



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr O Sanyaolu

**Respondent:** Citytrust Investments Group Limited

**Heard at:** Nottingham in person and hybrid by remote video **On:** 17-20 June 2024

**Before:** Employment Judge S Shore  
NLM – Mrs D Newton  
NLM – Mr M Alibhai

## Appearances

For the claimant: Mr T Atanda, Pro Bono Representative  
For the respondent: Mr C Howells, Counsel

## JUDGMENT AND REASONS

The unanimous decision of the Tribunal is that:

1. The correct name of the respondent is Citytrust Investments Group Limited, and the Tribunal's records shall be amended accordingly.
2. The claimant's claim of automatic unfair dismissal under section 103A of the Employment Rights Act 1996 is dismissed upon withdrawal.
3. The claimant's claims of direct discrimination because of the protected characteristic of race (contrary to section 13 of the Equality Act 2010) are dismissed upon withdrawal.
4. The claimant's claim of direct discrimination because of the protected characteristic of sex (contrary to section 13 of the Equality Act 2010) is dismissed upon withdrawal.
5. The claimant's claim for holiday pay under Regulation 13 of the WTR succeeds by consent. The respondent shall pay the claimant **£47.91** (gross).
6. The claimant's claims for breaches of Regulations 6, 7, 8, and 12 of the Working Time Regulations 1998 are dismissed upon withdrawal.

7. The claimant's claim in respect of alleged breaches of Regulations 10 and/or 24 of the WTR in respect of daily breaks and/or compensatory rest are not well-founded and are dismissed.
8. The claimant's claims of unauthorised deduction from wages under section 13 of the Employment rights Act 1996 are determined as follows:
  - 7.1 The claim for **£334.00** (refundable security deposit) succeeds by consent;
  - 7.2 The claim for £334 (monthly rent paid on 16 June 2022 for a period of one month) fails and is dismissed;
  - 7.3 The claim for £10 (shopping) fails and is dismissed;
  - 7.4 The claim for £30, (airport transfer) fails and is dismissed;
  - 7.5 The claim for £65.60 (bus fare) fails and is dismissed;
  - 7.6 The claim for **£35** (uniform) is well founded and succeeds; and
  - 7.7 The claim for £15.95 (shopping) fails and is dismissed.
- 8 The claimant's claim under section 15 of the Employment Rights Act 1996, the right not to have to make payments to an employer, fails and is dismissed.
- 9 The claimant's claims of breach of contract under Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 are not well-founded and are dismissed.
- 10 The total payable to claimant by the respondent is **£416.91** (gross).

## **REASONS**

### **Introduction and History of Proceedings**

1. The respondent is a domiciliary care agency that provides domestic care and other services to dependent people at home. The respondent contracts with local agencies to provide its services.
2. The claimant was employed by the respondent as a Senior Care Assistant from 28 February 2022 until his dismissal on 16 June 2022. He was recruited whilst he lived in Nigeria. The terms upon which he was recruited are disputed. The respondent asserts that it dismissed the claimant for the reason of conduct. The claimant identifies as Black Nigerian and initially claimed unfair dismissal because he had made protected disclosures, race discrimination, sex discrimination, breach of contract regarding the respondent's recovery of travel and other expenses by deductions from the claimant's pay, failure to pay holiday pay, and breaches of the Working Time Regulations 1998 ("WTR").

3. The claimant began early conciliation on 28 July 2022 and an ACAS certificate was issued on 8 September 2022 [1]. The claim form (ET1) [2-13] and Grounds of Complaint, only the amended version was produced at [14-26], were presented on 7 October 2022.
4. The Tribunal sent the parties a Notice of Claim on 14 October 2022 that set the final hearing date for 17, 18 and 19 June 2024 and made case management orders that included the requirements for:
  - 4.1 The respondent to submit its response (ET3) by 11 November 2022;
  - 4.2 The claimant to provide a Schedule of Loss by 25 November 2022;
  - 4.3 The parties to exchange lists of documents by 10 February 2023;
  - 4.4 The respondent to prepare a bundle of documents for the final hearing by 24 March 2023; and
  - 4.5 The parties to exchange witness statements by 2 June 2023.
5. The respondent presented its response form (ET3) [27-32] and Respondent's response [33-40] on 11 November 2022.
6. There was a preliminary hearing before Employment Judge Omambala KC on 14 March 2023 at which the claimant was represented by Mr Atanda, who represented the claimant at this hearing. The case management order [41-50] recorded the claims that were made.
7. The claimant clarified the claims he was making as follows:
  - 6.1 He was not making a claim for detriment short of dismissal because he made a protected disclosure under section 47B of the Employment Rights Act 1996;
  - 6.2 He was making a claim of automatic unfair dismissal because he made a protected disclosure under section 103A of the Employment Rights Act 1996;
  - 6.3 The claimant's claims under Regulations 6 (length of night work) and 11 (weekly rest period) of the WTR were withdrawn. EJ Omambala noted that these claims were dismissed upon withdrawal but we have not seen a Judgment dismissing the claims. We have therefore included the dismissal in our Judgment above;
  - 6.4 The claimant was maintaining claims under Regulations 7 (assessment of night work), 8 (pattern of work), 10 (daily rest), 12 (rest breaks), and 24 (compensatory rest) of the WTR although the specifics of the claims were not recorded in the case management order;
  - 6.5 The claimant was alleging failure to pay holiday pay under Regulation 13 and 13A of the WTR but had not set out the details or the amount of holiday pay claimed;

