EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr H Oseghale	**v**	**Gain Healthcare Limited**

Heard at: Reading Employment Tribunal
On: 30 October - 2 November 2023
Before: Employment Judge Talbot-Ponsonby
Mr Jon Appleton
Ms Caroline Baggs

Appearances
For the Claimant: Dr Oluwole Taiwo
For the Respondent: Mr Roy Magara (solicitor advocate)

JUDGMENT having been sent to the parties on 20 December 2023 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. This is a claim by the claimant, Mr Harrison Oseghale, against the respondent, Gain Healthcare Limited. The claimant was employed by the respondent from March or April 2022 until June or July 2022.

Claims and issues

2. The claimant claims that:

    2.1 He has been unfairly dismissed, on 3 bases:

        2.1.1 He asserted that the respondent was requiring him to work in breach of the Working Time Regulations 1998

        2.1.2 He made whistleblowing complaints about the state of accommodation in which he stayed and also about treatment given to a patient.

2.1.3 He was the victim of sex discrimination.

2.2 He was wrongfully dismissed and was therefore owed pay in lieu of notice.

2.3 The respondent was in breach of contract in that the claimant had paid the respondent the sum of £2,000, referred to in his contract as an admin fee, and the respondent had failed to return this.

2.4 The claimant claims that the respondent has made unauthorised deductions from his wages. This appears to be based largely on the fact that he had received no pay from when the respondent stopped allowing him to work on 16 May 2022; at the hearing, he claimed this for the period until 13 February 2023, based on the P45 he had received which gave this date as the end of his employment.

3. The issues were agreed in the case management hearing on 2 June 2023 and set out in the case management order arising from that hearing, which was sent to the parties on 27 June 2023. They are as follows:

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 21 April 2022 may not have been brought in time.

1.2 Was the complaint of direct sex discrimination made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

1.3 Was the complaint of automatically unfair dismissal made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?

1.3.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.3.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

1.4 Was the complaint of unauthorised deductions made within the time limit in section 23 of the Employment Rights Act 1996? The Tribunal will decide:

1.4.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?

1.4.2 If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.4.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.4.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Wrongful dismissal / Notice pay

2.1 What was the claimant's notice period?

2.2 Was the claimant paid for that notice period?

2.3 If not, was the claimant guilty of gross misconduct?

2.4 If the claim succeeds, what should the Tribunal award as a remedy?

3. Working Time Regulations

3.1 Was the Claimant entitled to the daily rest periods provided for under Regulation 10 of the Regulations? If so, did the Respondent fail to give the Claimant those daily rest periods?

3.2 Was the Claimant entitled to the rest breaks provided for under Regulation 12 of the Regulations? If so, did the Respondent fail to give the Claimant those rest breaks?

3.3 The dates of the alleged breaches under Regulations 10 and 12 are to be provided by the Claimant to the Respondent by 23 June 2023.

3.4 Did the Claimant raise concerns with the Respondent that it was acting in breach of Regulations 10 and 12? If so, was this the reason (or the principal reason) for dismissing the Claimant? Was the Claimant automatically unfairly dismissed contrary to s. 104 Employment Rights Act 1996?

4. Protected disclosure.

4.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

4.1.1 What did the claimant say or write? When? To whom? The claimant says he made disclosures on these occasions:

4.1.1.1. Email to Mrs Chapel-Nkomo on 14 April 2022 concerning a lack of hot water and heating in accommodation.

4.1.1.2. Comments to Mrs Chapel-Nkomo about errors in care to a patient. The Claimant is to provide the date of this disclosure by 23 June 2023.

4.1.2 Did he disclose information?

4.1.3 Did he believe the disclosure of information was made in the public interest?

4.1.4 Was that belief reasonable?

4.1.5 Did he believe it tended to show that:

4.1.5.1. a person had failed, was failing or was likely to fail to comply with any legal obligation;

4.1.5.2. the health or safety of any individual had been, was being or was likely to be endangered;

4.1.6 Was that belief reasonable?

4.2 If the Claimant made a qualifying disclosure, was it a protected disclosure because it was made to the Claimant's employer?

4.3 If the Claimant made protected disclosure(s) was this the reason (or the principal reason) for dismissing the Claimant? Was the Claimant automatically unfairly dismissed contrary to s. 103A Employment Rights Act 1996?

5. Remedy for Automatically Unfair Dismissal

5.1 Does the Claimant wish to be reinstated to his previous employment?

5.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?

5.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

5.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

5.5 What should the terms of the re-engagement order be?

5.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

5.7 What financial losses has the dismissal caused the claimant?

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

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

5.10 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

5.11 If so, should the Claimant's compensation be reduced? By how much?

5.12 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? Did the Respondent unreasonably fail to comply with the Code?

5.13 If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

5.14 If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?

5.15 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

5.16 Does the statutory cap of fifty-two weeks' pay apply?

5.17 What basic award is payable to the Claimant, if any?

5.18 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

6. Direct sex discrimination (Equality Act 2010 section 13)

6.1 Did the Respondent do the following things:

6.1.1 Dismissing the Claimant for mistakes in care which were allegedly made by two female colleagues. The Claimant says he was dismissed because he was male and that the two female colleagues at fault were not dismissed.

6.2 Was that less favourable treatment?

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

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

The Claimant says he was treated worse than two female colleagues and will provide their names to the Respondent by 23 June 2023.

6.3 If so, was it because of sex?

7. Remedy for discrimination

7.1 What financial losses has the discrimination caused the Claimant?

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

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

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

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

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

7.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the Respondent or Claimant fail to comply with it?

7.8 If so is it just and equitable to increase or decrease any award payable to the claimant?

7.9 By what proportion?

7.10 Should interest be awarded? How much?

8. Unauthorised deductions

8.1 Were the wages paid to the Claimant less than the wages he should have been paid? The Claimant is to specify the sums he says he was due and the dates of the underpayment by 23 June 2023.

