EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Abdool Jugut	**v**	**Isaac Creative Hair Limited**

Heard at: Watford (interpreter via CVP day 1)
On: 3, 4 and 5 April 2024
Before: Employment Judge Alliott
Members: Mrs J Keene
Mr A Scott

Appearances
For the Claimant: In person
For the Respondent: Mr Isaac Harman (Managing Director)

JUDGMENT

The judgment of the tribunal is that:

1. The claimant's claim is dismissed.

REASONS

Introduction

1. The claimant was employed as a Hairstylist by a company called Christos Limited on 9 June 2015. On 1 July 2022 he was "TUPE" transferred to the respondent. As of the date of the presentation of this claim the claimant remained employed. By a claim form presented on 23 January 2023, following a period of early conciliation from 28 to 30 December 2022, the claimant brings complaints of age, race and sex discrimination. The respondent defends the claims.

The issues

2. It is clear from the case management summary of the telephone preliminary hearing held by Employment Judge Postle on 22 June 2023 that Employment Judge Postle spent a considerable amount of time in ascertaining what treatment the claimant was complaining about.

Unfortunately, the respondent was not represented or present at that hearing. The reference to less favourable treatment makes clear that this case is a case alleging direct discrimination (s.13 Equality Act 2010).

3. The issues are therefore:

3.1 Did the respondent treat the claimant as follows (we have retained the numbering from the case management summary).

"DIRECT RACE and SEX DISCRIMINATION

7.1 The owner of the Respondent, Mr Harman refused to consider the Claimant's allegations of race and sex discrimination when these were reported in November 2022, he failed to investigate or to take them seriously or to take any action;

7.2 If the Claimant was late on occasion, Mr Harman would remonstrate with the Claimant in front of customers about his lateness, whereas if white staff or female staff were late it would be said to them. This occurred on each occasion the Claimant was late for work;

7.3 If Mr Harman had arranged a staff meeting, if the Claimant was to speak up he was told to shut up, whereas other staff were allowed to speak;

7.4 The Claimant was required to pay for his hair treatments, whereas all other staff were not required to pay for their hair treatments; and

AGE DISCRIMINATION

7.5 Mr Harman told the Claimant on numerous occasions a plan to replace the Claimant with a younger barber, no other staff were ever told that they were to be replaced by younger members of staff."

3.2 If so, was that less favourable treatment? No comparators have been specifically identified. The claimant's race is Black and he was 51 years old at the time. The case management summary recites that those employed in the respondent's salon are all white and of an age much younger than the claimant. All but 3 of the 18 employees were female. We have therefore taken as comparators white colleagues, younger colleagues and female colleagues.

3.3 If so, was that because of the claimant's race and/or age and/or sex?

The law

4. S.13 of the Equality Act 2010 provides as follows:-

"13 Direct discrimination

(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.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim."

5. S.23 Equality Act 2010 provides as follows:

"23 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13… there must be no material difference between the circumstances relating to each case."

6. As regards the burden of proof, s.136 provides as follows:

"136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

7. As per the IDS Employment Law Handbook discrimination at Work at 33.16:

"The Court of Appeal explicitly endorsed guidelines previously set down by the EAT in Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205, EAT, albeit with some adjustments, and confirmed that they apply across all strands of discrimination. The guidelines can be summarised as follows:

"● It is for the claimant to prove, on the balance of probabilities, facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination. If the claimant does not prove such facts, the claim will fail.

- In deciding whether there are such facts, it is important to bear in mind that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In many cases the discrimination will not be intentional but merely based on the assumption that "he or she would not have fitted in".

- The outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

- The tribunal does not have to reach a definitive determination that such facts would lead it to conclude that there was discrimination – it merely has to decide what inferences could be drawn.

- In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

- These inferences could include any that it is just and equitable to draw from an evasive or equivocal reply to a request for information.

- Inferences may also be drawn from any failure to comply with a relevant code of practice.

- Where there are facts from which inferences could be drawn that the respondent has treated the claimant less favourably on a protected ground, the burden of proof moves to the respondent.

- It is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed that act.

- To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that its treatment of the claimant was in no sense whatsoever on the protected ground.

- Not only must the respondent provide an explanation for the facts proved by the claimant, from which the inferences could be drawn, that that explanation must be adequate to prove, on the balance of probabilities, that the protected characteristic was no part of the reason for the treatment.

