant had not made any formal complaint, she decided to raise it with Mr Jones. On the same day as she did so, 13 June, Mr Jones and Mrs Papaiacovou called the Claimant to a meeting to identify and discuss what her concerns were.
75. The meeting was not a formal meeting of any type, and it was therefore not appropriate for the Respondent to offer the Claimant representation. The purpose of the meeting was to try to get to the bottom of why the Claimant felt she was being treated differently because of her skin colour. It was held without warning because Mr Jones and Mrs Papaiacovou took the issue seriously and wanted to deal with it without delay. The hotel is located in Bradford, where a large proportion of the population is made up of minority ethnic groups, and the hotel's workforce is very racially diverse. The management take any suggestion of racist treatment extremely seriously and Mrs Papaiacovou was concerned to understand as a matter of urgency what the Claimant was complaining about so that any problem could be addressed.
76. At the meeting, which was led by Mrs Papaiacovou, the Claimant was asked to explain why she believed she was being treated differently because of her skin colour. She gave examples of the tasks she was being required to do by Miss Hainsworth, such as preparing food for the following day. Mrs Papaiacovou and Mr Jones considered these duties to be part of the Claimant's job.
77. The Claimant said in her evidence that Mrs Papaiacovou shouted at her and asked her how she dare accuse the company of being racist. The Tribunal preferred Mrs Papaiacovou's evidence, which was clear and credible, that she was in fact just asking the Claimant to provide details of the ways in which she said she had been treated differently and why she thought it was because of her skin colour. The Tribunal accepted, as Mrs Papaiacovou said herself, that her style is direct, but it also accepts that she never raised her voice. She did have to be persistent in her questioning of the Claimant, in order to achieve the meeting's objective, which was to identify how and why the Claimant thought she was being treated differently because of her colour.

78. The Tribunal heard no evidence that the way in which Mrs Papaiacovou and Mr Jones conducted themselves in the meeting was in any way because of the Claimant's race.

79. This allegation therefore failed and was dismissed.

Allegation 15: At that same meeting Mrs Papaiacovou used Ms Akhtar, who was biased in favour of management and had weak language skills, to interpret for the Claimant and refused to allow her husband to attend to interpret for her. Alleged to be direct race discrimination.

80. Mrs Papaiacovou asked Ms Akhtar to interpret for the Claimant at the meeting on 11 June because she considered it appropriate for her to do so, not because of race. The Tribunal could see no reason to cast doubt on why she chose Ms Akhtar to interpret: it was Ms Akhtar who raised with Mrs Papaiacovou and Mr Jones that the Claimant believed she was being treated differently because of her skin colour; she had had dealings with the Claimant in the past and supported her; and she was fluent in Urdu, that being her second language after Punjabi. Ms Akhtar did not have weak language skills. The Tribunal accepted Ms Akhtar's evidence, which it found clear and very convincing, that she is not biased in favour of management, but stands by what is right. When the Claimant gave examples of her allegedly different treatment that related to the work she was being given, Ms Akhtar did ask her why she thought she was being treated differently because of her skin colour when the work she was mentioning was part of her job. That was not, however, because Ms Akhtar was biased in favour of management. When the Claimant told Mrs Papaiacovou and Mr Jones that she did not think Ms Akhtar was interpreting accurately, they brought in another employee who spoke Urdu to interpret for her in Ms Akhtar's place.

81. There was no evidence before the Tribunal that Mrs Papaiacovou or Mr Jones had refused to allow the Claimant's husband to be present to interpret for her. The Claimant made no such request. Mrs Papaiacovou did make the point to the Claimant at the meeting that on previous occasions issues relating to her employment had been discussed with her husband without her being present, and that the business wanted to discuss the current issues with her direct, not deal with matters through a third party.

82. This allegation failed and was dismissed.

Allegation 16: From 18 July 2022 until the end of the Claimant's employment, Miss Hainsworth gave the Claimant bulk jobs requiring substantial time to complete (eg peeling huge quantities of sweet potatoes, okra and potatoes) just

before the end of a shift and instructed her to complete them before ending her shift. When the Claimant said that was impossible, Miss Hainsworth accused her of not being a team player and said she was refusing to carry out instructions. Alleged to be direct race discrimination.

