



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Punnu

**Respondent:** Wm Morrison Supermarkets Limited

**HELD at Leeds in person ON: 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> January 2024**

**BEFORE:** Employment Judge Lancaster

**Members:** D Wilks  
K Smith

## REPRESENTATION:

**Claimant:** in person assisted by Mrs N Punnu

**Respondent:** Mr O Holloway, Counsel

**JUDGMENT** having been sent to the parties on 1 February 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Issues

1. The issues in this case were identified by Employment Judge Wade at an earlier hearing and that is the template we have used for our decision (see endnote)<sup>i</sup>.
2. Of course, at that stage, she dismissed historic complaints of discrimination because they were out of time. This means that a number of allegations that are still relied upon as cumulatively leading to an alleged fundamental breach of contract that entitled the claimant to resign - which resignation he submitted in November 2022 to take effect in early December when he had obtained another job. - are relevant only to the constructive unfair dismissal claim and no longer constitute in themselves specific allegations of either discrimination or harassment.
3. It is convenient to deal with the case firstly by looking at those itemised factual allegations.

4. The legal context is that, as far as the matters cumulatively amounted to an alleged fundamental breach of contract are concerned, we are looking at whether there was a breach of the implied term of trust and confidence. That is that an employer must not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or to seriously undermine that relationship of mutual trust that ought to exist between an employer and an employee.
5. And whilst it is abundantly clear so that we have no doubt that the claimant has genuinely lost all trust in Morrisons - and had done by the point he resigned - that is not the test. The test is whether or not the employer actually conducted itself in a way that led to that breach of trust.
6. As far as the discrimination complaints are concerned, whether they are categorised as direct discrimination (that is treating the claimant less favourably than a woman or a person who is not of his race or ethnic origins would have been treated) or of harassing him ( that is subjecting him to unwanted conduct on the grounds of that protected characteristic) there is always the issue as to whether under section 136 of the Equality Act there are any facts from which we could conclude that the respondent has acted in a discriminatory fashion. In which case the burden will pass to them to show that on no grounds whatsoever did they conduct themselves in that way. But as is expressed in the case of Laing v Manchester City Council [2006] ICR 1519 to which the respondent referred us, where we can properly move straight to the question of “why did the respondent do what they did?”, we do not necessarily have to go through that two phase test.
7. In the course of this case there are a number of matters that are put forward that suggested the mind of the claimant that there was a discriminatory culture at Morrisons. Of course when looking at those matters what we are also looking at primarily is why did the respondents do what they did when we are considering this discrimination claim.

## Facts

8. Against that general legal framework we look at the particulars.
9. The first allegation the claimant relies upon in relation to his unfair dismissal claim is that approximately a year after he started working in the contact centre at Morrisons as a team leader, a white male Mr Sandland he said was promoted to a role in doorstep delivery operation which was not advertised and the claimant did not have the opportunity to apply.
10. We are quite satisfied that the reality was that Mr Sandland was not “promoted”. There was a vacancy for a contact centre managers position, that is the level above the team leader role which the claimant occupied. Pending the interview process, which in fact took place in December 2021, there was therefore a vacancy and Mr Sandland stood up to perform that role. It was not advertised, it was n’t a permanent position. When the appointment was made he stood down. We are satisfied that the reason why he amongst the existing team leaders was asked to do that role, was that he had previous experience and had himself been a contact centre manager for some two years earlier. That is the reason why, in order to cover that temporary vacancy pending further appointment, the respondents took that step.
11. Of course the fact that they approached Mr Sandland in that way is not in itself any breach of the claimant’s contract of employment as a team leader. So what he

relies upon this as showing is that Morrisons were departing from their proper recruitment practices and that cumulatively that created, in his mind, a sense that they were not going to deal fairly with any applications that he made for promotion. But, as we have said, where the test is whether the respondent conducts itself in a manner calculated or likely to destroy that relationship of trust, question whether it had a reasonable cause for what it did, and in these particular circumstances we are satisfied that the respondent did have such reasonable cause. Therefore in itself there is certainly no breach of the implied term.