- 6.6 The claimant was making a claim for unauthorised deductions from wages under section 13 of the Employment rights Act 1996 but no details of the specific claims were given;
- 6.7 The claimant was claiming breach of contract under Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 for failing to:
  - 6.7.1 Reimburse the claimant for the cost of the claimant's flight from Nigeria;
  - 6.7.2 Pay the cost of the claimant's accommodation for three months;
  - 6.7.3 Pay the security deposit for the claimant's accommodation of £334.00;
  - 6.7.4 Reimburse the claimant for the cost of transport and subsistence;
  - 6.7.5 Reimburse the claimant for the cost of accommodation paid for but not used by him.
- 6.8 Direct sex discrimination under section 13 of the Equality Act 2010;
- 6.9 Direct race discrimination under section 13 of the Equality Act 2010.
8. EJ Omambala agreed a List of Issues with the parties. We will return to that List below.
9. The claimant was ordered to produce further information about his claims of automatic unfair dismissal because he made a protected disclosure, unpaid leave, and unauthorised deductions by 21 March 2023.
10. The final hearing was extended to five days.
11. The claimant provided the further information about his claim on 21 March 2023. He made the following amendments to his claims:
  - 10.1 The holiday pay claim was for 4 days accrued pay that he valued at £87.20 gross per day but stated the total to be £174.40.
  - 10.2 His protected disclosure was that he told Lucy King that he was tired on 5 June 2022.
12. On 18 August 2023, the claimant applied for a witness order in respect of Kate Ehiarinm, the claimant's co-worker, who was working with the claimant on 5 June 2022 when the incident that led to the claimant's dismissal occurred. The order was granted by EJ Adkinson on 13 September 2023.

13. The parties produced a joint bundle with index that consisted of 257 pages. If we refer to any documents from the bundle, we will put the relevant page numbers from the bundle in square brackets by the reference.
14. The claimant produced witness statements from:
  - 13.1 Himself. The claimant's statement dated 28 July 2023 consisted of 100 paragraphs. He gave evidence on oath.
  - 13.2 Ellitha Chabaya, who is the Director and Secretary of Ellie Propertiz Ltd. Her company provided rental accommodation for employees of the respondent. Her witness statement dated 24 August 2023 consisted of 9 paragraphs. She gave evidence on oath.
15. Kate Ehiarinm attended on the witness order that had been issued. She gave evidence in person on oath. She had not produced a witness statement.
16. The respondent produced witness statements from:
  - 15.1 Michael King, who is the Finance Director of the respondent. His witness statement dated 26 July 2023 consisted of 40 paragraphs.
  - 15.2 Lucy King, who is Registered Manager and Nominated Individual for the respondent. Her witness statement dated 26 July 2023 consisted of 46 paragraphs.
  - 15.3 Daniella Ikechukwu, who is a Senior Care Worker employed by the respondent. Her witness statement dated 27 July 2023 consisted of 11 paragraphs.
  - 15.4 Genevieve Okonedo, who was a Senior Care Worker for the respondent. Her witness statement dated 27 July 2023 consisted of 5 paragraphs.
  - 15.5 Cyril Justice Nyanhete who works for the respondent. His statement was dated 22 January 2023 and was in letter format.

## **Issues**

17. An agreed list of issues was produced at the preliminary hearing on 14 March 2023 [46-50]. However, that List included a claim of automatic unfair dismissal, which the claimant subsequently withdrew. The List also included consideration of time limit matters which Mr Howells confirmed that the respondent did not wish to pursue. The List did not contain any mention of the claimant's claims under the Working Time Regulations 1998 apart from a claim for holiday pay. As we have recorded below, the claimant withdrew his claim for automatic unfair dismissal and all claims relating to the WTR except for holiday pay and an alleged breach of Regulation 10/24 in respect of daily rest/compensatory rest. The list of issues was finalised as follows on the first day of this hearing:

### **1. Holiday Pay (Working Time Regulations 1998)**

1.1 *Did the Respondent fail to pay the Claimant for annual leave the claimant had accrued but not taken when their employment ended?*

1.2 *What is the relevant daily rate of pay?*

## **2. Unauthorised deductions**

2.1 *Did the Respondent make unauthorised deductions from the Claimant's wages and if so, how much was deducted?*

## **3. Breach of Contract**

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

3.2 *Did the Respondent do the following:*

3.2.1 *Fail to reimburse the Claimant for the cost of his flight from Nigeria;*

3.2.2 *Fail to pay for the cost of the Claimant's room for three months;*

3.2.3 *Fail to pay a security deposit in the sum of £334 on the Claimant's behalf;*

3.2.4 *Fail to reimburse the Claimant for the costs of transportation and subsistence;*

3.2.5 *Fail to reimburse the Claimant for the cost of accommodation paid for but not used by him?*

3.3 *If so was that a breach of contract? The Claimant relies on a letter dated 7 February 2022 and his contract of employment as the whole of the agreement between the parties.*

