



# EMPLOYMENT TRIBUNALS

**Claimant:** Gifty Robinson  
**Respondent:** Smile Publications Ltd  
**Heard at:** East London Hearing Centre (video hearing)  
**On:** 06 – 09 August 2024  
**Before:** Employment Judge Housego  
**Members:** Ms S Harwood  
Mr L O'Callaghan

## Representation

**Claimant:** In person  
**Respondent:** Bryony Clayton, of Counsel

## JUDGMENT

The claims are dismissed.

## REASONS

### Basis of claim and defence

1. The Claimant describes herself as black. She is Canadian, of Ghanaian heritage. The Claimant's job for the Respondent was telephone sales, seeking to sell advertising space in the magazines published by the Respondent for NHS related voluntary organisations. She was dismissed by the Respondent on 21 November 2022, part way through her probationary period, having commenced work on 03 October 2022. The Respondent says that this was because her sales technique was not good enough and she had not responded to guidance that she should slow down her presentations, stick to the script and build rapport with those she was calling. The Claimant says that she was the only non-white person in a team of six, that she endured a series of humiliations based on her race, ending up with her dismissal after she had just made a good sale, which had made the others jealous.

### Law

2. Race is a characteristic protected by the Equality Act 2010<sup>1</sup>. The Claimant asserted that the treatment she received was direct race discrimination<sup>2</sup>.
3. The test for a claim that the Claimant has suffered unlawful discrimination is whether or not the Tribunal is satisfied that in no sense whatsoever was there less favourable treatment (compared to someone else) which was tainted by race discrimination. It is for the Claimant to show reason why there might be discrimination, and if she does so then it is for the Respondent to show there was none. The Tribunal has applied the relevant case law<sup>3</sup>, and has fully borne in mind, and applied, S136 of the Equality Act 2010. Discrimination may be conscious or unconscious, the latter being hard to establish and by definition unintentional. It is the result of stereotypical assumptions or prejudice.
4. The Claimant also makes a claim of breach of contract, asserting that she should have received a period of one week's notice, and not been asked to leave immediately. She does not dispute that she was paid one week's pay in lieu of notice.

## Evidence

5. The Tribunal heard evidence from the Claimant and from her husband, Stephen Robinson. He had no personal knowledge of the events at the Claimant's workplace. For the Respondent, the Tribunal heard from Jennifer England, Jane Watkins, Colleague A<sup>4</sup> and Joanne Crathern. Jennifer England and Colleague A were colleagues of the Claimant, Jane Watkins the Claimant's line manager, and in charge of all sales staff, Joanne Crathern is a director of the Respondent. (There are three directors, one of the others being Joanne Crathern's husband Gary Wainwright, and the three directors and Jane Watkins are the senior leadership team).
6. There were difficulties with the documents, but a bundle of 163 pages plus EJ Palmer's CMO was provided. The witness statements were delivered late, but the Tribunal received the Respondent's witness statements at the start of the hearing. Other documents of little or no assistance to the resolution of the claims were also received. The Claimant and her husband had revised their witness statements, and in both cases both witness statements were considered.

## Issues

7. The issues were finally resolved by EJ Palmer at a Case Management Hearing (CMH) on 30 July 2024 and recorded in her Case Management Order (CMO) signed the same day and sent to the parties on 02 August 2024 by email. The Tribunal adhered to them. The Claimant sought to add a failure to send her payslip for November 2022. The Claimant had raised this after a previous CMO had attempted to set out the issues, but it had not

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<sup>1</sup> S11 Equality Act 2010

<sup>2</sup> S13 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.