- Since the respondent would generally be in possession of the facts necessary to provide an explanation, the tribunal would normally expect cogent evidence to discharge that burden – In particular, it will need to examine carefully explanations for failure to comply with a request for information under the "ask and respond" procedure and/or with any relevant code of practice."

8. And further, at 33.18:

> "Another point made by Mummery LJ, which is now frequently cited by tribunals dealing with s.136 Equality Act, is that "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".

The evidence

9. We heard oral evidence form the claimant, Mr Isaac Harman (Managing Director) and Ms Wendy Griffiths (Manager). We had a bundle running to 683 pages. In addition we were provided with three screen shots of the salon staff booking diary for the 1st, 30th and 31st December 2022.

10. The case management orders made by Employment Judge Postle included a direction that the parties exchange witness statements. The claimant has not prepared a single composite witness statement. The respondent has prepared a witness statement from Mr Isaac Harman although not signed. The claimant has placed in the bundle a large number of emails, each described in the index as a witness statement on a specific issue, most of which are largely irrelevant as they relate to incidents that occurred after the date of the claim form, namely 23 January 2023. Normally, in the absence of a witness statement from a claimant, we would take the contents of the claim form as the claimant's de facto witness statement. However, in this case, the claimant's claim form is lacking in any particularity and could not be relied upon.

11. Given the unclear nature of the claim form, on 20 April 2023 Employment Judge Ord ordered the claimant to provide particulars of the alleged discrimination by the 18 May 2023. On 17 May 2023 the claimant sent the respondent 10 PDF documents. Again, there is a lot of information that is not directly relevant to the issues as identified by Employment Judge Postle. However, there is set out in parts of those PDFs just about enough information about the claimant's case concerning the identified issues. We are satisfied that the respondent has had sufficient forewarning of the nature of the allegations so as to be able to prepare its case.

12. Nevertheless, the claimant was able to expand his evidence on the identified issues in his oral evidence in answer to questions from myself. Of necessity, further information emerged that the respondent did not have forewarning of and in fairness we adopted a flexible approach to allow the respondent to respond. This extended to preparing a witness statement for and calling the witness Ms Wendy Griffiths. The claimant did not object to this.

Interpreter

13. The claimant requested an interpreter and one was provided on the first day of the hearing. However, she was barely used as the claimant has a very good command of the English language and did not need her. With the claimant's agreement she did not attend for days 2 or 3.

The facts

14. The claimant worked as a Hairstylist for the respondent at its salon 'Christos Hair Group' in Newport Pagnell, Buckinghamshire. The business had been acquired by Mr Harman in July 2022 and the claimant had "TUPE" transferred to the respondent on 1 July 2022. The claimant and Mr Harman had previously worked together at the salon for about two years between 2015 and 2017 and they must have known each other well.

15. At all material times towards the end of 2022 about 18 people worked at the salon. All but three were female. The males were Mr Harman, Mark, the previous owner, and the claimant. The claimant's race is Black and he was

51 years old at the time. The rest of the employees are white and much younger than the claimant.

16. The claimant unfortunately has some health conditions. He has irritable bowel syndrome, kidney stones, a problem concerning urea and a hernia. The claimant has told us that due to his health conditions he did not eat breakfast and therefore generally needed to eat lunch before his designated lunch hour. He would do this by fitting lunch in between clients. His conditions also meant that he had to use the toilet more frequently than others.

17. There was a unisex toilet at the salon. There was a staff room to eat meals in.

18. We now turn to consider the specific alleged treatment.

7.1 The owner of the Respondent, Mr Harman refused to consider the Claimant's allegations of race and sex discrimination when these were reported in November 2022, he failed to investigate or to take them seriously or to take any action;

19. The claimant's further particulars set out this issue as follows:

> "In the garage at the back of the salon in November 2022, some days after the manager Joan had been dismissed I initiated a complaint regarding the bullying I have endured while working at the company. Specifically, I brought to Isaac attention instances of derogatory remarks and discriminatory comments made towards me by certain female colleagues. I expected a fair and unbiased investigation into the matter to ensure a safe and inclusive work environment for all employees.
>
> To my surprise and disappointment, Isaac response during our discussion was deeply troubling. Isaac stated that the issue at hand was within the purview of the female employees, insinuating that my concerns were unwarranted due to my gender. Furthermore, he made a derogatory remark suggesting that if I desired control, I should seek employment in a different industry such as construction, implying that being a barber was not suitable for me. Such statements not only perpetuate gender stereotypes but also exhibit discriminatory behaviour."