12. As we have indicated the post was advertised and the claimant applied and was interviewed in December. The appointment process was that there was an initial interview. Within that process the claimant scored 20 out of 30. He was not the lowest scoring person and that represented on the 10 questions that he was rated as "good" on each category. There were though a number of candidates who scored higher than he did and the top four scoring candidates went through to a second stage of interview. Following that second stage the job was offered to Kirsty Raistrick, who has given evidence before us, and it was also offered to a male candidate. He however declined the position. So at that point only one of the vacancies had been filled.
13. We pause to observe that the claimant has been at pains to say he has no issue with Mrs Raistrick, and indeed there is documentary evidence that he was approving of her appointment and of her performance. We are quite satisfied that she was a proper person on her merit to be appointed to that role.
14. Following the successful male candidate withdrawing, the respondents did not then simply go down the shortlist as they might have done under their policies and offer it to one of the other people who had gone through to the second stage. Clearly, this was because, as we are told, they did not consider they in fact merited promotion on that performance in the selection process.
15. What did then happen is admittedly unusual. It led to the appointment of Ms Hayes who has also given evidence before us. She had seen the job advert because it had been posted on social media by the then senior manager in the contact centre Nic Constantinou, who was an acquaintance of Ms Hayes but no more. although Ms Hayes did not apply initially she did though make contact with Ms Constantinou (because she was the named person responsible for advertising this post) and enquired whether the position was still vacant,. And at that stage because the successful candidate withdrew there was indeed a vacancy. Ms Hayes did then go through a selection process. She was interviewed. On the same day she went forward to give her presentation and following an appraisal that she was an appropriate to be appointed she then had a further relatively informal conversation to confirm and she was offered the role. Ms Hayes was a very highly qualified candidate for this position and indeed was stepping down from a more senior role with her then employer.
16. The claimant of course did not know of that method of appointing Ms Hayes at the time, so it cannot have had any bearing upon his subsequent decision to resign. What he did know was only that he had been unsuccessful at the first stage of interview and that the actual appointments were two women. The appointments were made by a panel also of two women, that is because the senior manager Ms Constantinou was female and the other manager who interviewed was Ms Millican - who again has given evidence before us She had though been the first

female contact centre manager, appointed only relatively recently in 2020. Prior to that it had been a male dominated team.

17. On those facts we certainly cannot find any background information to substantiate the allegation that this was an appointment of either Mrs Raistrick or Ms Hayes based upon their sex or their race because they were white British females. The reason was self evidently, on the evidence that we have heard, that they were the best qualified people. The claimant was not further involved in the process where Ms Hayes was appointed because he had been unsuccessful at an earlier stage in the same interview process, just as the two unsuccessful candidates who had in fact got through to stage 2 were not re-interviewed.
18. The claimant sought feedback from that interview. It was delayed but it was given. He complains, as contributing to the breach of contract, that he was asked by Ms Constantinou "what is it you want to know?". The claimant now alleges that was done in a patronising hostile tone, but we are quite satisfied that that is a proper question to ask if somebody asks for feedback as to why they had been unsuccessful. It is a perfectly reasonable question "what specifically are you concerned about?". It may be they were concerned to know whether they could have presented better, or whether they lacked particular experience and certainly there is nothing there to indicate that the respondent was acting in a way intended to destroy confidence between itself and the claimant.
19. The next allegation in time is that in the summer of 2022 it is alleged that operation managers sought to force team leaders to try and compel their team members to attend some summer parties. The particular background to this is that the first arranged party was at a hotel or bar in Leeds and alcohol was served and that there was a relatively large proportion of Muslim employees who would not be comfortable with that.
20. Again we remind ourselves this forms no specific allegation of race harassment because that has been excluded by Judge Wade's Judgment and Order.
21. On the evidence what actually happened we are satisfied, is this. The marketing team sought to arrange a staff function. They sent out a questionnaire inviting people to express interest in whether they wished to attend such an event, when they wished to attend it, whether they would be prepared to pay and what they would want from it. It is right to note that a large number of people saying what they'd want for their £5 admission would include a drink, someone specifically stating "alcoholic drinks".
22. The claimant does not recall himself ever receiving that questionnaire and although we have not seen the emails to which he refers, we are prepared to accept the claimant's evidence that there was then further communication with him and the team leaders inviting them to encourage people within the contact centre to take up this offer. The claimant did not respond to that, but he says that other team leaders did. They were then seen, he says, specifically contacting some of the female Muslim workers, but his own account is they were saying to them that that they could attend the event but they did not have to drink. It was entirely up to those people whether they participated or not and we do not accept the characterisation of these events as putting pressure on team leaders to force people to attend. And indeed that is borne out by what happened subsequently when there was a low take up rate from the contact centre. The immediate management then arranged another staff social event to hold a quiz night which