<sup>3</sup> The law is comprehensively set out in Royal Mail Group Ltd v Efobi [2021] UKSC 33 (23 July 2021)

<sup>4</sup> The Tribunal decided that the need for transparency in judgments was outweighed in the case of this person's name, which is anonymised. Her identity is not central to the claim, and publication of her name in conjunction with the personal matters raised in this hearing would be an unwarranted and disproportionate intrusion into her private life.

been raised in EJ Palmer's CMH. This states that the factual issue is whether the Claimant can establish that it is more likely than not that (one or more of) a series of events occurred. The list which follows is copied from the CMO, with some minor typographical corrections, an observation about numbers 6 and 15, and the insertion of some surnames. Allegations 11-18 were added at EJ Palmer's CMH, as permitted amendments, and so are out of chronological order. The factual issues are as follows:

- 7.1. that Jane Watkins asked her insensitive questions about a GP appointment which was 10 November 2022. The Claimant compares herself to her white colleague Jennifer England who was not questioned insensitively by Jane Watkins about her endometriosis.
- 7.2. that Joanne Crathern sent the Claimant home when she developed a cough, and the date was 17 November 2022. The Claimant compares herself to her white colleague Hayley who was not sent home;
- 7.3. that the Claimant's line manager (Jane Watkins) met the Claimant for one formal meeting on 8 October 2022. Furthermore, she had informal chats with Jane Watkins less frequently than her other colleagues with Jane Watkins such as in the corridor which her colleagues had. The Claimant compares herself to her white colleagues Jennifer England and Colleague A.
- 7.4. that Jane Watkins said to the Claimant that 'black people scare' her and this occurred at the end of October; (this is the same as allegation 17)
- 7.5. that Jane Watkins said 'It's too dark in here' which the Claimant says was a reference to her skin colour her which allegedly happened at the end of October 2022;
- 7.6. that Jane Watkins said 'is that your own hair or a wig' at the same time as touching the Claimant's hair and this happened between 9th November 2022 and 21 November 2022 (described in more detail at 15 below);
- 7.7. that the Claimant was dismissed, to include the allegation that she was told by Jane that she did not 'fit in'. The Claimant compares herself to her white colleagues Jennifer England and Colleague A who were not dismissed – Jennifer England despite being regularly late for work and Colleague A who had received warnings and who although dismissal was on the cards, was then told she would not be dismissed. The Claimant says that her dismissal was said to be because of her sales figures but that this was not the real reason because she had achieved more than two sales.
- 7.8. the Claimant states that she was not allowed to work out her notice period;
- 7.9. the Claimant was not given the opportunity to bring a grievance. The Claimant relies on a hypothetical comparator.

- 7.10. the Claimant was not given a P45 or P60;
  - 7.11. There was a comment made by Jane Watkins on the 3 October 2022 whether Gifty was her real name or nickname when Hayley had gone out on a break.
  - 7.12. On 5 October 2022 a comment was made by Jane Watkins if the name Gifty was a real name or nickname. The names of the people present when this comment was made was Jennifer England, Colleague A, Gemma Simmons and Angela Keene. (It was agreed that this was the same allegation, but on a different date.)
  - 7.13. In the period of October- November 2022, Jane Watkins made general comments about not liking “pikeys” and a comment that “pikeys” are scary and they disgust her. This was not made specifically in the office to the Claimant but was made in the context that black people scare her.
  - 7.14. On 8 October 2022 after the one to ones Jane Watkins made comments to the Claimant and other employees that Jane Watkins said she had difficulty understanding the Claimant and that Colleague A sounded like a robot. Other employees who were present were Gemma Simmons, Colleague A, Angela Keene and Jennifer England.
  - 7.15. Between October and November 2022 towards the end of her employment, Jane Watkins and Colleague A touched the Claimant’s hair. The Claimant lifted her wig as Jane Watkins and Colleague A were curious to see her natural hair underneath. Present at the time were Jennifer England, Jane Watkins, Colleague A, Gemma Simmons and Hayley. (It was agreed in the hearing that this is the same allegation as allegation 6, with more detail.)
  - 7.16. On one occasion in October 2022, Colleague A and Jane Watkins made comments about whether the Claimant eats with a fork or a hand in relation to food the Claimant had bought in. Present at the time were Jennifer England, Gemma Simmons and Angela Keene.
  - 7.17. On one occasion in October 2022, Jane Watkins made comments saying that black people scare her, that the Claimant is lighter skinned than people from the same country and that dark ones scare her. Present at the time were Hayley, Jennifer England, Gemma Simmons and Angela Keene; (this is the same as allegation 4)
  - 7.18. On the 8 October 2022 after the one-to-one meetings, Jane Watkins made comments about African accents and that the Claimant does not sound African. Present at the time was Jane Watkins, Gemma Simmons, Colleague A and Angela Keene.
8. The CMO then sets out that the Claimant must show that the matters found proved were detriments. If the Claimant satisfied the Tribunal that it could infer that any treatment of the Claimant was because of race, then the