8.2 Was any deduction required or authorised by statute?

8.3 Was any deduction required or authorised by a written term of the contract?

8.4 Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

8.5 Did the Claimant agree in writing to the deduction before it was made?

8.6 How much is the claimant owed?

9. Breach of Contract

9.1 Did this claim arise or was it outstanding when the Claimant's employment ended?

9.2 Did the Respondent do the following:

9.2.1 Fail to reimburse the Claimant £2,000 he paid prior to the commencement of his employment for administrative fees to cover the cost of documentation verification, practical training, adaptation, company car insurance, accommodation, ID badge, uniform and other miscellaneous costs.

9.3 Was there a contractual entitlement for such a reimbursement?

9.4 Was that a breach of contract?

9.5 How much should the claimant be awarded as damages?

4. In addition to the issues listed in the case management order and set out above, the tribunal needed to determine the effective date of termination of the claimant's employment.

Procedure, documents and evidence

5. The case was heard on 30 October to 2 November 2023 before Employment Judge Talbot-Ponsonby, Ms Caroline Baggs and Mr Jon Appleton. The claimant was represented by Dr Taiwo and the respondent by Mr Magara. The tribunal was grateful to both for their assistance.

6. The tribunal had a bundle of documents running to approximately 300 pages, together with witness statements from the claimant and from Olinda Chapel-Nkomo, the director and sole shareholder of the respondent. There were two additional applications by the respondent to adduce additional documents; the first at lunchtime on the first day, and the second on the morning of the third day, after the claimant had finished giving his evidence. The first application was allowed and the second dismissed. Reasons were given for each decision at the time.

7. The tribunal heard live evidence from the claimant and from Mrs Chapel-Nkomo. Both parties were fairly dogmatic in their views and reluctant to concede that they might be mistaken. In addition, they both, but especially Mrs Chapel-Nkomo, asserted a significant number of new facts that were not contained in their witness statements and in some cases directly contradicted the statements. For example , Mrs Chapel-Nkomo's witness statement stated that she had a meeting with the claimant on 2 June 2022; in the cross examination of the claimant, it was suggested that there was there was a telephone conversation rather than a meeting; however, when giving evidence, Mrs Chapel-Nkomo accepted that she did not work on bank holidays, and the tribunal accepted that 2 June 2022 was a bank holiday;

and, when it was put to her that there had been no communication on that day, she stated that "there was no conversation to be had because he was issued with a letter of termination". Similarly, in her witness statement Mrs Chapel-Nkomo stated that the claimant's attendance was poor and gave examples of alleged missed appointments as evidence of poor attendance; when cross examined, she confirmed that the "Pass" system sent notifications of tasks missed rather than necessarily just appointments.

8. The claim was unsatisfactory in that much of the evidence on which the tribunal might expect to rely was not provided. For example, the respondent alleged that the claimant was dismissed for failing to complete his training, but provided no evidence of a record of training required, attended or missed. Similarly, there was said to have been an investigation of alleged errors by the claimant, culminating in a report produced by the claimant's line manager, but no copy of this was provided. Email chains and text message chains provided by both parties were incomplete, leaving out dates and important context. We did not hear evidence from the claimant's line managers who were said to have discussed the alleged complaints with the claimant.

9. This was not satisfactory as it left the tribunal in the difficult position of assessing the claim without the important contemporaneous documentation; it is also a breach of the parties' obligations to disclose all relevant documentation, whether or not it assists their case, and to assist the tribunal. While both parties have provided incomplete correspondence, it was the respondent who held the vast majority of the documentation that the tribunal would expect to see, including the full terms of the employment contract and particulars of the job; the staff handbook for the dates in question; records of attendance and hours worked; records of training required and attended; records of the results of any investigation into the conduct or performance of the claimant. Very little of this was provided and the tribunal was left to decide the case based on documents that were referred to in oral evidence alone.

Fact finding

10. The claimant applied, apparently on 17 February 2022, for a job as healthcare assistant with the respondent.

11. At some stage, the claimant was told he would have to pay a fee. The claimant in his evidence stated that he believed this was for a certificate of sponsorship (COS), which at that time the respondent was entitled to issue on behalf of the home office; the respondent suggested that it was to cover administration costs and that this was stated on the website and in his employment contract. The claimant's position in his further and better particulars was that this payment was unlawful and that he was entitled to its return.

12. In an exchange of text messages, the date of which the tribunal was not given, the claimant asked Mrs Chapel-Nkomo for details of the bank

account and how much to pay. Mrs Chapel-Nkomo responded giving details of an account in her name (not that of the respondent company), and asked the claimant to pay £2,000. The claimant asked whether this was for 3 or 5 years, and was told that it was 5 years.

13. On the balance of probabilities, the tribunal was satisfied that the claimant paid £2,000 to Mrs Chapel-Nkomo's personal account and this was effectively an inducement for Mrs Chapel-Nkomo to procure that the respondent issued the COS and provide employment. It was not a payment made pursuant to the terms of the contract, which the claimant had not by that time received in any event.

14. In an exchange of emails on 23 February 2022, the claimant asked for his employment contract prior to booking shifts. On 26 February 2022, the respondent issued a COS referring to the respondent's employment of the claimant for 5 years starting on 1 April 2022.

15. In late February, the claimant and his wife had a child; both parties' evidence was that this was by emergency caesarean after 33 weeks of pregnancy.