3.4 *How much should the Claimant be awarded as damages?*

## **4. Direct Race Discrimination**

4.1 *The Claimant describes himself as Black Nigerian.*

4.2 *Did the Respondent do the following:*

4.2.1 *Dismiss the Claimant;*

4.2.2 *Suspend him for two weeks;*

4.2.3 *Expressing a preference to retain another employee, Kate Ehiarim, in employment because she had UK/EU nationality?*

4.3 *If so, was that less favourable treatment? The Claimant says that he was treated worse than Kate Ehiarinm.*

4.4 *If so, was it because of race?*

**5. Direct Sex Discrimination**

5.1 *The Claimant is man.*

5.2 *Did the Respondent express a preference to retain Kate Ehiarinm, in employment because she is a woman?*

5.3 *If so, was that less favourable treatment?*

5.4 *If so, was it because of sex?*

**10. Remedy for discrimination**

10.1 *Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?*

*What financial losses has the discrimination caused the Claimant?*

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

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

10.5 *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*

10.6 *Did the Respondent or the Claimant unreasonably fail to comply with it?*

10.7 *If so, is it just and equitable to increase or decrease any award payable to the Claimant?*

10.8 *By what proportion, up to 25%?*

10.9 *Should interest be awarded? How much?*

**11. Breach of Regulation 10/24 WTR 1998**

11.1 *It is agreed that the claimant had no daily rest time between his night shift on 4 June 2022 and his day shift on 5 June 2022.*

11.2 *Did Regulation 10 WTR apply to the respondent?*

*11.3 If not, was the claimant given a period of compensatory rest under Regulation 24?*

18. During the hearing, the claimant withdrew his claims of direct discrimination because of the protected characteristics of race and sex and his claims of breaches of Regulations 7, 8 and 12 of the WTR. We did not have to determine the issues related to those claims. The parties agreed that the claimant had been subjected to unauthorised deductions from wages of £344 in respect of an accommodation security deposit. The parties agreed that the claimant was owed £47.91 in respect of holiday pay.

### **Law**

19. We have only set out the relevant law in respect of the claims that we had to make findings of fact and decisions on liability upon.
20. The relevant Regulations of the WTR are 10, 13, 21(c)(i) and 24:

#### ***Daily rest***

*10. (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.*

*(2) Subject to paragraph (3), a young worker is entitled to a rest period of not less than twelve consecutive hours in each 24-hour period during which he works for his employer.*

*(3) The minimum rest period provided for in paragraph (2) may be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.*

#### ***Compensatory rest***

*24. Where the application of any provision of these Regulations is excluded by regulation 21 or 22, or is modified or excluded by means of a collective agreement or a workforce agreement under regulation 23(a), and a worker is accordingly required by his employer to work during a period which would otherwise be a rest period or rest break—*

*(a) his employer shall wherever possible allow him to take an equivalent period of compensatory rest, and*

*(b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, his employer shall afford him such protection as may be appropriate in order to safeguard the worker's health and safety.*

#### ***Entitlement to annual leave***

*13.—(A1) This regulation applies to—*

*(a) a worker in respect of any leave years beginning before 1st April 2024, and*



*(b) a worker to whom regulation 15B does not apply in respect of any leave years beginning on or after 1st April 2024.*

*(1) Subject to paragraph (5), a worker is entitled to four weeks' annual leave in each leave year.]*

*(2) . . .*

*(3) A worker's leave year, for the purposes of this regulation, begins—*

*(a) on such date during the calendar year as may be provided for in a relevant agreement; or*

*(b) where there are no provisions of a relevant agreement which apply—*

*(i) if the worker's employment began on or before 1st October 1998, on that date and each subsequent anniversary of that date; or*

*(ii) if the worker's employment begins after 1st October 1998, on the date on which that employment begins and each subsequent anniversary of that date.*

*(4) Paragraph (3) does not apply to a worker to whom Schedule 2 applies (workers employed in agriculture [F4in Wales or Scotland]) except where, in the case of a worker partly employed in agriculture [F4in Wales or Scotland], a relevant agreement so provides.*

*(5) Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the leave to which he is entitled in that leave year is a proportion of the period applicable under [F5paragraph (1)] equal to the proportion of that leave year remaining on the date on which his employment begins...*

*(9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—*

*(a) subject to the exceptions in paragraphs (14), (15) and (17)] ,] it may only be taken in the leave year in respect of which it is due, and*

*(b) it may not be replaced by a payment in lieu except where the worker's employment is terminated...*

*(14) Where, as a result of taking a period of statutory leave in any leave year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such untaken leave into the following leave year.*

*(15) Where, as a result of taking a period of sick leave in any leave year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such*

*untaken leave into the following leave year provided it is taken by the end of the period of 18 months from the end of the leave year in which the entitlement originally arose.*

*(16) Paragraph (17) applies where, in any leave year, an employer fails to—*

*(a) recognise a worker's right to annual leave under this regulation or to payment for that leave in accordance with regulation 16;*

*(b) give the worker a reasonable opportunity to take the leave to which the worker is entitled under this regulation or encourage them to do so; or*

*(c) inform the worker that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost.*

*(17) Where this paragraph applies and subject to paragraph (18), the worker is entitled to carry forward any leave to which the worker is entitled under this regulation which is untaken in that leave year or has been taken but not paid in accordance with regulation 16.*

*(18) Annual leave that has been carried forward pursuant to paragraph (17) cannot be carried forward beyond the end of the first full leave year in which paragraph (17) does not apply.*