Tribunal must have regard to any explanation for the treatment advanced by the Respondent and determine whether the Respondent established that the treatment was in no sense whatsoever because of race. If they did not do so the claims succeed.

9. While it this is a two-stage process it is not an error of law to elide them in an appropriate case<sup>5</sup>.

### **The hearing**

10. The hearing was a recorded video hearing.
11. The evidence was concluded after 2½ days, and submissions were given before the end of the 3<sup>rd</sup> day. This decision was given orally on the 4<sup>th</sup> day.

### **Submissions**

12. The submissions were recorded as part of the video hearing, and I made notes of them in my record of proceedings. The main thrust of the submissions is below.
13. The Respondent's submissions were in writing and took the Tribunal to various credibility issues with the Claimant's evidence, analysed the evidence of the Respondent's witnesses and went through the allegations one by one.
14. The Claimant highlighted the lack of any training in equality diversity and inclusion by or for managers. She highlighted the way she found her dismissal abrupt, unprofessional and inhumane. She attributed her early menopause to that treatment. She invited the Tribunal not to believe the evidence of the Respondent's witnesses. She was black and the Respondent occasionally employed black people and then dismissed them after a short time. The things of which she complained during her employment all happened and were because she was black.

### **Facts found**

15. The background is set out above, and forms part of the Tribunal's findings of fact. The Respondent employs 6 people at the Claimant's workplace in Braintree and a total of 25 or so in all. Currently none are black. The Tribunal did not doubt Ms Crathern's evidence that other aspects of diversity present, such as there are staff members who describe themselves as LGBTQ+.
16. The Respondent does not have any training programme for equality diversity and inclusion ("EDI"), and Jane Watkins did not think it necessary. She thought the Respondent did not have an EDI policy at all. The Staff Handbook contains a policy on diversity but plainly it is not a lived document. While there is no legal requirement to have and to implement an EDI policy this is an area the Respondent may wish to revisit with some urgency.
17. The Respondent points out that the demographics of area in which it is

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<sup>5</sup> Madarassy v Nomura International Plc [2007] EWCA Civ 33

based have few people who are not white and says this accounts for the small number of employees who are not white. The Claimant had a 30-minute journey to her workplace and so the catchment area is wider than its immediate vicinity. Since the Claimant was dismissed, no other black person has been recruited. Nevertheless, Jane Watkins recruited the Claimant, and before her another black employee, and there is no reason to think that there is any policy to recruit only white people.