20. Due to the general nature of these allegations the claimant was invited to explain the details of the bullying/derogatory remarks/discriminatory comments he has referred to. He gave evidence that he complained to Mr Harman in the garage/porch at the back of the salon, probably in early November 2022, as reference has been made to "some days " after Joan the manager had left her employment, which was on 2 November 2022.

21. The claimant's oral evidence concerned three matters: Firstly, he said he told Mr Harman about people complaining about his food – saying he was "eating like a person who has no food – like a person on the street". Secondly, he alleged that a lady was bullying him about going to the toilet, making comments such as "luckily the toilet is free" as he always used it. Thirdly, he complained about having to do "basin" jobs such as shampooing

which he found difficult due to his health conditions. The claimant accepted that this third matter related to his health and was nothing to do with his race or sex. He also acknowledged that Mr Harman never objected to him eating his lunch when he wanted to.

22. Mr Harman has accepted there was a meeting between the two of them in the garage/porch in November 2022. He told us they had a conversation and that he, Mr Harman, thought he raised that other staff had told him that the claimant was not helping or washing up.

23. We find that the claimant was not making allegations of race or sexual discrimination and that Mr Harman could not reasonably have been expected to consider the allegations as such. The comments reported by the claimant may have been unwelcome but we find they were not related to his race or sex. We find that the comments were most probably made because he was eating lunch before the designated lunch hour and using the toilet more frequently than others. In any event, Mr Harman told us, and we accept, that he tried to deal with the issue informally and spoke to other members of staff to try and diffuse the situation. That is entirely in accordance with the Acas Code of Conduct on grievance procedures and the guidance that "employees should aim to settle most grievances informally with their line manager…". We find that there was no failure to investigate or take the issues seriously or to take actions in the immediate aftermath of the meeting in early November 2022.

24. In any event, on 13 December 2022, the claimant sent an email as follows:-

> "Dear Isaac, I would like to let you know that I am taking legal action against you for discrimination, lied, refused a dad for seeing her daughter, have not maintained what I had before with Christos even though you did promise and a few other things which will follow soon with evidence.
>
> For the moment I would like to request the official handbook in 7 days please and make sure the handbook is the one that we are all aware of (original) and not the one you have edited.
>
> As you are the manager/director and owner of the business Christos Group so I would like to request for any legal or personal comments you want to do or tell me must be in writing not verbal from today.
>
> I hope we can both work as normal when legal action is in progress. I will also request you to take legal advice even though you didn't give me a chance to appeal or getting legal advice for myself and threaten me to dismissal without any notice."

25. This email undoubtedly does refer to discrimination, although it does not say on what basis it is alleged. We find that the probable catalyst for that complaint was the fact that the respondent had refused the claimant unpaid leave to attend his daughter's play at school earlier in December.

26. On 5 December the claimant had received the following letter:-

> "Your request for time off work
>
> You recently asked me if you could have some time off work on the morning of Tuesday 6th December to watch your daughter's school play. I explained it was company policy staff should not take time off in December and as a result, I was unable to approve your request for time off on Tuesday 6th December.
>
> I was therefore very surprised that you informed me in the salon recently, in front of staff and customers, that you had communicated with some of your colleagues and that you would still be taking the time off.
>
> As the owner of the business and your manager I write to confirm that my position remains the same as when you first asked for the time off, ie your request to have time off on Tuesday 6th December is refused. I also confirm that any absence on Tuesday 6th December is likely to be treated as an unauthorised absence."

27. The letter then went on to enclose two pages from the employee handbook which highlighted that unauthorised absence or unauthorised holidays could constitute gross misconduct and lead to dismissal without notice.

28. We strongly suspect that the refusal to allow the claimant to attend his daughter's school play greatly upset and annoyed the claimant who decided to take retaliatory action and bring this claim. We note however that allegations surrounding the refusal of permission for the claimant to attend his daughter's school play does not form part of the list of issues in this case.

29. Mr Harman treated the email of 13 December as a grievance. He brought in an external Acas experienced individual, Mr Read, to assist. The grievance meeting was originally arranged for 20 December 2022 but was postponed to 30 December at the claimant's request. Meanwhile the claimant formally notified Acas, presumably electronically, on 26 December 2022 in order to initiate these proceedings.

30. It is notable that the claimant did not provide details of his allegations on 30 December 2022 and this is confirmed by the follow up letter dated 3 January 2023 which states:-

> "Grievance meeting
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> You attended the rearranged formal grievance hearing last Friday 30 December 2022, 2pm at the Swan Revived Hotel, High Street, Newport Pagnell. At the hearing, you were unable to provide me with full details of your grievances, which you had briefly set out in the first paragraph of your email to me of 13 December 2022, as you explained you were still taking legal advice regarding making a potential claim to an Employment Tribunal."