## **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 –*

*...(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...*

## **24. Compensatory rest**

*Where the application of any provision of these Regulations is excluded by regulation 21 or 22, or is modified or excluded by means of a collective agreement or a workforce agreement under regulation 23(a), and a worker is accordingly required by his employer to work during a period which would otherwise be a rest period or rest break—*

*(a) his employer shall wherever possible allow him to take an equivalent period of compensatory rest, and*

*(b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, his employer shall afford him such protection as may be appropriate in order to safeguard the worker's health and safety.*

21. The relevant law in respect of the breach of contract claim is Article 3 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994:

***Extension of jurisdiction***

3. *Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—*

*(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;*

*(b) the claim is not one to which article 5 applies; and*

*(c) the claim arises or is outstanding on the termination of the employee’s employment.*

**The Hearing**

22. The case management order of EJ Omambala provided for the Tribunal to read the papers on the first morning and anticipated that the hearing proper would begin at 2:00pm. The parties were asked to make themselves available on the first morning in case the Tribunal wished to discuss preliminary matters. There were matters that we wished to discuss with the parties on the first morning but they were never in the building at the same time, so we had to wait until 2:00pm.
23. The hearing was recorded on the CVP system in audio only. On the fourth day, the audio recording system did not work and no recording was possible.
24. We had asked the parties if a timetable had been agreed as ordered by EJ Omambala. The claimant and his representative were not in the building, but Mr Howells produced a draft timetable and shared it with Mr Atanda before we started. The timetable was agreed as follows:

Day 1	Morning	Tribunal reading
	Afternoon	
	Afternoon	Claimant’s evidence
Day 2	Morning	Claimant’s evidence
	Afternoon	Respondent’s evidence
Day 3	Morning and part Afternoon	Respondent’s evidence
	1 hour	Submissions
Day 4	4 hours	Tribunal making decision and giving Judgment
	2 hours	Dealing with compensation or other remedies if necessary
Day 5		Potentially not needed

25. Mr Atanda said he had another matter to attend to that may mean he was unavailable on the second morning. As it transpired, he was available on the second morning.
26. As the case developed and the claimant withdrew further claims, we adapted the timetable.
27. Mr Atanda handed in a document titled "Claimant's Updated list of Issues For Final Hearing". It confirmed that the claimant had withdrawn his claim of automatic unfair dismissal. We have dismissed that claim above. The document confirmed that the claimant wished to continue with claims under Regulations 7, 8, 10, 12, and 24 of the WTR in addition to holiday pay claims.
28. After a discussion, Mr Atanda confirmed that the claimant would withdraw the claims under Regulations 7 (assessment of night work), 8 (pattern of work), and 12 (rest breaks) of the WTR. We indicated that we would dismiss those and the other WTR other claims that had been withdrawn at the preliminary hearing on 14 March 2023. The claimant's remaining claims under the WTR were under Regulations 10 (daily rest), 13/13A (holiday pay) and 24 (compensatory rest).
29. We agreed to add the Regulation 10 and 24 claims to the List of Issues.
30. We had checked the name of the respondent on Companies House before the hearing started as it had been set out in different ways in the documents. It was agreed that the correct legal name of the respondent is **Citytrust Investments Group Limited** and that the Tribunal records should be amended accordingly.
31. We enquired of the parties if there were any additional documents to the ones in the agreed bundle, as Mr Atanda had given our Clerk a copy of the letter of dismissal dated 14 June 2022. Mr Atanda explained that the new document was different to the letter of dismissal dated 14 June 2022 in the bundle [189-190], as that letter contained four bullet points explaining the reason for the claimant's dismissal, whilst there were six bullet points explaining the reasons for dismissal in the new version.
32. Mr Howells had not seen the second version so we made an order requiring the claimant to produce the letter and the covering email, WhatsApp or whatever means that had been used to send it, to the respondent and the Tribunal by 9:30am on the second morning, which is what happened.
33. Mr Howells said that the respondent's base position was to object to the document's inclusion. We indicated that it may be relevant so would determine the point on the second morning. We did not anticipate that the cross-examination of the claimant would end on the first day, so there would be opportunity for Mr Howells to cross-examine the claimant on the document if we admitted it.
34. We brought the parties' attention to a clear typo that appeared in paragraph 39 of Lucy King's witness statement. It was amended by way of a supplementary question at the start of her evidence.
35. The Tribunal raised the issue of a patient who had been injured on 5 June 2022 when they were attended at their home by the claimant and Kate Ehiarinm. The individual had been named in the bundle and the witness statements. It was agreed

that Restricted Reporting and Anonymity Orders were appropriate to protect the identity of the person being revealed because of their medical circumstances under section 12 of the Employment Tribunals Act 1996, and one has been prepared. In these reasons, any reference to the person will use the initials "GJ".