18. The Claimant's case was that she was a token non white employee, and that as the person she replaced was also black the Respondent had a policy of having a token black employee, who would be "recycled" by dismissal after a short period. This makes no sense, and the Tribunal did not accept that was the case. If a token black person was what the Respondent wanted, it would seek to find a competent but meek person who would contribute, and not recruit and dismiss repeatedly.
19. The allegations break down into three parts: first the conduct of Jane Watkins and others towards her in the workplace, secondly the dismissal, and thirdly post dismissal matters.
20. The Tribunal does not deal with the allegations in the order they are set out above. It seemed more logical to deal with the events while working first, then the dismissal, then post dismissal matters. Rather than reorganise the pre-dismissal allegations into chronological order the Tribunal sets out its conclusions for pre-dismissal allegations in the order set out in the list of issues, then the dismissal and then post-dismissal allegations. The Tribunal considered the whole of the evidence before arriving at any conclusion on any specific allegation.
21. Allegation 1: that Jane Watkins asked her insensitive questions about a GP appointment which was 10 November 2022. The Claimant compares herself to her white colleague Jennifer England who was not questioned insensitively by Jane Watkins about her (Jennifer England's) own endometriosis.
  - 21.1. The Claimant had a discussion with Jane Watkins on 09 November 2022 about not feeling well, and she was being investigated for endometriosis. The Claimant had this discussion in the office and not in the foyer where confidential conversations were held. That was her choice. Jennifer England happened to hear this. She said that she too had endometriosis. Jane England had not discussed this in the office before this conversation. Jane Watkin's evidence was that she had felt that she should have asked more about a GP appointment rather than less, as she thought she may have appeared disinterested, and unconcerned about the Claimant's health. The evidence of Jennifer England was that the Claimant volunteered that she may have endometriosis which prompted her (Jane England) to disclose that she had the same issue. The Tribunal accepted that evidence.
  - 21.2. The Claimant cross examined at length as to this being a breach of Ms England's right to privacy. First, it cannot be, as it was Ms England who raised it, in sympathy with the Claimant. Secondly, even if was

this would not support a claim by the Claimant of race discrimination.

21.3. The Claimant also said that Ms Watkins had asked her not to talk to Colleague A about whether and when she intended to have children, as it was unlikely that Colleague A would be having children and found the Claimant's repeated enquiry upsetting. The Claimant said that Ms Watkins had described Colleague A as "barren". She said that this was a breach of Colleague A's right to privacy. Plainly it was not a breach of Colleague A's right to privacy as Colleague A had requested Ms Watkins to speak to the Claimant (this was confirmed by Colleague A in her evidence). Secondly, this evidence damaged the Claimant's credibility. During the Claimant's cross examination of Ms Watkins, the Tribunal asked the Claimant whether the biblical and offensive word "barren" was how the Claimant viewed what was said by Ms Watkins, or was the very word used by Ms Watkins. The Claimant was adamant that this was the word used by Ms Watkins. However, despite this exchange, which made entirely clear that the word was inappropriate, when cross examining Colleague A the Claimant twice used that word applying it to Colleague A and had to be told by the Tribunal that she should not do so. Plainly the Claimant was, at the least, inaccurate in her representation to the Tribunal on this point. Ms Watkins did not use the word when discussing with the Claimant. This cast doubt on the accuracy of the Claimant's recall of other matters.

22. Allegation 2: that Joanne Crathern sent the Claimant home when she developed a cough, and the date was 17 November 2022. The Claimant compares herself to her white colleague Hayley who was not sent home;

22.1. The Claimant had called in sick the previous day, 16 November 2022. A text message from her husband stated that he was returning from work to look after her, as she said she had a migraine and was vomiting. On 17 November 2022 she arrived for work plainly feeling unwell. She wore a scarf around her face. Texts to her from her husband that day asked how she was feeling, so plainly she had not been well. She was not well on 17 November 2022.

22.2. The Claimant wanted work that day. There are people in the office who had been badly affected by Covid-19. Ms Crathern asked her to take a Covid-19 test. There were none in the office. The Claimant purchased a test and went home to take it. She went to bed. She was chased about this before the end of her working time, 2:15, which was when the others went home (save Jennifer England who worked till 2:30) and responded that she was negative.

22.3. The Claimant's evidence and case is that she was denied water and was sent home against her will.

22.4. She said that she was refused water to solve her cough problem. That was not what happened. Ms Crathern told her she could not work in what is a close environment of six people until she had a test. Drinking water would not have any relevance.