31. The grievance meeting was rearranged for 13 Janaury 2023. Again, the claimant did not provide details of his allegations and this is confirmed in a follow up letter dated 19 January 2023. This states:-

> "In an email to me on 28 December, you reiterated you were taking legal action against your employer but were still willing to attend a grievance hearing. A further grievance hearing was arranged for Friday 13 December **[sic: that should be January 2023]**. You attended this hearing but said you were unable to arrange for your representative to attend. At this meeting, I was still not provided with full details of the issues raised in your email of 13 December 2022. You asked the meeting be concluded. I confirmed I was still willing to explore the issues with you, with a view to exploring a resolution but could not do so until I have received full details of the issues raised in your email."

32. We find that, for whatever reason, the claimant was not willing to provide details of his allegations which could not therefore be investigated. Mr Harman gave evidence that the claimant refused to provide details as he would only give evidence once he got to court. The claimant sought to explain this by asserting that he did not really know what a grievance was and that he did not want to give details to Mr Harman as the grievance was about, in part, Mr Harman himself.

33. Mr Harman's witness statement gives the following evidence:-

> "I remember my HR advisor, Mr Nick Read, explaining to the claimant that grievance procedures were there to give an opportunity for issues to be resolved in the workplace, so claims did not have to be made to a tribunal. The claimant's response was basically "If I give you details now you will be able to defend yourself".

34. We prefer the evidence of Mr Harman on this issue as it is entirely credible. We do not accept the claimant's statement that he did not know about the grievance procedure. He had researched bringing a claim in the employment tribunal on the internet and could have similarly researched what a grievance procedure was and what it involved if he was really and genuinely in doubt. Further, we find it was explained to the claimant in the first grievance meeting on 30 December 2022 what the grievance procedure was. We find that the claimant's allegations, such as they were, were taken seriously and the only reason they were not investigated or further action taken was because the claimant failed to provide details. We find that the claimant had probably already decided to pursue this employment tribunal claim and so was not interested in resolving the matter with his employer.

7.2 If the Claimant was late on occasion, Mr Harman would remonstrate with the Claimant in front of customers about his lateness, whereas if white staff or female staff were late it would be said to them. This occurred on each occasion the Claimant was late for work;

35. The nearest the claimant's further information gets to dealing with this issue is in an email dated 9 February 2024 wherein he states:-

> "July 2022 and 19 November 2022 – differential treatment: Unequal treatment in enforcing tardiness…"

36. The claimant gave evidence that on two occasions in July and November 2022 he was late for work and that this was unusual, which was accepted by Mr Harman. The claimant's evidence was that Mr Harman spoke to him harshly saying words to the effect "Watch your time" and that this was in the salon in front of customers. As a customer was waiting for the claimant, we find that such a comment was readily understandable legitimate management and innocuous. It is clear to us that Mr Harman dealt with all colleagues if they were late. As such, being told off and dealt with for lateness was not less favourable treatment. It may be that Mr Harman did not tell off other colleagues in front of customers. As such, the way the claimant was dealt with could be characterised as different and less favourable than other white female staff. However, we find that without more there is insufficient material from which we could conclude that this was unlawful discrimination. The claimant had worked with Mr Harman for two years between 2015 and 2017 and they clearly must have known each other well. We find that justifiably reprimanding the claimant on two occasions five months apart with an innocuous comment was not because of the claimant's race or sex; it was because he had been late and kept a customer waiting. Even if a prima facie case has been made out, we find that the respondent has provided a non-discriminatory explanation.

7.3 If Mr Harman had arranged a staff meeting, if the Claimant was to speak up he was told to shut up, whereas other staff were allowed to speak;

37. This is referenced in the claimant's further information as follows:-

> "Following the dismissal of the previous manager, a meeting was held on 2 November 22, where I expressed my inability to attend due to prior commitments. In an angry manner, Isaac insisted that I must attend, as everyone else will be present in the meeting (which was wasn't the case). During the meeting Isaac harshly instructed me to "shut up" leaving everyone shocked."

38. The claimant's evidence was that when he spoke he was told to shut up by Mr Harman. Mr Harman had no real recollection of saying "shut up", and stated that he would have no reason to and that is not a thing he would say.

39. We have been provided with many extracts from the WhatsApp staff group. Had the claimant been treated in an objectionable manner such as this we would expect comments to have been made by other staff. We have no such evidence.