36. Mr Howells indicated that one of the respondent's witnesses, Genevieve Okonedo, no longer worked for the respondent and would not be able to attend in person to give evidence. With the agreement of Mr Atanda, we agreed that Ms Okonedo's evidence could be heard by video link as she was in the United Kingdom. We asked Mr Howells to make enquiries about the witness's availability and inform us of her availability on the second day.
37. At 3:00pm, we began to hear the claimant's evidence. He gave evidence on oath and produced his witness statement as his evidence in chief. The claimant was cross-examined by Mr Howells. We took a break at 3:55pm and returned at 4:02pm. We closed the hearing for the day at 4:35pm. The claimant was given the usual warning given to witnesses who have not finished their evidence when the court rises, not to speak to anyone about the case. However, we made an exception to allow the claimant to speak to Mr Atanda about the second dismissal letter.
38. We started the second day's hearing at 10:12am by discussing the second dismissal letter. The claimant produced an email from Michael King to the claimant with the second letter attached that was dated 16 June 2022 and timed at 11:51am. Mr Howells withdrew the respondent's objection to the production of the letter. The letter was added to the bundle as pages 258 and 259. The email was added as page 260.
39. It was agreed that the first dismissal letter [189-190] had been sent by WhatsApp message by Lucy King to the claimant at 11:47am on 16 June 2022 [145]. It was agreed that the respondent could deal with the documents by way of supplementary questions to Mr and/or Mrs King.
40. Mr Atanda advised us that Ellitha Chabaya was in attendance but had to pick someone up from the airport at 2pm, so asked that we heard her evidence before returning to the claimant's evidence. With the consent of Mr Howells, we agreed.
41. Mr Howells advised us that Genevieve Okonedo would be available to give evidence by video at 2pm on the second day, so we arranged for a Notice of Video Hearing to be sent to her with joining instructions and a request to log in at 2:00pm.
42. We then heard the evidence of Ellitha Chabaya who produced her witness statement as evidence in chief. Mr Atanda asked two supplementary questions. Mr Howells and the Tribunal had no questions for the witness, who was released at 10:25am.
43. The claimant was then recalled to the witness table and was reminded that he was still on oath. Mr Howells continued his cross examination until 11:10am, when we took a break. After the resumption at 11:20am, the cross-examination continued until 1:01pm. Mr Alibhai and Mrs Newton asked the claimant some questions until 13:10pm when we took lunch.

44. We heard the evidence of Kate Ehiarinm, who gave evidence on oath. She was asked questions by Mr Atanda. She was not cross-examined. Mr Alibhai asked one question.
45. We asked our Clerk to notify Ms Okonedo that we would hear her evidence at 2:15pm. Ms Okonedo gave evidence on affirmation and produced her witness statement as her evidence in chief. She was cross-examined by Mr Atanda until 2:46pm. The Tribunal asked her no questions and there was no re-examination.
46. We took a break, after which, Mt Atanda advised us that the claimant wished to withdraw his claims of direct sex and direct race discrimination. We consented to the application and have dismissed the claims in our Judgment above.
47. We asked the representatives to consider what the withdrawal of the claims would mean to our time estimate and the requirement to hear from the remaining witnesses.
48. Mr Atanda said he had an appointment to attend for work at 9:00am on the third morning so asked for the hearing to start late. We broke for 15 minutes to give the parties time to consider their positions and for us to consider Mr Atanda's application.
49. On the resumption, Mr Howells said that the respondent would not now call Cyril Nyanhete but that Danielle Ikechukwu would have to give evidence on one discreet point.
50. We granted Mr Atanda's application and agreed that the hearing would start at 1:00pm on the third day and that we would hear Lucy King's evidence on the second afternoon and then hear Michael King and Danielle Ikechukwu's evidence on the third day. We also hoped to be able to hear closing submissions on the third day.
51. We heard Lucy King's evidence. She produced her witness statement as her evidence in chief and was cross examined by Mr Atanda until 3:42pm. She deferred on some questions as she said Mr King was better placed to give the evidence on the points raised. The Tribunal had no questions for Mrs King and there was no re-examination. We broke for the day at 3:45pm and made orders regarding closing submissions.
52. The third day started at 1:20pm and we heard Daniella Ikechukwu's evidence. She gave evidence on affirmation and produced her witness statement as evidence in chief. She was cross-examined by Mr Atanda until 1:33pm. There were no Tribunal questions or re-examination.
53. The final witness was Michael King who gave evidence on affirmation and produced his witness statement as evidence in chief. He was cross-examined by Mr Atanda until 3:15pm. Mr Alibhai asked one question of Mr King. There was no re-examination, but he had not been able to answer questions about whether the claimant's employment made him exempt from Regulation 10 of the WTR and whether regulation 24 applied.
54. With the consent of the parties, we recalled Mrs King who gave evidence on oath about the work that the claimant did. We finished for the day at 3:33pm and asked

the parties to return on the fourth day to make closing submissions. Both parties prepared and exchanged written submissions.

55. On the fourth day, Mr Howells and Mr Atanda spoke to their submissions from 10:35am to 10:40am. We asked them to return at 2:00pm to hear our decision.
56. We delivered our unanimous Judgment and Reasons at 2:00pm. Mr Atanda asked for the reasons to be put in writing. He suggested that some of the dates given in the oral reasons were incorrect. The dates have been checked for the Written Reasons. If Mr Atanda feels that the Judgment and Reasons contain any material errors, he is invited to seek a reconsideration.