83. Miss Hainsworth did give the Claimant bulk quantities of vegetables to prepare for the following day. This was principally for the evening meal but occasionally for lunch when curry was to be served. The Tribunal found that the Claimant had ample time to complete this task during her normal working hours, given the fact that she would have completed the preparation of dinner by 5.45pm and her shift did not end until 7.30pm and she had further time available for the task in the afternoons while the evening curry was cooking. The Tribunal found that the reason Miss Hainsworth gave the Claimant these tasks to do was not because of her race but because it was part of her job.

84. The Claimant did not say in her evidence that she told Miss Hainsworth that the task was impossible. Nor did she say in her evidence that Miss Hainsworth told her she was not a team player. Miss Hainsworth denied that these things had ever been said and the Tribunal did not accept that they were.

85. This allegation failed and was dismissed.

Allegation 17: At a meeting on 28 July 2022 Mrs Papaia covou showed the Claimant total disrespect and bullied her. Using a loud, harsh and dictatorial tone, she told the Claimant to listen to what was being said to her and told her to agree to any instructions given to her. Mrs Papaia covou said to the Claimant in a loud, disrespectful and abrupt manner: “listen to me, keep quiet and listen to me – you are here to listen not to speak”. Alleged to be direct race discrimination or harassment related to race.

86. On 24 July Miss Hainsworth sent Mr Jones an email, copying it to Mrs P, raising various concerns she had about the Claimant. . It read as follows:

Hi,

We have had a few problems with Anaya [the Claimant] this week.

On Tuesday (19/7) – Anaya was talking to the 402 family while they were preparing their own lunch. As a result of this, she forgot to put the Afghan lunch in the oven (Cajun chicken thighs and diced potato). At 12.10 I asked if they were cooking as I didn't recall seeing them going in the oven. They weren't. So me and Paul [Mr Fox] put them in the oven. At 12.30, Anaya tried taking them out of the oven and serving them. We told her to

put them back in the oven as they weren't ready. She argued this saying they were ready. We didn't serve them until just after 12.45 (15 minutes late) when they were above 75 degrees.

On Sunday (24/7) – Anaya started at 11 and was told to put the Afghan lunch in the oven at 11.30 by Paul. He had trayed all the chicken up and prepared the Bombay potatoes during breakfast, it only needed cooking. To this, she said 'no, you do it'. So she was told again to put it in the oven at 11.30 to ensure it was cooked by 12.30. At 11.40, Paul realised that she hadn't put lunch in the oven. So he did it.

At 12.30. Chris [Mr Carr] asked Anaya if lunch was ready. Anaya told Chris to tell Paul that he needs to send lunch.

At 2.30 I went up to Anaya to ask her to get the lunch prepared for the morning (dicing sweet potato, onions and tomato). She ignored me and walked away. I went up to her and asked again. I was ignored again. I then went to Naz [Ms Akhtar] as she was duty manager. Explained what had happened and asked her to speak to Anaya if she was ignoring me. Naz went to speak to her. She was stood with her arms crossed and sulking the whole time, she wouldn't even look at Naz while she was speaking to her.

At 5.15, I reminded Anaya that she needed to prepare the sweet potato, onions and tomato before she finished her shift. She ignored me and walked off again. I then told her that it needed doing as she was doing lunch in the morning and if it wasn't done, then she would be late with lunch yet again.

When we have outside caterers in the kitchen for multi-cultural events, she spends most of the day talking to them rather than doing her job. Which gets us behind on a regular basis. When this happens, we have to constantly remind her to do things or when it gets too late we have to take over and do it ourselves.

She seems to be under the impression that she is only here to do the evening meal for the Afghans, if this is true, then we don't need her in for 8.5 hours a day. It should be a 5 hour shift, maximum.

Anaya is constantly arguing back, refusing to do things, ignoring her line manager and I would like this sorting please. I shouldn't have to ask the duty manager to task her with things.

*Thanks,
Amy*

87. As a result of receiving that email, Mr Jones and Mrs Papaia covou invited the Claimant to a meeting, led by Mrs Papaia covou. The Claimant's evidence on what Mrs Papaia covou said to her at that meeting was as follows:

Listen Ananya, you are here to listen to us, we are not here to listen to you, so sit down keep quiet and listen, from tomorrow we turn a new leaf, you will smile in the kitchen and obey any order given to you, you will say yes sir and obey the orders and I do not want to hear anyone again complaining about you.