did not involve the provision of alcohol. So again there is nothing on the face of that to contribute to any breach of trust and confidence.

23. Ms Hayes having been appointed in the manner we have described to the contact centre role, shortly afterwards found herself acting up in the unexpected absence of Ms Constantinou, who was taken ill. That was not a formal process. It was simply that because of her past experience and abilities, if there were functions that ordinarily would have been undertaken by the senior manager and she was able to fulfil those roles she sought approval for stepping up either attending meetings, dealing with budgetary functions and - simply because of her experience - she has recounted how she was turned to by other members of that level of management for advice, whereas they would ordinarily have gone to their line manager Ms Constantinou.
24. When it then transpired some two months or so later Ms Constantinou would not be able to return to work, a decision was taken to invite Ms Hayes to step up to the more senior position and she agreed that she would do that. That is permissible within the recruitment policy where there is a particular succession planning need. The respondents had from the team of contact centre managers one person who was clearly qualified to step up and who in previous employments had fulfilled that level of management responsibility.
25. The other managers at that level were approached informally and none of them indicated that they would wish to apply for that role. It may well be that that was simply a pragmatic decision, that they did not want to compete with Ms Hayes because they appreciated that her experience made it very likely she would be appointed. But there is nothing improper in not then advertising that role and it is certainly not reasonable to suggest that the claimant who had only in any of his previous jobs or in this job functioned within a contact centre at team leader level, would have stepped up to two levels above where he had already been unsuccessful in applying for the one step promotion.
26. So the fact that Ms Hayes was appointed in that manner is not of itself a breach of the claimant's contract of employment and again it can only possibly be relied upon as evidencing a willingness on the part of Morrisons to depart from proper procedures that meant he lost trust and confidence in that they would deal fairly with any similar applications that he made in the future. But again we say that they acted with reasonable and proper cause to fill the gap left unexpectedly by the departure of Ms Constantinou.
27. The following allegations concurrently form claims of discrimination.
28. Ms Hayes having stepped up there was then a further vacancy at a contact centre manager level and that was advertised. The claimant applied. The advert was both internal and external. It seems to be a major part of the claimant's concerns about Morrisons that they advertise posts externally which meant of course that internal candidates were in competition with others who had perhaps greater experience and there was not an immediate career progression route to promote people from one level to another. But that was Morrisons policy and that is a commercial decision they are entitled to take to meet their business needs of ensuring that appropriately qualified people take on responsibilities within the organisation.
29. Within that process there was firstly a sifting of external candidates so that not all went through to interview, but internal candidates it appears would automatically

have been interviewed. One of those was the claimant. The interviews were scheduled for 3 August and at that point the claimant had a pre-planned three and a half week family holiday in Tanzania, so he was not available on that date. The other interviews went ahead. Those initially interviewed were two external candidates -who were the two who were eventually appointed - and one other candidate a male who was unsuccessful. We have now seen following the subject access request an exchange of emails around this time that indicates what Ms Hayes was communicating with HR about the arrangements for those interviews. Firstly those who got through that sift process to interview were intended not only to be interviewed in a more formal setting but also to go on to give a presentation. There was discussion with HR about both the length of the presentation to be given and the prior warning of the topic. It was the initiative of HR that it was agreed that the candidates would be given a full weekend to prepare.