### **Findings of Fact**

#### **Preliminary Comments**

57. All findings of fact were made on the balance of probabilities. The balance of probabilities is an assessment of whether it is more likely than not that something has happened. The balance of probabilities is the standard of proof in the Employment Tribunal.
58. If a matter was in dispute, we will set out the reasons why we decided to prefer one party's case over the other. If there was no dispute over a matter, we will either record that with the finding or make no comment as to the reason that a particular finding was made. We have not dealt with every single matter that was raised in evidence or the documents. We have only dealt with matters that we found relevant to the issues we have had to determine. No application was made by either side to adjourn this hearing to complete disclosure or obtain more documents, so we have dealt with the case based on the witness statements and cross-examination of witnesses and the documents produced to us.
59. As we mentioned during the hearing, the Tribunal strives to achieve a just and fair hearing. Part of that includes ensuring that both sides and the Tribunal all clearly understand what the claim is about and what the respondent's defence is. That is why we produce a List of Issues (which is a list of questions that the Tribunal needs to find the answers to). We have only addressed evidence in this case that has assisted us to answer the questions asked of us in the List of Issues on the claims that were not withdrawn or agreed.

#### **Disputed Points**

#### **General Points**

60. We have not made findings of fact on much of what is alleged by the claimant in his lengthy witness statement because we did not find that many of the matters referred therein were relevant to the issues that we had to determine following the withdrawal of claims. A large part of the claimant's statement dealt with the circumstances of his dismissal, which were only relevant to claims of unfair dismissal and discrimination. We have not addressed any of the matters that were solely concerned with the claims of automatic unfair dismissal, direct race, and sex

discrimination or the WTR claims that were withdrawn. Put simply, the claimant's case that remained after the withdrawals is that:

- 60.1 He was not given a rest break in the period he worked between 10:00pm on 4 June 2022 and 10:00pm on 5 June 2022 and was not given compensatory rest;
- 60.2 The respondent made unauthorised deductions from his pay;
- 60.3 The claimant had to make payments to his employer contrary to section 15 of the ERA; and
- 60.4 The respondent breached the claimant's contract by failing to reimburse him for expenses incurred. There was overlap between the claims of unauthorised deductions and breach of contract.

### Expenses

61 As stated above, there was overlap between the claimant's claims of unauthorised deductions and breach of contract. Only the claim for reimbursement of his plane tickets from Nigeria was unique to the claim of breach of contract. The context of the claims is that the claimant's case is that he had a binding agreement with the respondent that the respondent would pay for his flight from Nigeria to the UK and all his living, travel, and accommodation expenses. The respondent's case is that it agreed to loan the claimant money to pay for his travel expenses (except the air fare, which it says it did not agree to either pay for or loan the claimant money for) and that it recovered the monies loaned from the claimant's pay. The claim for expenses (deduction from wages) expenses are:

- 61.1 £334 (refundable security deposit for the claimant's accommodation);
- 61.2 £334 (monthly rent);
- 61.3 £10 (pillow and bedding from Asda);
- 61.4 £30 (airport transfer);
- 61.5 £65.60 (bus fare);
- 61.6 £35 (uniform); and
- 61.7 £15.95 (food shopping).

62. We find that the claimant never disputed that:

- 62.1 The respondent **did not** pay for his air fare from Nigeria to the UK; but
- 62.2 It **did** pay all seven items of expense for the claimant listed above.



## Contractual Position

63. It was agreed that on 1 February 2022 the claimant was provided with a copy of a contract of employment. The claimant did not dispute that he signed a contract with the respondent [52-61] on 9 February 2022. The claimant did not argue that the contract was void.

64. We find that the sixth page of that contract [57] includes a clause on 'Deductions', which contained the following entry that was inserted by the respondent:

*"You have been loaned money by the company full sum of which will be calculated and discussed with you before you board your flight to the UK. It is only at your agreement that the charges will be added to your account and deducted as you earn at an agreed percentage. It is company policy that your bill be cleared within the first 3 months."*

65. Mr Atanda made much of the fact that the clause above used the phrase "You **have been** loaned money..." (our emphasis) in support of his contention that the clause was not operative in respect of the loans that were yet to be made. What we find incontrovertible is that there was an agreement between the parties in which the claimant acknowledged that a loan arrangement had been agreed.

66. We also find that the preceding clause in the "Deductions" section is relevant:

*"The Company is authorised, without further agreement, to deduct from pay any sums due to the Company including, by way of example, any overpayment **or any outstanding loans** (our emphasis) or advances, or any sum in respect of breach of clause 0. If the final payment is insufficient to allow for the whole of any such deduction, you will be required to repay the outstanding amount due to the Company within 1 month of the termination of your Employment."*

We find this clause catches any loan made to the claimant from 9 February 2022, the date of his signature. We find that the claimant is bound by the above terms as a matter of contract law.

## UKVI Procedure

67. The claimant required a visa to enter the United Kingdom to take the job offered by the respondent. The process is administered by UKVI, an adjunct of the Home Office.

68. We find that the parties agree that the Home Office requires evidence that applicants for work visas have sufficient financial means to live in the UK without relying upon state-funded benefits. That proof can take one of two forms:

68.1 Applicants can prove that they have had at least £1,270 in their bank account for a minimum of 28 consecutive days, and the last day must be within 31 days of applying for the visa.

68.2 Alternatively, applicants can provide proof that their employer will “cover” the applicant’s costs during the first month in the UK.

We make that finding because we were invited to consider the Gov.uk pages on the procedures and Mr Atanda provided us with extracts from the Guidance given to officers determining applications for visas.