16. On 1-2 March 2022, the claimant attended the respondent's offices for an induction. The respondent said he left at 3pm rather than 5pm and the Tribunal accepts that this may have been the case, because of his personal circumstances. The respondent stated in cross examination (when altering her evidence given in cross examination the day before) that the respondent had attended a previous induction the week before and failed to take it sufficiently seriously. There was no evidence of this before the tribunal and the Tribunal did not accept it; there is no record of any invitation to a prior induction, it was not put to the claimant, and the suggestion of the claimant having had to attend induction twice is not in either party's witness statement.

17. The respondent stated that the claimant would be required to undertake 2-4 weeks of assessment prior to being issued with an employment contract. This is consistent with the email apparently sent to the claimant which the tribunal understands, from the limited extract provided, sets out the application process.

18. On 9-11 March 2022, the claimant was asked to carry our work for the respondent. The respondent's initial case was that the claimant did not attend on those days; the claimant stated that he did attend, but did not have sufficient information to register his attendance on the respondent's app. In cross examination, as noted above, Mrs Chapel-Nkomo stated that the app recorded tasks rather than solely attendance and the tribunal accepted that the claimant did attend and carry out tasks on those days, but that they were not properly recorded in the app. This is also consistent with the respondent paying the claimant for 18.75 hours in March.

19. The claimant started work full time on 1 April 2022. On 4 April, there was an exchange of emails in which the claimant requested a copy of his contract and offer letter from Chido Manyande of the respondent, and she responded to say that she would escalate this. Nonetheless he was not provided with the contract or offer letter until 25 April, and this contract contained the wrong address. The claimant was eventually provided with the correct contract and offer letter on 10 May 2022, and he signed it on 12 May 2022.

20. The offer letter, dated 1 April but (as stated above) not sent to the claimant until much later, simply states that the claimant is to be paid £25,000 per annum and is required to work 40 hours a week. In fact, the claimant was paid at an hourly rate by reference to the "contact time" he spent with patients. The respondent stated variously that the basis of this was set out in the particulars of his employment and in a letter of amendment of his employment terms and conditions. Neither document is in the bundle.

21. In practice, the claimant was aware by 14 April 2022 that this is how he was paid because he expressed his dissatisfaction in an email on that day. By continuing to work after that date, he affirmed the contract on those terms.

22. On that day, there was an exchange of emails in which the claimant complained of:

    a. The fact that he was employed on a permanent contract but being paid for hours worked like an agency worker

    b. That he should be able to carry out 40 hours' work within a 5-day week

    c. That the accommodation provided to him by the respondent was unsatisfactory in that it had no gas cooker, no heating and no hot water; and

    d. He was having to work long hours and for 6-7 or more days in a row.

23. The respondent in those emails informed the claimant that he had to work the shifts he was allocated and, if he did not, then the respondent would have to make a referral to the Disclosure and Barring service (DBS) as this was a safeguarding issue. In cross examination, she stated that the claimant was allowed to take the next day off, but the tribunal was provided with no evidence of which shifts the claimant did or did not do. It was not put to the claimant that he had taken this day off for sickness and the tribunal was not in a position to make a finding on this matter. If he had been allowed the day off as he was sick, this would not of itself suggest that he was unreliable.

24. In April 2022, the claimant contracted covid. In its amended grounds of resistance, the respondent suggests that "On one occasion, the claimant stated that he had contracted covid-19 and could not attend work. However, despite constant requests from the respondent, he never provided a covid

test as proof which would in turn have allowed the respondent to update its system, clients and staff." The respondent has not substantiated this assertion with any reminders to the claimant of the need to provide a test, and the claimant has provided an email in which he sent the result of a positive test to the respondent within 3 minutes of receiving the email confirmation from the NHS covid notification. The tribunal therefore did not accept the suggestion by the respondent that this is evidence of the claimant's unreliability.

25. The respondent asserted that the claimant failed to meet his training requirements. As noted above, there is very limited evidence that the claimant failed to carry out his training. The only documentary evidence in relation to training is:

    a. A text message (undated) to the claimant and 5 and others insisting that they attend training in Stoke on Trent on a Saturday.

    b. A text from the claimant on some date before 6 June in which he confirms he has completed his care certificate training and there are just a few others remaining to be completed.

    c. An automated email sent to the claimant on 12 Dec 2022 listing training for which the claimant had been registered.

    d. An automated email sent to the claimant on 19 June 2023 which stated that he had 90 training tasks to complete.

26. On this basis, and despite the very limited evidence provided by the respondent, the tribunal accepted that, by the end of May 2022, the claimant had not completed all of his training requirements. The tribunal did not accept that he was necessarily anywhere near as dilatory in doing so as the respondent asserted.

27. The respondent asserted that there were a number of complaints about the care provided by the claimant, specifically:

    a. The provision of incorrect medication.

    b. A client's bed was raised meaning that the client could not get back into bed.

    c. A client's duvet cover was placed in a washing machine and it was burned, shrunken and damaged.

28. The claimant asserted that he had discussions with his line manager (the care co-ordinator), and that he was not directly responsible for any of these; he had given details of those (Abiola and Grace) who were, and the line manager never came back to him to suggest that this was not correct.

29. The respondent disputed this, saying that, on the first 2 occasions, the claimant was in fact working with Manpreet Kaur and this had been checked against the shift rotas; and that Ms Kaur was dismissed for the same instances. The respondent stated that there had been a full investigation, resulting in a report from the care co-ordinator which identified that the claimant and Ms Kaur were both responsible for these failings. This report was not before the tribunal nor was a copy ever provided to the claimant and he continued to insist that the fault lay with Abiola and Grace.

30. It is for the respondent to provide evidence to support of these allegations and it has failed to do so. On the balance of probabilities, and taking into account the oral evidence of the parties and the lack of any documentation provided, the tribunal found that the respondent had not made out its case that the claimant was responsible for poor care and accordingly we find that there is no evidence of poor care by the claimant.