- 22.5. Her colleague Hayley coughed. Hayley smoked. She always coughed. She did not appear ill. No one thought it was possible she might have Covid-19. The cough was not substantial. The Tribunal accepted Ms Watkins' evidence that she had not noticed it.
- 22.6. The Claimant correctly said that it was not at that time a requirement to self-isolate if you had Covid-19. That is irrelevant. An employer, particularly one with many staff in close proximity to one another, and where there was particular concern about Covid-19 could rationally decide to have a Covid-19 testing policy. It is regrettable that the Respondent did not have any Covid-19 tests in the office, but the Claimant was not sent home. She was told not to work until she had a negative Covid-19 test result. If she had gone to a chemist and bought a testing kit and taken it she could have returned to work. Instead, she went home and to sleep.
- 22.7. The messages between the Claimant and her husband reflect that she was seemingly relaxed about being sent home. Subsequently (again messages between Claimant and her husband) suggest she was annoyed at losing a day's pay. Management (Gary Wainswright) agreed to one hours pay, and the Claimant accepted this. In fact, Ms Crathern agreed that the Claimant be paid for the day, as it was possible there was a misunderstanding regarding returning to the office that day. There is no suggestion in the messages that the Claimant felt she was badly treated and no reference to race discrimination.
- 22.8. There is nothing to suggest that race had anything to do with this.
23. Allegation 3: that the Claimant's line manager (Jane Watkins) met the Claimant for one formal meeting on 8 October 2022. Furthermore, she had informal chats with Jane Watkins less frequently than her other colleagues with Jane Watkins such as in the corridor which her colleagues had. The Claimant compares herself to her white colleagues Jennifer England and Colleague A.
- 23.1. The 1-2-1 meetings were to be monthly. The Claimant had one, in the 5 weeks or so that she was working for the Respondent. She would not expect more 1-2-1 meetings. When in the office, Jane Watkins sat close to the Claimant and gave her feedback about her call style and how it needed to change.
- 23.2. There is no evidence that the comparators had more meetings than she did during the Claimant's period of employment.
- 23.3. The Claimant objects that she did not get the handwritten notes of this meeting. After she was dismissed, she was sent the notes, typed. She does not accept that they are accurate but was not able to say how. There is contemporaneous evidence of Ms Watkins saying to Ms Crathern that the Claimant's telephone style needed to change. In an email of 31 October 2022 Ms Watkins emailed Ms Crathern about Hayley and said "*She's doing fab. Very nervous and desperate to do well so I've just had to pull her off the phone and calm her down*



*a bit!!! I've been spending time with her and Gifty today to get Gifty up and running in a better way than she currently is.*" This shows two things: first that Ms Watkins was happy with Hayley and secondly that she was not happy with the Claimant. This is relevant not only to this allegation but to the dismissal.

24. Allegation 4: that Jane Watkins said to the Claimant that 'black people scare' her and this occurred at the end of October;
  - 24.1. This is an extraordinary accusation to make against the person who had just recruited her.
  - 24.2. There is no context to the alleged remark. Such things are seldom said out of the blue. There is usually something leading up to a racist comment. The Claimant put forward no such context.
  - 24.3. Considering all the evidence and the credibility of the Claimant's evidence the Tribunal found that this did not occur.
25. Allegation 5: that Jane Watkins said 'It's too dark in here' which the Claimant says was a reference to her skin colour her which allegedly happened at the end of October 2022;
  - 25.1. The Claimant's account is that this was said more than once as she walked into the room, that others giggled or hid their heads and that nothing was done to alter the lighting after it was said, so that it was a comment poking fun at her, by referencing her skin colour.
  - 25.2. The Respondent says that they had not been in the office long (since July 2022), that it had only two windows, one looking at a bike shed and the other looking out at a big building not far away, that the season of autumn was advancing, and it was becoming apparent that the office was gloomy.
  - 25.3. The context is of a friendly working environment. It is, of course, possible that this was "banter": often a curse of the workplace. However, the Tribunal found that it was not banter, but an innocent comment, taken as a personal reference by the Claimant, whose sensitivities are (as remarked on elsewhere in this decision) heightened. In short, if something can be taken two ways, an innocuous way or a pejorative way, the Claimant is pre-disposed to consider it aimed at her by reason of race.
26. Allegation 6: that Jane Watkins said 'is that your own hair or a wig' at the same time as touching the Claimant's hair and this happened between 9th November 2022 and 21 November 2022 (described in more detail at 15 below);
27. Allegation 15: Between October and November 2022 towards the end of her employment, Jane Watkins and Colleague A touched the Claimant's hair. The Claimant lifted her wig as Jane Watkins and Colleague A were curious to see her natural hair underneath. Present at the time were Jennifer England, Jane Watkins, Colleague A, Gemma and Hayley. (It was agreed