69. We find that the claimant cannot rely on upon a letter dated 7 February 2024 written by the respondent to UKVI [104] to substantiate his assertion that the respondent had agreed to cover the claimant’s expenses and that he was not required to reimburse any payments made by the respondent on his behalf. We find that it is not possible to interpret the letter as an agreement between the claimant and the respondent. We find that the letter is no more than a letter of intent from the respondent to UKVI written to comply with the relevant regulations for workers entering the UK.
70. In this case, the claimant, by the respondent’s letter of 7 February 2022 [104], provided proof to UKVI that his employer would “cover” his initial expenses for the first 3 months after arriving in the UK. We find that there is no evidence which meets the standard of proof required to support the claimant’s contention that an offer to “cover” meant that those expenses could or should not be reimbursed. There is nothing in any of the guidance that we were taken to on the government’s website that indicates that the costs that an employer will cover for a worker will not be a loan or would be reimbursable (which is effectively the same thing). We agree with Mr Howell’s summary of the position in his closing submissions.

### Flight from Nigeria

71. We find that the claimant’s evidence that he genuinely believed that the respondent would cover his expenses, including his flight to the UK from Nigeria the was inconsistent with the texts he exchanged with Lucy King (the claimant is referred to as “Lanre” in the messages) on 7 March 2022 [118]:

*“8.37- Lanre: Please I will like to find out if CTH will help sort flights tickets and is the flight going to be direct or stop-over?”*

*8.39- Lucy: Hi Lanre **no flights are not included all we pay for is ur home office sponsor fee.***

*8.42- Lanre: **Ok good**, then I can go ahead to sort my ticket” (emphasis added)*

72. We find that the claimant asked the respondent to pay for his flight to the UK. We find that Mrs King refused and pointed out that the respondent would not pay and that the claimant accepted that position. Those findings are entirely contrary to the claimant’s case that the respondent agreed to pay or reimburse him for his air fare to the UK. No document was produced to us that corroborates the claimant’s position on this point.

### Expenses in the UK

73. We have already found that the claimant did not dispute that the respondent paid for the items that are listed in paragraph 33.1 to 33.7 above.
74. We find that it is more likely that the claimant was aware that he had to repay his expenses than not. We make that finding because of the conversation about plane tickets; the evidence of Mrs King that the claimant was reluctant to spend the respondent's money when he was on shopping trips because he wanted to save to bring his family to the UK; the clauses referring to loans and repayment in both contracts that the claimant signed; and the evidence of Danielle Ikechukwu.
75. We also make the finding because the claimant was provided with payslips from the start of his employment. The first payslip dated 22 April 2022 [237] identifies a "loan deduction" of £30.22 from the claimant's earnings. On 29 April 2022, a loan deduction of £200 was made from the claimant's earnings [238]. The inclusion of loan repayments was consistent in every payslip until the claimant's final payslip.
76. We find that the claimant reviewed the contents of the payslips [237 and 238] and raised queries about the sums deducted. He also queried the hours that he was deemed to have worked in week 4 [155]. The claimant was told that the deductions were made in respect of uniform, rent, deposit, airport transfer, and bus fares.
77. We find that, in response to the information about the deductions provided by the respondent, the claimant replied, "*Okay noted. Thank you*". We find that the claimant's acceptance of the deductions when explained to him was indicative of him knowing that the monies were repayable. We are mindful of the inequality of bargaining position between the claimant and the respondent but note that the claimant felt able to challenge his employer about the terms of his employment: he queried the hours he was paid for and the sums deducted.
78. On 9 May 2022, the claimant signed a second contract of employment [62-68] that contained the same Deductions clauses as the first contract [65].
79. At 1:15pm on 16 May 2022, Lucy King sent a message advising that rent was due and asking that a payment for £334 be made to City Trust [134]. We find that by this date, the claimant had repaid nearly all the monies that the respondent asserts were owed. This was reflected within the reduced value of the loan deductions for that week of £63.38 [241]. The Claimant replied to Mrs King's WhatsApp at 2:54pm on 16 May 2022 by writing, "*Good day Lucy, noted*" and "*Trying to transfer now*". It was agreed that the claimant paid £334.00 in rent to the respondent on 13 June 2022 [142].
80. It was agreed that the claimant paid £334.00 in rent to the respondent on 16 May 2022 [247].
81. We find that on various dates between February and May 2022 the claimant was either informed about the loans that he had been granted or he was told about deductions that were being made pursuant to that loan agreement. We find that the claimant never challenged the assertion that he had been loaned money or the appropriateness of the deductions from his salary.