30. So that is what happened for the three candidates who were interviewed on the 3<sup>rd</sup>. The claimant was dealt with differently, it must be accepted. He was due to be interviewed as well. Initially Ms Hayes asked if that could be done before he went on holiday but it was agreed that he would be interviewed immediately upon his return on 18 August. There is then an exchange of emails, which are quite clearly when we read them expressing a concern on the part of Ms Hayes about he need to act quickly to fill the gap resulting from her stepping up. And in particular she was evidently concerned as of 28 July with what would happen if they interviewed candidates on the 3<sup>rd</sup> and found that they had very high calibre applicants but would then have to delay making a decision because they could not interview the claimant until he returned some two weeks later. So she expressed her thoughts to the HR business partner that from a business perspective the “gap is live”. The longer she has to wait to make the offer the later the notice periods are going to be triggered, and it is in that context that she does express the view that the claimant “Naseer is not a strong contender”. But she also says “I absolutely wanted to give him the chance in interview” and that she didn’t know he was going on holiday. So the context is that Ms Hayes conditionally if she had candidates who are of a high calibre did not want to run the risk of losing them because she could not offer the job as quickly as possible. And although she wanted to interview the claimant and ideally to give him the chance to be interviewed and make a presentation at the same time, we accept it is a genuine assessment - having known him for six months, having been aware that he had previously been unsuccessful in applying for this role and having seen his application and CV -that he was not necessarily a strong contender.
31. Therefore in further communication with HR a decision was taken that when the claimant returned from holiday he would be interviewed but at that stage he would not be required to give the presentation. However, a further date would be scheduled where he would do that if his performance at interview indicated that it was likely to make a difference and affect the ultimate decision as to who should be appointed. But of course by that stage it would be known what the calibre of the candidates who had already gone for interview had been, whereas at 28 July, as we say that was again largely conjectural because they had not yet been seen and interviewed.
32. So the claimant was interviewed on the 18<sup>th</sup>. He scored badly. He complains that he was interrupted. We prefer the evidence of the respondent’s interviewers that further questions were asked in a probing manner to seek to elicit more information

from him that might actually advance his case. We did not accept the claimant's characterisation of that as feeling that it was an interrogation, and certainly not that it was designed to intimidate him and prevent him from performing. But it did mean that adopting that two stage process for his interview meant that after that first stage it became apparent that job offers could be made. Initially there had only been one vacancy, that given by Ms Hayes moving up, but by 20 August it had become clear there was going to be another vacancy because the then one male manager Adrian Cobbledick was also going to stand down. So shortly after the claimant was interviewed, before he was provisionally scheduled to give his presentation and before he was told that he had been unsuccessful, Ms Hayes did make contact with the first successful candidate, Ms Gilmartin. She also made contact with the other successful candidate Ms McCaffrey to indicate that she had been successful but it was confidential because they were still awaiting confirmation of the changes on Adrian's departure which would mean that there was in fact a second vacancy to be filled. This is not a case where either of those external candidates, who were both white women, was approached in advance.

33. It is right that Mrs Raistrick who conducted the interview with the claimant, though she had not conducted the interviews with the other three candidates, had also attended the presentation given by all three candidates on the 3<sup>rd</sup> and that included Mrs McCaffrey with whom she had previously worked at another location. But equally all the contact centre managers who attended at presentation stage to observe and give their views they would have worked with any internal candidate and again we see nothing untoward in that process.
34. We are quite satisfied then that the reason why firstly Ms Gilmartin and then Mrs McCaffrey were offered what were then the two vacancies was because of their superior performance at interview. Although we do not have the notes of their interviews nor their scores, we have seen their CVs and seen their relevant recent experience and it is entirely plausible on that basis that they will have performed well.
35. Also at that interview on the 18<sup>th</sup> there is the specific allegation of racial harassment. As we have said the claimant had only just returned from a holiday in Tanzania. His account is that at the start of the interview there was some discussion about that. Of course the two interviewers, both Ms Hayes and Mrs Raistrick, knew he had been on holiday in that country. That was the whole reason why they delayed the interview. The claimant says that following that initial discussion about his holiday that Ms Hayes asked in relation to Tanzania "is that home". The making of that comment is denied. The claimant says that it was said, and we also have corroborative evidence from his wife who says that she remembers him coming home from that interview and stating that that comment had been made.
36. On balance there is evidence to suggest that something to that effect was indeed said at that point at the start of the interview. But in context it is then also admitted by the claimant that there was further conversation prior to commencing the interview proper about what he and his family had done in Tanzania. It is entirely laudable that as well as taking a family holiday they had approached an agency who that put them in touch with volunteer projects, partly to facilitate his son's work on his Duke of Edinburgh award but with which the whole family joined in. And it is agreed that the further part of the conversation indicated that both interviewers were entirely approving and impressed by that public service on the part of the