in the hearing that this is the same allegation as allegation 6, with more detail.)

- 27.1. These two allegations are dealt with together. The evidence of the Respondent's witnesses on this was compelling. They had no idea that the Claimant habitually wore a wig until the subject of the Christmas party came up, and the Claimant said that she would wear a different wig to it. There would have been discussion about this as a result of that observation by the Claimant, but in the light of the Tribunal's overall assessment of the evidence and the credibility of the witnesses these allegations are not proved.
  - 27.2. The Tribunal did not consider that there was more than the one occasion – that when the Christmas party was discussed – when the Claimant's wig was discussed.
28. Allegation 11: There was a comment made by Jane Watkins on the 3 October 2022 whether Gifty was her real name or nickname when Hayley had gone out on a break.
- 28.1. See below
29. Allegation 12: During her induction [on 5 October 2022] a comment was made by Jane Watkins if the name Gifty was a real name or nickname. The names of the people present when this comment was made [a second time] were Jennifer England, Colleague A, Gemma Simmons and Angela Keene.
- 29.1. These two are the same allegation, the Claimant saying it happened on two days.
  - 29.2. This occurred on one or other days, not both. As Jane Watkins said, there would be no reason to ask again a couple of days later.
  - 29.3. There is simply nothing racist about this. It is an unusual name. There is nothing inherently invasive about asking about someone's name. Nor is it linked to race. The Claimant says that it is a black name, which is a bold statement. One of the Claimant's colleagues has a daughter named "Billie" and is often asked if this is a given name or a diminutive or nickname. It is not racist to express interest in the derivation of someone's name, whatever their race, and there is no suggestion that this was done in an offensive manner. The Claimant simply objects in principle to being asked about her name, it being, she says, one of the 50 things the google list says that a white person must not ask a black person. The Tribunal does not agree.
30. Allegation 13: In the period of October-November 2022, Jane Watkins made general comments about not liking "pikeys" and a comment that "pikeys" are scary and they disgust her. This was not made specifically in the office to the Claimant but was made in the context that black people scare her.
- 30.1. In the hearing the Tribunal eschewed the pejorative term.
  - 30.2. This is a bizarre allegation, not least as there is no connection

between black people and travellers unless it be that they are said both to scare Ms Watkins.

- 30.3. The Tribunal did not find credible the assertion that Ms Watkins said she found black people scary, for the reasons given in relation to allegation 17, and this undermines the possible reason for saying it.
  - 30.4. One of the Claimant's colleagues, who the Claimant says heard this alleged remark, has gypsy heritage on her mother's side, and has gypsy relatives. As she said in her evidence, if this had been said she would have objected strongly to it, both in principle and by reason of the offensive term said to have been used.
31. Allegation 14: [from the CMO] On 8 October 2022 after the one to ones Jane Watkins made comments to the Claimant and other employees [Jane Watkins] said about not understanding the Claimant and that Colleague A sounded like a robot. Other employees who were present were Gemma Simmons, Colleague A Angela Keene and Jennifer England.
- 31.1. Jane Watkins and Colleague A agree that was what she said to Colleague A.
  - 31.2. It is nothing to do with anyone's race.
  - 31.3. Colleague A was reading her introductory script in a way that Ms Watkins said sounded robotic. Everyone has experienced cold callers speaking in that way.
  - 31.4. Colleague A took the criticism and guidance on board and changed her style of delivery. In contrast, no matter how often Ms Watkins asked the Claimant to change her style of delivery she did not do so.
  - 31.5. Ms Watkins comments to the Claimant was that she speaks too fast, says too much, and gives no space for response. This was exactly how the Claimant presented throughout this hearing.
32. Allegation 16: On one occasion in October 2022, Colleague A and Jane Watkins made comments about whether the Claimant eats with a fork or a hand in relation to food the Claimant had bought in. Present at the time were Jennifer England, Gemma and Angela.
- 32.1. This relates to the Claimant bringing in and heating up jollof, a spicy rice dish that is a Ghanaian favourite (and of other nations, with variations).
  - 32.2. The office was a serviced office. The kitchen was shared with other occupiers of the building. It had a microwave. The Claimant's team worked 5-hour shifts. While they could stop to eat, there was no lunch break. They were not supposed to bring in hot food, though sometimes people did.
  - 32.3. There was conversation about the jollof. The Tribunal accepted the evidence that this was not, as the Claimant said, to complain that of