31. The claimant was not permitted to work after 16 May 2022. Mrs Chapel-Nkomo stated in cross examination that she had a meeting with the claimant on 16 May, in which she was going to provide him with the investigation report and discuss with him undertaking additional training to ensure that care was properly provided; and that he could not be allowed to work on shifts until this training was provided, to ensure the safety of patients. She stated that, at the meeting, she had intended to have an informal discussion with the claimant and go through with him what would be required of him. However, he lost his temper and became aggressive, to the extent that someone else had to intervene. As a result of this, he was not given the report at that time. None of this appeared in her witness statement.

32. Despite the paucity of the documentation, and the lack of reference to it in her witness statement, the tribunal accepts Mrs Chapel-Nkomo's evidence that this meeting occurred, and that the claimant was asked to undergo more training prior to being able to undertake more shifts. This is consistent with the claimant's text to the respondent on 19 May (referred to below) stated that he had completed some training, and asking to be allowed to work.

33. The tribunal did not accept that the claimant became aggressive in this meeting. If he had, it would have been of such significance that Mrs Chapel-Nkomo would have referred to it in her witness statement, and it would be likely to have been cited among the reasons for the claimant's dismissal.

34. On 19 May 2022, the claimant sent a text to the respondent stating that he had completed training and asking to be allowed to work. There is no evidence of a response from the respondent; there is a further text from the claimant, whose date is not given but it can be inferred to be in the week commencing 23 May 2022, in which the claimant stated that he had completed his care certificate training and there were a few others remaining to be completed. Again, there is no evidence of any response from the respondent.

35. On 2 June 2022, the respondent wrote a letter to the claimant to say that he was dismissed. The address given on this letter was an address from which the claimant had moved in December 2021 and he stated that he did not receive the letter until it was produced at the case management hearing on 2 June 2023. The tribunal accepts that the address was wrong and that the claimant did not receive this letter until the case management hearing. The respondent sought to argue that it was the claimant's responsibility to ensure that this address on the respondent's system was correct and up to date. The tribunal did not accept this, as the claimant was receiving payslips and informed the respondent once that they were using the wrong address, when it was incorrect on his first contract of employment. Having corrected this once, and receiving payslips, the claimant would have no reason to assume that the respondent had failed to update its records.

36. The tribunal finds that there was no meeting or even telephone call on 2 June 2022. There are several reasons for this; it was a bank holiday, on which Mrs Chapel-Nkomo would not normally work; there was no invitation to a meeting shown to the tribunal; her evidence shifted from saying that there was a meeting, to it being put to the claimant in cross examination that there had been a telephone call, to her own evidence in cross examination that there was no need for a conversation as she had sent the letter.

37. On 6 June 2022, the claimant sent a text to the respondent stating that he had completed all the training but for 2 tasks; the respondent replied to say "Harrison we terminated your employment and sent you a letter and notified home office". The claimant replied immediately, seeking to persuade the respondent to meet him before terminating his employment.

38. The respondent did not reply to the claimant's texts but nonetheless the claimant attended the offices in Bicester on 7 June to try to speak to the respondent. He was escorted out the office. Neither party addresses this meeting in their witness statements but the claimant's email sent on 8 June states, "your statement has suggested to me that you have decided to terminate my employment from Gain Healthcare Limited". It goes on to say, "I am appealing to you to please reconsider your stand".

39. Thereafter, the claimant and his representative sent a number of messages to the respondent, and the claimant's wife attended the respondent's offices on one occasion, and the respondent eventually sent an email to the claimant on 20 July 2022 stating in unequivocal terms that he had been dismissed and giving reasons, and asking the claimant not to contact her any more.

40. The claimant continued to receive messages and payslips from the respondent's automated systems, until July 2023.

41. The bundle contains 2 forms P45 for the claimant, one dated 2 July 2022 and another dated 23 February 2023.

<u>Reason for dismissal</u>

42. At this stage, as it is a finding of fact, it is appropriate to set out the tribunal's findings as to the reason for the claimant's dismissal.

43. The employer asserts that the dismissal was for the reasons given in the letter of 2 June 2022. These were:

    a. The claimant's failure to complete all his training

    b. The claimant's failure to deliver satisfactory care as required by CQC

    c. The claimant's failure to complete 140h per week as per his contract

    d. The level of complaints received from 3 specific clients.

44. The tribunal has accepted that the claimant did not comply with all his training requirement, albeit that at the time of his dismissal he was still trying to do so and had achieved most of them.

45. Having heard all the evidence, it appears to the tribunal that, following the meeting on 16 May at which the claimant was informed he needed to carry out more training, the respondent was not satisfied that he had accepted this requirement and eventually, taking into account his slow progress in remedying his training requirements and his apparent failure to accept that he could be at fault, coupled with a history of making complaints about a range of issues (including that he was being paid hourly, his awkwardness about accepting the shifts as evidenced by the respondent's email on 14 April, the accommodation, the long hours he was working, his travel, and his complaint that Mrs Chapel-Nkomo was threatening to report him to the DBS) Mrs Chapel-Nkomo she felt she had no alternative but to dismiss him and did so.

46. The tribunal does not find that there was gross misconduct on the part of the claimant.

Law

Date of termination

47. The effective date of termination (EDT) of a contract is set out s. 97 Employment Rights Act 1996 (ERA). This provides, so far as relevant:

> 97 Effective date of termination.
>
> (1) Subject to the following provisions of this section, in this Part "the effective date of termination" —
>
> (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

> (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect […]
>
> […]

48. In Robert Cort and Son Ltd v Charman [1981] ICR 816, EAT, Mr Justice Browne-Wilkinson held that, regardless of the position at common law, the EDT for statutory purposes is the date on which the termination takes effect, meaning the date on which the employee is actually dismissed. This has been followed in several subsequent cases.