family. So, against that background, even if a phrase was used “is that home” it appears to us entirely improbable that that could have been intended as the claimant now appears to assert to put him on the back foot from the start of the interview to intimidate him to suggest that he did not belong as a British Asian person but his home was as an East African Asian. Nor is it reasonable to construe that as having the harassing effect upon him even if the claimant did feel somewhat uncomfortable. So in context any claim of harassment is not made out. It is more likely that some question was asked in the context, similarly to the way in which the Judge asked the claimant when he was giving evidence as to whether there was actually any connection with Tanzania which led to the contacts being made and why the family had volunteered there. And of course the answer is no there was not: although it has now transpired there is more remote family who are based there, it was all done through an external agency. It is not an unreasonable question to ask of somebody if they had been in a foreign country doing voluntary work whether there is any connection with that country that led to them being particularly interested in doing that type of work.

37. And we do accept it as highly plausible, and agree with Mr Holloway’s submission, that this comment then became exaggerated in the mind of the claimant when he put in his original claim form on 2 December, because at that stage there had very recently been in the news the incident whereby Lady Hussey had inappropriately approached a minority ethnic attendee at a Royal Garden Party and insistently asked where they came from despite being assured that they came from Britain. And although the claimant makes the connection between what he was asked and what Lady Hussey did we can see no obvious connection at all. It is not that the claimant was being pressed to suggest that he did not genuinely come from this country, and we do think it is significant in this context that Ms Hayes does have a British Indian son-in-law so she would be perfectly familiar with the fact that someone may be Asian but be British. She would have known the claimant was British Asian and she is not pressing him to suggest that his roots of origin were not British, but are in the context of specifically why he had had a family holiday in Tanzania and done good work in that particular foreign country.
38. The claimant was then given feedback about that interview. He requested that in writing initially. The preference of Ms Hayes was to deliver that in person and that is also evidenced by the chain of emails that has now come to light: at the point she was offering the job to the two successful candidates and preparing to tell the unsuccessful male candidate who had gone through to the interview presentation stage, she was also intending to tell the claimant that he had not got through the interview stage which meant he would not be required to put in his own presentation. And she was, within those emails, at that point expressly indicating that she was proposing to talk through with him a PDP (a Personal Development Plan). That is obviously better done in person. But the claimant takes exception to the fact that when that feedback was indeed offered orally, a number of possible areas where he might develop his expertise - so as to enhance his position should he apply again for promotion - were outside of the contact centre. And therefore Ms Hayes said expressly on the claimant’s account “I hope you don’t think we’re trying to get you out of the contact centre.” We take that at face value. That is precisely what she meant. She was offering potential alternative development opportunities that happened to be outside the contact centre and she was therefore at pains to say that she was not wishing to give the impression that she wanted to get rid of the claimant. But the claimant reads it entirely the opposite way to how



it appears on its face and how we are satisfied it was intended. The fact that she failed to provide the written feedback given that the claimant did not make a further request for it in writing afterwards is insignificant in our view.

39. There is an allegation then about the leaving speech from Ms Constantinou which we will come to in a moment because it is not now alleged that in itself in fact constitutes any harassment of the claimant.
40. The final alleged act both of discrimination and leading to the resignation is the claimant saying he was named and shamed in September by being asked by Mrs Raistrick to undertake the planning of breaks for those in his team. This happened on an open chat forum. We do not have those messages and we understand the claimant to be concerned that they are not available; but we are quite satisfied that we can identify what happened.
41. It is accepted that it was well within the claimant's level of responsibility to organise the breaks for his team, but he had not previously done that. The department where he then worked which was doorstep deliveries, that break planning had been carried out by a manager who moved across with that team when it transferred from one area of the business to another. But it was time for a transition so that that person would move on and somebody else would need to take on the responsibility.
42. The claimant we are prepared to accept was identified in the Google chat forum as being tasked with now doing that for his team. But his account then is that he then raised in that same open forum the fact that he was uncomfortable. And therefore, because he was still within the open forum which accessible to a number of people, the claimant says 30 or 40, the reply also came on the same chat forum that he was expected to do this job. So the reason why it was in that public space is because the claimant had raised his objection to being tasked in that public space. But he then was able to take advice from another manager and perform that task. We do not accept his characterisation that this was naming and shaming him and we certainly do not accept there is any basis for saying that that is done because of either his race or his sex, and indeed the only reason the claimant can advance is that Mrs Raistrick had been involved in the earlier interview process in August which he believes was an incident of discrimination and therefore she must also have been applying the same motivation at this point. We do not accept that.