its smell, but because it is flavoursome (the Claimant is rightly proud of jollof) and her colleagues asked about it.

- 32.4. The Claimant said in her evidence that she ate her jollof with a fork and the accompanying chicken using her fingers. The allegation that her colleagues asked her whether she ate using cutlery or her fingers is a distortion of what happened.
  - 32.5. This was no more than the Claimants bringing in an unusual (for her colleagues) appetising Ghanaian dish and them asking about it.
33. Allegation 17: On one occasion in October 2022, Jane Watkins made comments saying that Black people scare her, that the Claimant is lighter skinned than people from the same country and that dark ones scare her. Present at the time were Hayley, Jennifer England, Gemma and Angela.
- 33.1. The Claimant gave no context to this alleged remark, and such remarks seldom come out of the blue.
  - 33.2. It is not credible that Ms Watkins would have hired the Claimant if she found all black people “scary”.
  - 33.3. The Claimant is Canadian and speaks with a soft Canadian accent. It is not obvious that the Claimant’s heritage is from Ghana, and that makes the allegation about people from “her country” not credible.
  - 33.4. The comment does not have any inherent credibility, and the Tribunal did not find much of the Claimant’s evidence about pre-dismissal discrimination credible, for reasons given. It is not proved.
34. Allegation 18: On the 8 October 2022 after the one-to-one meetings, Jane Watkins made comments about African accents and that the Claimant does not sound African. Present at the time was Jane Watkins, Gemma, Colleague A and Angela.
- 34.1. In her cross examination of witnesses the Claimant put the reverse case – that after she spoke in Twi to a potential client others said that she had a strong African accent.
  - 34.2. In any event, even if it was said, it would not be a detriment, for it would have been a compliment about the quality of the Claimant’s spoken English.
35. Allegation 7: that the Claimant was dismissed, to include the allegation that she was told by Jane that she did not ‘fit in’. The Claimant compares herself to her white colleagues Jennifer England and Colleague A who were not dismissed – Jennifer England despite being regularly late for work and Colleague A who had received warnings and who although dismissal was on the cards, was then told she would not be dismissed. The Claimant says that her dismissal was said to be because of her sales figures but that this was not the real reason because she had achieved more than two sales.
- 35.1. An email the following day to the Claimant from Jane Watkins said “/

*don't think you are right for this particular sales role"* Her witness statement put it that she said "I kept it very short by saying *"Gifty It's bad news I'm afraid, it's just not working out for us and I am going to have to let you go"*.