88. These words are different from those in allegation 17 but the thrust is the same, that Mrs Papaia covou was not interested in listening to the Claimant and wanted to intimidate her. From Mrs Papaia covou's evidence and the notes of that meeting which were consistent with that evidence, the Tribunal finds that what in fact was discussed was Mrs Papaia covou's concerns that the Claimant was not obeying the instructions of her line manager, Miss Hainsworth, and that that needed to change or she may be facing a disciplinary process. She told the Claimant that she had to communicate with Miss Hainsworth and respect her and do what she was being asked to do. During the meeting the Claimant was still insisting that it was not her job to prepare the Afghan guests' lunches. Mrs Papaia covou had to talk over her to keep the meeting on track. She told the Claimant that she must not ignore Miss Hainsworth, she must complete the tasks involved in preparing lunch and dinner, she must not speak to anyone to distract her from what she was doing, and she must not walk away from Miss Hainsworth or the other chefs. Mrs Papaia covou ended the conversation by making clear that the Claimant's disruptive behaviour would not be tolerated, Miss Hainsworth had a lot to manage.

89. The Claimant did start crying during the meeting, but the Tribunal accepted Mrs Papaia covou's assessment that this was because she was frustrated that her views about the limits of her duties were not being accepted, rather than because she felt humiliated. The Tribunal did not accept that Mrs Papaia covou's purpose was to create a hostile environment for the Claimant. Her purpose was to focus the Claimant's attention so that she understood that she was on the verge of being disciplined for insubordination. The Tribunal did not accept that that was the effect of Mrs Papaia covou's conduct either. Even if the Tribunal assumed, without finding, that the Claimant felt intimidated by it, it was not reasonable for it to have that effect in circumstances where the Claimant was being told only that she needed to comply with her job duties and obey the instructions of her line manager. She was simply hearing things she did not want to hear.

90. Further, the Tribunal heard no evidence to indicate that anything that Mrs Papaiaovou said or did in that meeting was because of or related to the Claimant's race in any way.

91. This allegation therefore failed and was dismissed.

Mrs Kalsoom

92. The Claimant sought to claim that another Asian woman working at the hotel, Mrs Kalsoom, had confessed in conversations with the Claimant that she had been harassed during her employment in the Respondent's workplace for a number of years. In support of this, the Claimant put in evidence a translation of two voice messages that Mrs Kalsoom left on the Claimant's 'phone. When these were checked by the Tribunal-appointed interpreter, he deleted a reference Mrs Kalsoom was recorded in the Claimant's translation as having made to the hotel. Mrs Kalsoom did make reference to having "*suffered a lot, so much has happened with me*" but, as she explained in her evidence to the Tribunal, this related to matters in her personal life that she had discussed with the Claimant shortly before these messages were left.

93. In her evidence to the Tribunal, which the Tribunal found credible and accepted, Mrs Kalsoom said that after the Claimant had resigned, she and her husband had tried to get Mrs Kalsoom to give evidence in support of the Claimant's Tribunal claim, to confirm that she had witnessed the Claimant being bullied. She was not prepared to do so because that was not in fact the case. Mrs Kalsoom did not work in the kitchen. Although the Claimant had spoken to her on occasions at work about being upset, this was mainly about the problems the Claimant was having at home, her family situation and, mainly, about her husband.

94. By the time of the Hearing, having seen Mrs Kalsoom's witness statement, the Claimant's position was that Mrs Kalsoom was an unreliable witness who was not telling the truth. In her submissions, the Claimant said that Mrs Kalsoom had threatened in her messages that she would not hesitate to falsify statements if need be, should her own employment come into jeopardy by the Claimant involving her in the case. In fact, on the basis of the corrected translation of her messages, all that Mrs Kalsoom said was: "if I lose my job, then I will put the entire blame on you". That was no more than saying she would hold the Claimant responsible. She confirmed in her evidence to the Tribunal that she did not in fact fear for her job. She wanted the Claimant and her husband to believe that she did because she was frightened by the way they were trying to manipulate her into giving evidence on the Claimant's behalf and she wanted to give them a reason why they must leave her alone.

95. The Tribunal found Mrs Kalsoom to be a clear and impressive witness. She repeatedly confirmed that she was not being coerced by the Respondent in any way to give her evidence; it was the truth.

Summary

96. In summary, the Tribunal identified some shortcomings in the management of the Claimant during her employment. But it found no evidence that the conduct of any of the people alleged to have discriminated against her was because of, related to, or influenced in any way by her race or sex.

97. The nub of the Claimant's case was that she was viewed by the Respondent's managers as "below human" because she was an Asian woman and could not stand up for herself. There was simply no evidence to substantiate that allegation.

Employment Judge Cox
Date: 27 November 2023