82. We find that the claimant's assertion that his contract of employment supports his assertion that the respondent had agreed to reimburse his expenses because of the wording of the 'Expenses' clause within the contract [53] does not come anywhere near meeting the standard of proof required. We make that finding because:
- 82.1 Our findings above mean that there was an agreement in place under which the claimant had to repay loan monies to the respondent.
  - 82.2 There was no time limit within the expenses clause, so it follows that if the claimant's interpretation of that clause is correct then the respondent would be liable to cover the claimant's subsistence costs (including rent, food, and transportation) throughout the period of his employment. We find that such a construction is not consistent with the claimant's case, namely that the respondent agreed to pay for 3 months without any requirement that these expenses be reimbursed (the period in the letter of 7 February 2022).
  - 82.3 The expenses clause is concerned with the reimbursement of expenses *paid by the employee* in connection with the business of the employer. In contrast, this case is concerned with the reimbursement of expenses *paid by the employer*.
83. We find that the claimant sent a text to Lucy King on 16th May 2022 [134] (before the first rent payment was made) noting that the payment for rent was due and that he would "transfer the money now". We find that to be an agreement that he would be responsible for the rent.
84. We did not find Mr King's evidence that the £35.00 deduction for uniform was credible. We do not accept his evidence that the claimant requested further uniform or that it was provided to him or that it was part of the loan arrangements.
85. The respondent accepts that the £334.00 deducted from claimant referred to in a text message from the respondent around 28 April 2022 should not have been deducted, as the deposit was paid by the respondent to Ellie Propertiz Ltd and was repaid to it by that company. We find that this was an unauthorised deduction with the consent of the parties.

### Termination Findings

86. We find that the claimant's employment ended on 16 June 2022 at 11:47am when the first dismissal letter [189-190] was sent to the claimant by Lucy King attached to her WhatsApp [145]. We make that finding because the notes of the disciplinary meeting on 14 June 2024 [173-176] did not record that the claimant was dismissed at the meeting. The minutes record that the claimant was told the respondent would discuss the situation and let the claimant know the outcome within seven days [176].
87. It is well-established law that dismissal only takes place once the decision to dismiss is communicated to the employee. We find that the claimant was informed of his dismissal by WhatsApp at 11:47am on 16 June 2022. That was the effective date of termination.

88. It was agreed that the claimant vacated his accommodation on 18 June 2022 [[145]. It was not disputed that the respondent did not re-let the room for several months.

### **Rent for the period 16 June 2022 to 16 July 2022**

89. We find that the claimant's claim for reimbursement of these monies either under a breach of contract; or under section 15 of the Employment Rights Act 1996 as a payment that he had to make to an employer; or as an unauthorised deduction fail for legal reasons.
90. The first is that a breach of contract claim can only be in respect of a sum outstanding at the time of dismissal. This was not as it was paid after dismissal.
91. The second is that a claim under section 15 must be a payment made to an employer. The respondent was not the claimant's employer and the payment was made to another legal entity.
92. The third is that it was not a deduction from wages.
93. We note that Mr King twice accepted what we find to be a moral obligation to reimburse the claimant for the rent he had paid in advance for the accommodation he did not use because he vacated the premises on 18 June 2022. We would encourage Mr King to reflect on what he said in evidence.

### **The Section 15 Claim**

94. This is advanced in respect of the rent payments made by the Claimant from 16 May 2022. The Claimant argues that he did not provide in writing his agreement or consent to making these payments.
95. We find that this argument is misconceived since the Claimant sent a text to Lucy King on 16<sup>th</sup> May 2022 (before the first rent payment was made) noting that the payment for rent was due and that he would "*transfer the money now*" [134]. WE find that to be written consent.

### **Breach of WTR**

#### **Regulation 10**

96. The parties agree that the claimant worked a night shift on 4 June 2022, which started at 10:00pm on 4 June and ended at 7:00am on 5 June 2022. The parties also agree that the claimant worked a further shift on 5 June 2022, which ended at 10:00pm that day.
97. We find that regulation 10(1) does not apply to the claimant because regulation 21(c)(i) applies. We find that the claimant was entitled to a compensatory rest period within the meaning of regulation 24.

#### **Regulation 21**

98. We find that the case of **Gallagher and others v Alpha Catering Services Ltd** [2005] ICR 673 held that it is the worker's activities, not the work carried out by the employer, that must involve the need for continuity. We agree with Mr Howells' submissions in this case that:

98.1 The claimant provided care to patients in their home. These patients would otherwise have to be cared for within a hospital (or care home) setting. That brings the claimant within Regulation 21(c)(i).

98.2 The claimant worked to a treatment plan. The treatment plan would include the administration of medication. That brings the claimant within Regulation 21(c)(i).

98.3 The administration of medication formed part of the claimant's activities, which is why he received training in respect of this issue on 19 February 2022 [69]. That is a service provided by hospitals or similar establishments such as... residential institutions.

98.4 If a patient requires medication and there is nobody else available to deal with this task (e.g., because the carer previously assigned is unavailable due to illness, delay or because of an emergency elsewhere), that could create the need for the carer to interrupt their break so as to provide continuity of service.

98.5 The unavailability of other cover gave rise for the need to work the additional shift.

99. For the above reasons, we find that regulation 21(c)(i) is engaged. The practical effect of this is that the claimant was instead entitled to compensatory rest (regulation 24), but the respondent was not required to ensure that he had at least 11 hours rest between shifts (regulation 10).

#### **Regulation 24- compensatory rest**

100. We find that the claimant was suspended from work from 5 June 2022 [168] until his dismissal. We cannot speculate as to whether a period of compensatory rest would have been permitted. There is no basis for the claimant to assert, or the Tribunal to find, that regulation 24 was breached on the facts of this case.

#### **Holiday Pay**

101. It was agreed by the parties during the cross examination of Mr King that the claimant was entitled to £47.91 in holiday pay accrued but not taken and not paid.

Employment Judge Shore  
25 June 2024

Sent to the parties on:

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For the Tribunal Office:

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