## **Conclusions**

43. So it follows from our discussion of the relevant issues we have to determine that in terms of the Equality Act claims -whether they be harassment or direct discrimination whether on the grounds of race or sex - we can go straight to the "reason why question". And we are perfectly satisfied that the respondent has satisfied that burden of showing why they appointed particular people, and that is because they were the best qualified people at that point and not because of their race or sex. Nor was it unconscious bias: the fact that the panel happened to be women does not in our view given any basis whatsoever for saying there must be such an unconscious bias, given the quality of the applicants that is evident from their CVs.
44. Therefore it is not directly relevant to consider whether there are any facts from what we could absent an explanation conclude that there has been discrimination. One of those potential facts is however the matter with which we said we would return, namely the leaving speech by Mr Adrian Cobbledick for Ms Constantinou.

It is there alleged, and we accept, that he made a comment to the effect that the sexist policy of only appointing female managers would now cease. That was quite clearly intended in a humorous way and it is accepted it was received by people in a humorous way. The claimant seeks to say that must indicate, in fact, that there is a truth behind that joke, which shows there was indeed a perception on the part of Mr Cobbledick that Ms Constantinou was indeed operating a sexist policy. We do not accept that. All it indicates is that since the appointment of Ms Millican in 2020 there had indeed been a change and there now was a predominantly, and soon to be in fact totally female management structure in the contact centre following the then departure of Mr Cobbledick himself: and that is the truth that underlines that comment. There was a change but it is not in our view on any reasonable interpretation an indication that Mr Cobbledick was addressing his departing manager, for whom he was making a farewell speech to send her off on a good footing, to accuse her of actual sexism or to indicate that that was happening.

45. The other matter the claimant relies upon is the demographic breakdown that there were no male managers at that point and there were no minority ethnic senior management team. That is correct, but given the breakdown of the demographics of the contact centre, and as we say given the fact that the changes were only since 2020, that is in our view entirely coincidental. Certainly it is not a fact in itself from which we could conclude that there is any evidence of a discriminatory policy.
46. The claimant has also, apart from its early clearly and genuinely held belief that he has been the victim of discrimination, brought evidence from three other witnesses. Their statements have been admitted in evidence. They have not been challenged in cross-examination. But they do provide only limited evidence. So Mr Tariff Mahmood points to one instance where he was required to reapply for his role, whatever that then was, and he asserts (and again this is unchallenged) that it was given to a friend of one of the senior managers. So his primary allegation is of favouritism, but from that he further says he felt discriminated against because of his ethnicity. Tatiana Zatooni, who is a black African female, recites a very clear perception of a toxic discriminatory culture in the contact centre, but she gives no concrete examples at all to support that. She identifies she sees as problems in the workplace with no structured complaint resolution system. In terms of the alleged discrimination she says that she witnessed qualified and very experienced colleagues from black and Asians backgrounds repeatedly failing interview processes for roles which they were competent to undertake but she does not say what those roles were, whether they were sideways moves, or whether they were promotional moves. She does not say on what basis she is able to assess their competency, and of course she gives no information as to the actual process. She repeats what underlies much of the claimant's case, and that is that she disapproves of the practice of external advert which means that people may come in to Morrisons with direct immediate equivalent experience elsewhere that places them at an advantage over anyone seeking to be promoted from a lower role and the lack of career progression. She was only with the company only from June 2020 to October 2021 so it is unclear what roles she is referring to. If it was a promotion role to which she refers in that timeframe, as we say Ms Millican was appointed as the first female contact centre manager in June 2020 or thereabouts. There are no other appointments which seem to be potentially relevant. The final witness is Mr Satvia Singh. He worked under the claimant in the doorstep deliveries department and he asserts that over a short period when he was