49. When considering whether an employee has been dismissed, the tribunal needs to consider the words used. If unambiguous words (of dismissal or of resignation) are used by a party to an employment contract, these may be taken at face value, regardless of the circumstances (Sothern v Franks Charlesly and Co [1981] IRLR 278, CA). If ambiguous words are used, then the tribunal will need to take into account all the surrounding circumstances. If the words are still ambiguous, then the tribunal will been to consider how a reasonable employee would have understood them in the circumstances. The interpretation of a letter shjoud not be technical, but should "reflect what an ordinary, reasonable employee … would understand by the words used". In addition, "the letter must be construed in the light of the facts known to the employee at the date he receives the letter" (Chapman v Letheby and Christopher Ltd [1981] IRLR 440, EAT).

Time limits

50. Under s. 111 ERA, any claim for unfair dismissal must be brought within 3 months of the dismissal, unless the tribunal finds that it was not reasonably practicable to do so, in which case it must be brought within such further time as the tribunal considers reasonable.

51. When considering the meaning of "not reasonably practicable":

    a. S.111(2)(b) ERA should be given a "liberal construction in favour of the employee" (Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53, CA)

    b. What is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. As Lord Justice Shaw put it in Wall's Meat Co Ltd v Khan [1979] ICR 52, CA: "The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the [employment] tribunal, and that their decision should prevail unless it is plainly perverse or oppressive"

c. The onus of proving that presentation in time was not reasonably practicable rests on the claimant. That imposes a duty upon him to show precisely why it was that he did not present his complaint (Porter v Bandridge Ltd [1978] ICR 943, CA). Accordingly, if the claimant fails to argue that it was not reasonably practicable to present the claim in time, the tribunal will find that it was reasonably practicable (Sterling v United Learning Trust EAT 0439/14).

52. In the case of Lowri Beck Services Ltd v Brophy [2019] EWCA Civ 2490, CA, the court considered the effect of a misunderstanding of the date of dismissal. B had dyslexia, which according to unchallenged medical evidence was severe and affected "his ability to memorise new information, to understand, or to retain verbal instructions unless backed up by an extra explanation or confirmed in writing". He had been supported for much of his life by his brother, particularly when dealing with any official documents or processes. Following a disciplinary investigation and hearing, B was told by telephone on 29 June 2017 that he was being dismissed with immediate effect for gross misconduct. He was also told that this decision would be confirmed by letter and he would then have five days to appeal. On 6 July 2017 he received a letter dated 4 July, which was phrased in terms of informing him of the decision rather than confirming what he had already been told. The letter stated that dismissal "will be with immediate effect from 29 June 2017". It was only after receipt of this letter that B told his brother about the dismissal. B's brother, acting on the basis that the dismissal had taken place on 6 July, presented an unfair dismissal claim out of time. An employment judge considered that the letter of 4 July was unclear and contradictory. The judge accepted that B's brother had genuinely and reasonably believed the dismissal to have taken place on 6 July and concluded that it had not been reasonably practicable to present the claim in time. On appeal, both the EAT and the Court of Appeal held that the tribunal had been entitled to reach this decision. Lord Justice Underhill in the Court of Appeal held that it was reasonable for B and his brother to take the view that the formal dismissal took effect only when B received the letter dated 4 July. The reference in the letter to dismissal taking effect from 29 June muddied the waters but not to the extent that the tribunal was bound to find that it was unreasonable for B and his brother not to have sought advice.

53. Under the Equality Act 2010, section 123, there is a primary time limit of 3 months from the date of the relevant act, or if there is a continuing act, the end of the period of discrimination.

54. It is important to note that one must look at the act, not the consequences; this was made clear by the decision of the House of Lords in Barclays Bank plc v Kapur and ors [1991] ICR 208, which drew a distinction between a continuing act and an act that has continuing consequences. They held that where an employer operates a discriminatory regime, rule, practice or principle, then such a practice will amount to an act extending over a period. Where, however, there is no such regime, rule, practice or principle in operation, an act that affects an employee will not be treated as continuing, even though that act has ramifications which extend over a period of time.

Thus in Sougrin v Haringey Health Authority [1992] ICR 650, CA, the Court of Appeal held that a decision not to regrade an employee was a one-off decision or act, even though it resulted in the continuing consequence of lower pay for the employee who was not regraded. There was no suggestion that the employer operated a policy whereby black nurses would not be employed on a certain grade; it was simply a question whether a particular grading decision had been taken on racial grounds.

55. The tribunal has jurisdiction to extend time under section 123(1)(b) if it is just and equitable to do so.

56. This is a broad discretion. In Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA, the Court of Appeal stated that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) of the Equality Act 2010, "there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule." However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law does not require this but simply requires that an extension of time should be just and equitable, as per the decision in Pathan v South London Islamic Centre EAT 0312/13.

Unauthorised deductions from pay

57. Under s. 23 ERA, any complaint about an unauthorised deduction from pay must be made within 3 months of the deduction or, if there is a series of deductions, within 3 months of the last of them, unless the tribunal finds that it was not reasonably practicable to do so, in which case it must be brought within such further time as the tribunal considers reasonable.

58. The same considerations in relation to what is reasonably practicable apply as for unfair dismissal.

Wrongful dismissal / notice pay

59. Minimum notice periods for dismissal are given by s. 86 ERA. For an employee who has a period of continuous employment of less than 2 years (as is the case here), the minimum period is 1 week.

60. Unless an employee is dismissed for gross misconduct, the failure by an employer to give requisite notice amounts to wrongful dismissal and the employee is entitled to be paid for that period.

Working Time Regulations 1998 (WTR)

61. Regulation 10 of the WTR provides, so far as relevant:

> 10. Daily rest

(1) A worker is entitled to a rest period of not less than eleven consecutive hours in each 24-hour period during which he works for his employer.