40. We had evidence from Ms Wendy Griffiths that she was present throughout the meeting and would have heard such a comment and did not. We prefer the evidence of Mr Harman and Ms Griffiths and find that the claimant was not told to "Shut up". The claimant gave evidence that other colleagues may have been told to wait before asking questions and we find that the claimant was probably treated in exactly the same way.

7.4 The Claimant was required to pay for his hair treatments, whereas all other staff were not required to pay for their hair treatments;

41. The claimant's further information puts this as follows:-

> "On a Monday about October and November time, I approached my employer with a request to undergo the PRP hair treatment. It is important to note that I offered to pay for this service and scheduled it to take place after my regular shift at the clinic located upstairs in our workplace. My reason for seeking this treatment was due to a recent hair transplant procedure I had undergone in November 2021. Unfortunately, the initial PRP treatment, performed by a trainee, was not executed properly as the plasma was accidently spilled. Consequently, I sought to have the procedure done by Tina, an experienced professional, as she had availability that evening with three cancellations.
>
> When I made the request to my employer, he informed me that he intended to reduce Tina's working hours because he believed she was working excessively. However, it is worth mentioning that Tina typically finishes her shift at 20.00 hours on Mondays, and at the time of my request, it was only 18.00 hours. Despite there being three cancellations and his promise to consult with Tina, my employer denied my request for the PRP treatment. He assured me that it would be scheduled within two weeks, but he failed to communicate this to Tina, and the treatment has yet to be performed.

42. Mr Harman told us and we accept, that white female and younger colleagues had free haircolouring and styling. Mr Harman told us and we accept, that the claimant had free haircolouring and styling and, when he had a beard, free beard colouring. The claimant did not really dispute this and we find there was no difference in treatment of the claimant and his colleagues as regards what might be termed routine hair treatments.

43. This claim was presented in a confused way by the claimant. It apparently related to a single request for PRP hair injections which were expensive and which the claimant offered to pay for. Mr Harman gave evidence that he did not recall refusing the treatment. The claimant's statement already quoted refers to the procedure being rescheduled. We find that is not a refusal. We accept it did not happen and so the claimant was not required to pay for it. In all the circumstances we find that this alleged treatment has not been proved.

AGE DISCRIMINATION

7.5 Mr Harman told the Claimant on numerous occasions a plan to replace the Claimant with a younger barber, no other staff were ever told that they were to be replaced by younger members of staff."

44. The nearest this is alluded to in the claimant's information is in the email dated 9 February 2024 wherein the following is stated:-

> "August and October/November 2022 – Threats to employment: remarks about replacing me with a younger barber implied discriminatory motives (age)."

45. The claimant's evidence was that on two occasion in August 2022 and after Joan was dismissed, Mr Harman told him he was planning to have a

youngsters barber shop in order to attract young customers and said he will bring his barber friend to replace him.

46. Mr Harman's evidence in his witness statement was as follows:-

> "The claimant says there were remarks about replacing him with a younger barber, implying discriminatory motives. Again, this isn't specific. When I took on the business there was general conversations [sic] between the manager and I, about how we could possibly attract a younger clientele into the salon. This was not done in any way to single anyone out. But one of the suggestions made was to employ an additional but younger barber. The claimant was obviously never replaced, and no other barbers were employed".

47. In support of his allegation that the suggestion was to replace him, the claimant asserted that there was no room for another male barber in the salon. Despite this claim, there clearly was room. There were four barber's chairs and an extra chair could have been arranged. There were many other chairs for female clients. We do not accept the claimant's evidence that he was told by Mr Harman that he was to be replaced by a younger barber and we find that the claimant has misinterpreted the information about recruiting an additional younger barber. We prefer Mr Harman's evidence on this point.

Conclusions

48. We find the treatment alleged in 7.1 has not been proved.

49. We find the treatment alleged in 7.2 has been proved to the extent that Mr Harman on two occasions told the claimant to "Watch his time" in front of customers when he was late, that this was less favourable treatment than white female staff because it was in front of customers but that the treatment was not because of his race or sex.

50. We find the treatment alleged in 7.3 has not been proved.

51. We find the treatment alleged in 7.4 has not been proved.

52. We find that the treatment in 7.5 has not been proved.

53. For the above reasons the claimant's claim in dismissed.

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Employment Judge Alliott

Date Signed: 13 May 2024

Sent to the parties on: 21/05/2024

For the Tribunal Office

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