employed of some 18 months he applied for over 20 roles. He does not say what they were. He got two interviews and asserts that in his view fellow colleagues who are less qualified would be selected. And in particular he gives an example that he sought what appears to be a sideways move to an insurance team and he says the role went to a new starter who had previously been a stay at home wife with no experience but who happened to be British.

47. On the actual facts of the evidence put forward there is no significant detail, but what we can conclude is that there is an identifiable number of people who have worked at the contact centre who genuinely, it appears, believed that there was a discriminatory environment and they themselves believed that they had not been able to progress as they wished. And though that may be sufficient to establish that there is potentially a fact for which we should consider whether the respondents have disapproved any discrimination - given this level of upset amongst a number of their minority ethnic employees - as we have said we do not need to go through that process in two stages. That is because we can go straight to the issue in the case of the claimant and look at why he was unsuccessful, why these things happened, and we are perfectly satisfied they had nothing to do with either his sex or his race. Unfortunately, although in other circumstances it may well be that with his previous experience he would have been able to fulfil a contact centre manager's role had he been given the opportunity to grow into that., he was up against people who were on the face of it eminently more qualified, more suited and who also performed better at the interview process and that is why in a competitive environment he was not promoted.
48. On the other allegations of discrimination, on the facts we find they are not made out. The totality of this experience, although the claimant had clearly lost trust and confidence in his employer, does not point to any conduct on their part that led to their situation. There is no fundamental breach of contract. The claimant was employed as a team leader. He had the opportunity to seek to apply for promotion but was unsuccessful on his merits on those occasions. But having realised he was not likely to be promoted his account is that following that unsuccessful interview in August he then started to look for alternatives where he might feel more comfortable and he did secure alternative work, put in a reduced period of notice and left to take up other employment. But it was not because of a fundamental breach but because he realised that he was no longer comfortable in his workplace and wished to seek opportunities elsewhere.
49. For those reasons we trust we have explained our rationale for dismissing all these complaints. As was said in the course of our discussion earlier none of this is to doubt the genuineness of the claimant who believes he witnessed evidence of discrimination, but we have to look at the hard facts and apply the law. We are however certainly not casting aspersions on the actual credibility of the claimant or his wife in the way they presented the claim as they see it.

Employment Judge Lancaster

Date: 21<sup>st</sup> February 2024

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## ALLEGATIONS AND ISSUES

### Unfair dismissal

1. Did the respondent do the following things:

1.1. In October 2021 was a white male Mr M Sandland promoted to a role 'Doorstep Delivery Operations' which was not advertised internally, or any interviews held, denying the claimant the opportunity to apply;

1.2. In December 2021 did Miss N Constantinou say 'what is it you want to know Naz' in a patronising and hostile tone, when the claimant had requested feedback on an unsuccessful interview for an operations role;

1.3. In December 2021 were 2 white external female candidates, Miss V Hayes and Miss K Raistrick appointed to operations roles in preference to the claimant;

1.4. Did senior operations managers force team leaders to try and force their team members to attend summer parties in 2022 held in pubs and clubs;

1.5. In July 2022 was a white female Miss V Hayes appointed to a senior operations role, which was not advertised, or any interviews held, denying the claimant the opportunity to apply;

1.6. During an interview with the claimant in August 2022 for an operations role, did Miss V Hayes say to the claimant in respect of Tanzania 'is that home?', and keep cutting him off when answering questions;

1.7. In August 2022 was a white female Miss Hannah McAffrey? appointed to an operations role, in preference to the claimant?