[…]

62. Regulation 12 of the WTR provides, so far as relevant:

12. Rest breaks

(1) Where a worker's working time is more than six hours, he is entitled to a rest break.

[…]

(3) Subject to the provisions of any applicable collective agreement or workforce agreement, the rest break provided for in paragraph (1) is an uninterrupted period of not less than 20 minutes, and the worker is entitled to spend it away from his workstation if he has one.

[…]

63. Regulation 21 of the WTR provides, so far as relevant:

21. Other special case

Subject to regulation 24, regulations 6(1), (2) and (7), 10(1), 11(1) and (2) and 12(1) do not apply in relation to a worker–

(a) where the worker's activities are such that his place of work and place of residence are distant from one another, including cases where the worker is employed in offshore work, or his different places of work are distant from one another;

(b) where the worker is engaged in security and surveillance activities requiring a permanent presence in order to protect property and persons, as may be the case for security guards and caretakers or security firms;

(c) where the worker's activities involve the need for continuity of service or production, as may be the case in relation to–

(i) services relating to the reception, treatment or care provided by hospitals or similar establishments (including the activities of doctors in training), residential institutions and prisons;
(ii) work at docks or airports;
(iii) press, radio, television, cinematographic production, postal and telecommunications services and civil protection services;
(iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration;
(v) industries in which work cannot be interrupted on technical grounds;
(vi) research and development activities;
(vii) agriculture;
(viii) the carriage of passengers on regular urban transport services;

[…]

64. It is important to note that the list in regulation 21(c) is not exhaustive; for example, in Union Syndicale Solidaires Isère v Premier Ministre and ors [2011] IRLR 84, ECJ, the European Court indicated that Article 17(3)(c) of the Working Time Directive (on which Reg 21(c) is based) was capable of applying to casual and seasonal workers responsible for the round-the-clock supervision of children resident at holiday and leisure activity centres.

65. Most cases and guidance on regulation 21(c) relate to obvious or extreme circumstances.

66. It is important to note s.104(1), (2) ERA. This provides so far as relevant:

> 104. Assertion of statutory right.
>
> (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—
>
> (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or
>
> (b) alleged that the employer had infringed a right of his which is a relevant statutory right.
>
> (2) It is immaterial for the purposes of subsection (1)—
>
> (a) whether or not the employee has the right, or
>
> (b) whether or not the right has been infringed;
>
> but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.
>
> […]

67. Therefore, notwithstanding the issues set out above, the tribunal does not need to consider whether the claimant's rights under the WTR were actually infringed, merely whether the claimant believed in good faith that he had the right and that it was infringed.

68. For the employee to have protection under this section, the assertion of the statutory right must be the reason, or (if more than one) the principal reason for dismissal.

Public interest disclosure dismissal

69. Section 103A of the Employment Rights Act 1996 provides as follows:

> 103A Protected disclosure
> An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

70. "Protected disclosure" is defined in sections 43A and subsequent sections of the Act. Sections 43A to 43 C provide as follows:

> 43A Meaning of "protected disclosure"
>
> In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.
>
> 43B Disclosures qualifying for protection
>
> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
> (e) that the environment has been, is being or is likely to be damaged, or
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.
>
> (2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.
>
> (3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.
>
> (4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.
>
> (5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).
>
> 43C Disclosure to employer or other responsible person
>
> (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure …—

(a) to his employer, or
(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—

(i) the conduct of a person other than his employer, or
(ii) any other matter for which a person other than his employer has legal responsibility,

to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer."

71. In the case of Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325, the Employment Appeals Tribunal undertook a detailed consideration of that amounts to disclosure of information. The tribunal found that "information" requires facts, rather than allegations of dissatisfaction, noting that section 43F distinguishes between information and an allegation. The tribunal noted, at paragraph 24:

> "24. Further, the ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around". Contrasted with that would be a statement that "you are not complying with Health and Safety requirements". In our view this would be an allegation not information."

72. In his judgment in the case of Kilraine v London Borough of Wandsworth [2018] ICR 1850, Sales LJ elaborated on this, saying there is no rigid dichotomy between allegations and information; some statements made by employees may be both allegations and disclosures, or a mixture of the two. The example given in Cavendish Munro was of an allegation which contained no specific information, but other allegations may. It is an issue for the tribunal to decide on each occasion.

73. Sales LJ went on to explain that the wood "information" in section 43B(1) has to be read with the qualifying phrase "tends to show"; the worker must reasonably believe that the information 'tends to show' that one of the relevant failures has occurred, is occurring or is likely to occur. Accordingly, for a statement or disclosure to be a qualifying disclosure, it must have sufficient factual content to be capable of tending to show one of the matters listed in S.43B(1)(a)–(f). Whether an identified statement or disclosure in any particular case meets that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question that is likely to be closely aligned with the issue of whether the worker making the disclosure had the reasonable belief that the information he or she disclosed tends to show one of the six relevant failures. Furthermore, as explained by Lord Justice Underhill in Chesterton Global Ltd (t/a

Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) [2018] ICR 731, CA, this has both a subjective and an objective element. If the worker subjectively believes that the information he or she discloses does tend to show one of the listed matters, and the statement or disclosure he or she makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his or her belief will be a reasonable belief.

74. In the case of Gunning v County Durham and Darlington NHS Foundation Trust and anor ET Case No.2500404/15, the claimant alleged that he had been dismissed because of protected disclosures made over several years. The tribunal accepted his assertion that he had raised issues with management on numerous occasions, and in relation to a number of different matters, but at the hearing he failed to give any evidence of what information he had actually provided to his employer. In the absence of this information, the court was unable to make any finding of a protected disclosure.

75. The tribunal will take into account the context of any communication and the entirety of any series of communications, even if communicated to different people, as was the case in Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540, EAT. S had contacted NL's health and safety department and then, subsequently, the HR department, asking about health and safety policies in relation to driving on snowy roads, and raising the concern that he considered the roads to be dangerous. The tribunal found that the communication whole constituted a qualifying disclosure.

76. Finally, in Kilraine (above) the Court of Appeal confirmed that the context of the statement matters. As Sales LJ said, at paragraph 41 of his judgment:

> "It is true that whether a particular disclosure satisfies the test in s 43B(1) should be assessed in the light of the particular context in which it is made. If, to adapt the example given in para [24] in the Cavendish Munro case, the worker brings his manager down to a particular ward in a hospital, gestures to sharps left lying around and says 'You are not complying with Health and Safety requirements', the statement would derive force from the context in which it was made and taken in combination with that context would constitute a qualifying disclosure. The oral statement then would plainly be made with reference to the factual matters being indicated by the worker at the time that it was made. If such a disclosure was to be relied upon for the purposes of a whistleblowing claim under the protected disclosures regime in Part IVA of the ERA, the meaning of the statement to be derived from its context should be explained in the claim form and in the evidence of the claimant so that it is clear on what basis the worker alleges that he has a claim under that regime. The employer would then have a fair opportunity to dispute the context relied upon, or whether the oral statement could really be said to incorporate by reference any part of the factual background in this manner."

77. The other element of the test of a protected disclosure is that the claimant must show that he reasonably believed that the disclosure was in the public interest. The tribunals and the Court of Appeal have construed public interest widely. In particular, in Dobbie v Felton t/a Feltons Solicitors [2021]

IRLR 679, the EAT commented that the key question is whether the disclosure serves the private or personal interest of the worker making the disclosure, and those that serve a wider interest.

78. The question of the reason of the claimant's dismissal is a question of fact for tribunal. In the case of Smith v Hayle Town Council [1978] ICR 996, the Court of Appeal confirmed that in cases where the employee does not have 2 years' service, he has the burden of proof to show, on the balance of probabilities, that the dismissal was for an automatically unfair reason.

Discrimination generally

79. Section 13(1) Equality Act 2010 provides that (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

80. Under section 9, race is a protected characteristic and includes colour, nationality and ethnic or national origins.

81. In order to claim direct discrimination under section 13, the claimant must have been treated less favourably than a comparator who was in the same, or not materially different, circumstances as the claimant.

82. In the pivotal case of Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL, (a sex discrimination case), Lord Scott explained that this means that "the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class".

83. In Watt (formerly Carter) and ors v Ahsan [2008] ICR 82, HL, (a race discrimination case), Lord Hoffmann opined that it is "probably uncommon" to find an individual who qualifies as a statutory comparator. Furthermore, where such an individual is identified, there is likely to be disagreement over whether his or her circumstances are materially different. However, Lord Hoffmann thought that in most cases "it will be unnecessary for the tribunal to resolve this dispute because it should be able, by treating the putative comparator as an evidential comparator, and having due regard to the alleged differences in circumstances and other evidence, to form a view on how the employer would have treated a hypothetical person who was a true statutory comparator."

84. The definition of direct discrimination in the Equality Act 2010 requires the complainant to show that he or she received less favourable treatment "because of a protected characteristic". The protected characteristic must be an "effective cause" of the treatment.

Burden of proof

85. Section 136 of the Equality Act 2010 provides that, once a claimant proves facts from which the tribunal could conclude, in the absence of any other explanation, that an employer has committed an act of direct discrimination, the tribunal is obliged to uphold the claim unless the employer can show that it did not discriminate.

86. Further guidance was given by Lord Justice Mummery in Madarassy v Nomura International plc [2007] ICR 867, CA, where he stated:

> "The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

Conclusions

87. Considering then the issues in the light of the findings of fact and the law as set out above

Issue 0: EDT

88. As noted above, on 6 June 2022 the claimant sent a text to the respondent which read, "Harrison we terminated your employment and sent you a letter and notified home office". Although this appears unequivocal, this does refer to a letter that the claimant had not received, so it could be considered that he would not know the position until he saw the letter.

89. There was then a meeting on 7 June, which is considered below, and on 20 July 2022 the claimant sent a letter to the respondent in unequivocal terms.

90. As for the meeting on 7 June 2022, the tribunal does not know exactly what words were used but, having regard both to the text sent on 6 June and that the respondent did then appear to understand that the claimant was no longer prepared for him to work for them, and were informing the home office of this, we find that the claimant was summarily dismissed on 7 June 2022.

Issue 1 – timing of application

91. The date given in issue 1.3 of 12 April 2022 is clearly a mistake, as it is nearly 6 months before the application to the tribunal. Working backwards from the date of the claim of 7 October 2022, and taking into account the ACAS early conciliation process, the date that should have been referred to in issue 1.3 is 26 June 2022, being 3 months and 12 days before 7 October 2022.

92. On that basis, the application is prima facie out of time.

93. The tribunal then considered whether it was reasonably practicable for the claimant to bring the claim in time.

94. The tribunal did not hear direct evidence on this matter or argument from either side. As noted above, it is for the claimant to explain why the application was not made in time. The tribunal infers that, as per the emails sent on 20 July 2022, the claimant believed that the EDT was on that date.

95. The tribunal considered whether that was a reasonable belief at the time, and found that it was, bearing in mind there had been references to a letter that the claimant had not received. On this basis, a mistaken but reasonable belief on the part of the claimant means it was not reasonably practicable for the application to be made in time. Reasonable period to extent time to is to the date it would be based on his mistaken belief, which is therefore 19 October plus 12 days, i.e. 31 October 2022.