1.8. On the 23/9/22, did Miss V Hayes say to the claimant when giving verbal feedback on the claimant's unsuccessful interview in August 2022, 'I hope you don't think that we are trying to get you out of the contact centre', and focused during the conversation on opportunities which were available outside the contact centre;

1.9. Did Miss V Hayes fail to provide written feedback to the claimant on his interview performance, as he requested in September 2022;

1.10. Did a senior operations manager Mr A Cobbledick, state in 2022 during a leaving speech for Miss N Constantinou, 'at least the sexist policy of recruiting female operations manager only will stop now'

1.11. Was the claimant "named and shamed" on the 1/9/22 by being asked by operations manager Miss K Raistrick to undertake break plans on a chat forum, receiving no help or support to undertake this task, despite advising that he did not know how to do this task. The claimant alleges the following did have help to undertake the plans: Mandy Beale, Sophie, Benita and Atiya.

2.If so:

2.1.Did these acts breach the implied term of trust and confidence?

2.2.whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

2.3.whether it had reasonable and proper cause for doing so.

2.4.Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

2.5.Did the claimant resign at least in part in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

2.6. Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

2.7.What was the reason for the dismissal and was it potentially a fair one?

### Equality Act allegations/claims

3.The claimant identifies as a male, British born Pakistani. The complaints permitted to proceed and for which a just and equitable extension is given are set out below. Where no comparator information is given the claimant relies on a hypothetical comparator:

3.1.During an interview with the claimant in August 2022 for an operations role, did Miss V Hayes say to the claimant in respect of Tanzania 'is that home?'—pursued as race related harassment (section 26) or less favourable treatment because of race (section 13)

3..2 Did Miss Hayes keep cutting him off when answering questions in this interview -pursued as less favourable treatment because of sex and/or race(Section 13)—the comparators are the other candidates interviewed for the role;

3.3 In August 2022 was a white female Miss Hannah McAffrey appointed to an operations role, in preference to the claimant by Ms Hayes and Ms Raistrick – pursued as less favourable treatment s13 because of sex and/or race?

3.4 On the 23/9/22, did Miss V Hayes say to the claimant when giving verbal feedback on the claimant's unsuccessful interview in August 2022, 'I hope you don't think that we are trying to get you out of the contact centre', and focused during the conversation on opportunities which were available outside the contact centre—pursued as harassments<sup>26</sup> or s 13 less favourable treatment sex and/or race;

3,5 Did Miss V Hayes fail to provide written feedback to the claimant on his interview performance, as he requested in September 2022—pursued as s 13 less favourable

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treatment sex and/or race—the other interviewees who were not successful and who requested feedback or hypothetical comparators

3.6 Did a senior operations manager Mr A Cobbedick, state in 2022 during a leaving speech for Miss N Constantinious, ‘at least the sexist policy of recruiting female Operations manager only will stop now’ pursued as a s 26 harassment related to sex;

3.7 Was the claimant “named and shamed” on the 1/9/22 by being asked by operations Manager Miss K Raistrick to undertake break plans on a chat forum, receiving no help or support to undertake this task, despite advising that he did not know how to do this task. The claimant alleges the following did have help to undertake the plans: Mandy Beale, Sophie, Benita and Atiya—pursued as s 13 less favourable treatment because of sex and/or race.

4 .In respect of direct discrimination –section 13 -allegations the Tribunal will ask: Was the claimant treated less favourably and the comparators? Was he treated less favourably than he would have been treated if he had been a white female in similar circumstances? why was the claimant treated as he was by those involved?

5. In respect of harassment complaints the Tribunal will ask whether the alleged conduct related to the claimant’s race or sex? Was its purpose or effect to violate his dignity or create an intimidating, hostile, degrading, humiliating ..or otherwise offensive working environment for him?

6 .If direct discrimination or harassment is found, did the respondent -ie Morrisons – take all reasonable steps to prevent (whether by training or otherwise)the managers involved doing or saying what they did?

#### Remedies

7.The Tribunal may find it convenient, if any Equality Act complaints above succeed to address Equality Act remedy first as follows:

7.1 Recommendations –if the claimant seeks any to obviate the effect of on any injury to his feelings?

7.2 Any sum to compensate for injury to feelings as evidenced by the claimant?

7.3 Any financial sums which but for the contravention, the claimant would have received?

7.4 Interest?

8 Unfair dismissal remedy can then –if the complaint is upheld –address Basic Award and loss of statutory rights.