96. On that basis, the tribunal finds that the unfair dismissal claim was brought in time.

97. As to the sex discrimination claim (issue 1.2), on the same basis, the tribunal considers that it is just and equitable for time limit to be extended.

98. As to the unauthorised deductions claim, the last payment to the claimant was on 7 June 2022. The same test and principles apply as to the unfair dismissal claim and the tribunal makes the same finding.

Issue 2: Wrongful dismissal / notice pay

99. The tribunal has accepted that his notice period was a week. The claimant has not been paid for it.

100. As set out above, there was no gross misconduct and so the claimant was entitled to a week's notice. He is therefore entitled to a week's pay.

Issue 3: WTR

101. As noted above, and notwithstanding the list of issues, s. 104 ERA does not require tribunal to determine whether the claimant had the benefit of eg 10 and 12 of the WTR, nor whether (if he did) the respondent was in breach of them. It is enough for the claimant to assert that he has the benefit and the respondent is in breach of them.

102. For the avoidance of doubt, having considered the hours that the claimant worked, based on his assertion in April that he was being paid for 6 hours in a 14 hour shift, and his timesheets, it appears to the tribunal that the respondent's evidence about the claimant having rest breaks is correct, albeit that they might on busy days amount to less than 2 hours.

103. The tribunal further accepts that the need for the claimant to deliver care to the same individual during the course of a day from morning to night, means that he will inevitably work a long day and therefore reg 10 does not apply to him by virtue of reg 21(c).

104. The tribunal accepts that the claimant's emails of 14 April do amount to an assertion of a statutory right but, considering the reason for dismissal that the tribunal has found, this was not the sole or principal reason for the claimant's dismissal and so this element of the claim does not succeed.

Issue 4: Protected disclosure

105. The claimant emailed the respondent on 14 April complained about the accommodation.

106. Taking the tests in turn:

    a. The email did disclose information.

    b. The claimant did not believe that the disclosure was in the public interest. He confirmed in cross examination that he was concerned solely about himself in that email.

    c. It is not clear whether the claimant believed that the information disclosed tended to show that the employer was failing to comply with a legal obligation or the health and safety of its employees; he was simply complaining about the standard of the accommodation.

107. Accordingly, having regard to (b) above, it was not a protected disclosure.

108. In any event, even if it was a protected disclosure, considering the reason for dismissal that the tribunal has found, this was not the sole or principal reason for the claimant's dismissal.

109. The second disclosure is of alleged errors in care to a patient.

110. In cross examination, the claimant indicated that he was referring to a text in which he stated that Abiola had given the wrong medication to a patient. Taken on its own, this does not disclose adequate information; it is a response to a complaint about the care of a client while the claimant was on shift and so, if the employer knew all the relevant detail, it might amount to enough information.

111. Accordingly, the claimant cannot reasonably have believed that, even if he was disclosing information, he was doing so in the public interest - he was seeking to justify his own behaviour.

112. Accordingly, this was not a protected disclosure

113. In any event, even if it was a protected disclosure, considering the reason for dismissal that the tribunal has found, this was not the sole or principal reason for the claimant's dismissal.

Issue 5: remedy

114. Having regard to the findings above, this issue does not arise.

Issue 6: Sex discrimination

115. The comments made above about the burden of proof under section 136 EqA are noted.

116. The claimant first needs to show that the was a difference in treatment between himself and someone of the opposite sex, and that there is evidence on which the tribunal can find that this was due to discrimination.

117. It was very difficult for the tribunal to establish the comparators, as the respondent asserted that the other person whose service was poor was also dismissed, whereas the claimant asserts that it was different people and they were not.

118. However, the claimant's allegation about sex discrimination was clear and was limited to the sole fact that he had been dismissed and his comparators had not.

119. Despite questioning by the tribunal, he did not allege any wider issues of sex discrimination.

120. Accordingly there is no evidence on which the tribunal can find that there was sex discrimination.

121. Even if the comparators were those alleged by the claimant, the respondent's explanation for claimant's dismissal was effectively that the respondent had failed to respond to the opportunity given to him to remedy matters.

122. Considering the reason for dismissal that the tribunal has found, this was not the sole or principal reason for claimant's dismissal and was not an effective cause.

Issue 7: remedy

123. Having regard to the findings above, this issue does not arise.

Issue 8: Unauthorised deductions

124. The claimant argues that he is owed wages from May 2022 to Feb 2023:

125. As discussed above, his EDT was 7 June 2023 so he is not entitled to any pay beyond this date.

126. Before that, as we have set out, the claimant was entitled to be paid by reference to the hours he worked. He has not claimed that he has worked

longer hours than he has been paid for, and therefore this claim is not well founded.

Issue 9: Breach of contract

127. The claimant claims that he is entitled to the return of £2,000. The tribunal has found that this was not paid to the respondent under any contractual term and therefore the respondent has no contractual liability to return it.

128. Even if it were under the contract, the claimant has not completed 2 years' service and therefore would not be entitled to its return.

129. The tribunal has found it was paid to Mrs Chapel-Nkomo personally. Whether or not he has a remedy against her personally is not within the jurisdiction of this tribunal.

Other issues

130. Under s. 138 Employment Act 2002, if the claimant was not provided with full statement of particulars, the tribunal must make award under this section.

131. It is clear that there is more documentation than has been prided to the tribunal, referred to by both parties, so the tribunal is not in a position to find that the claimant has not received this and accordingly makes no award.

132. Accordingly, taking all the issues into account, the claimant is awarded one week's pay for wrongful dismissal.

133. The tribunal considers that this will be 40h x £12 = £480. The parties agreed that this was the correct figure and so the claimant is awarded £480 as gross sum.

_____

Employment Judge Talbot-Ponsonby

Date: 29 January 2024

Sent to the parties on: 30 January 2024

For the Tribunal Office