- 35.2. The Tribunal refers elsewhere to the manner of the dismissal, but it was clear that Ms Watkins has a particular way of going about the task. Once the decision is made, it is implemented swiftly. There is a standard introduction *"It's not good news"*, then a phrase such as in the quotations above. It is possible that the phrase was *"you are not a good fit for the role"*. These are standard terms often used by managers. They are not equivalent to the stereotypical *"you don't fit in"* way racism is sometimes expressed, and the Tribunal finds this was not said. The Claimant did fit in in personal terms – everyone said she was liked, and the Claimant did not deny this or challenge any witness about that basic fact. The Claimant is acutely sensitised to racism (this is not a criticism) and her evidence is what she thinks she heard. The Tribunal did not think her evidence in this regard untruthful but did think it was not accurate.
- 35.3. Jennifer England was not late for work. She walked to work after her school drop off which meant she could not get to work by 9:15. She worked 9:30 – 2:30 instead of 9:15 – 2:15. The Claimant accepted that she did not know of Ms England's different contractual hours – all she would see was Ms England habitually arriving after 9:15. She was almost never late.
- 35.4. Colleague A needed a lot of time away from work as her pets were in need of care after surgery. She told the Respondent that she would leave in order to do so. The day she was leaving she started clearing her desk. The Respondent decided that they would allow her the time off she needed, and so she did not leave. She was never faced with dismissal. She was accommodated as she was an asset to the Respondent.
- 35.5. The Respondent has always been clear that sales performance was not the issue with the Claimant. Everyone had the same sales target, but new starters were not expected to meet it for several months.
- 35.6. The Claimant's states that she made a good sale shortly before she was dismissed, and this made the others jealous, such that one went for a smoke break, and another left the room too. She says that the team felt too many people were allocated to the Northampton area, and the team wanted rid of her as that would give them more of a change. She says that the Friday before she was dismissed, after she had left, the rest of them had a meeting and leaned on Jane Watkins to dismiss her. She says that it was a done deal, so that they all arrived early on Monday to see her dismissed. However, Jane Watkins was not working that day. She worked Mondays Tuesdays and Wednesdays.
- 35.7. There was no such Friday meeting. There was no such concerted early arrival on Monday.

- 35.8. Even on the Claimant's own account, the reason for this, had it occurred, would be nothing whatsoever to do with her race. It would be because the team felt Northampton over resourced, and that removing her as the most successful person would help them.
- 35.9. In fact, the Claimant made 4 or 5 sales in the 5 weeks she was present, and so the underlying proposition in the Claimant's case is inaccurate. Others sold more, but the Claimant was not expected to hit target until she had time to build up knowledge experience and expertise. The problem was her style not her sales.
- 35.10. The whole asserted rationale of the reasons for dismissal claimed by the Claimant is incoherent, for these reasons.
- 35.11. In a text to her husband the day of her dismissal, the Claimant wrote that Gary Wainwright had said that Ms Watkins' decision was final and that the reason was her sales. She wrote that Ms Watkins said that "*I don't fit in and it's my calls.*" This makes it clear that it was Ms Watkins's decision, and that on the day of dismissal the Claimant knew the reason Ms Watkins had dismissed her was the way she made her calls, exactly as Ms Watkins has always said.
36. Allegation 8: the Claimant states that she was not allowed to work out her notice period;
- 36.1. The Claimant thinks this is an absolute right. It is not.
- 36.2. The reason for making a payment in lieu of notice is coherent – people dismissed as not performing well in a sales role are unlikely to be an asset in their notice period and may well demoralise others. The Respondent also wishes to ensure that there is no possibility that the integrity of their sales operation is affected.
- 36.3. The contract of employment clearly gives the Respondent the right to make a payment in lieu of giving notice.
- 36.4. The Claimant's response to this being pointed out to her was that the Respondent had forged the document, even though she accepted that the signature it bore was hers. This is highly unlikely to be the case, and nothing about the document raises suspicion.
- 36.5. The Staff Handbook says the same. The Claimant said that her copy of it was sent on to her at her request but had been taken out of its spiral binding and that part inserted. The document is entirely sequential and this is again fanciful.
- 36.6. The Respondent has since dismissed two white employees without notice.
- 36.7. There is nothing about the absence of a notice period to indicate race discrimination played any part in it.
37. Allegation 9: the Claimant was not given the opportunity to bring a grievance

(post dismissal). The Claimant relies on a hypothetical comparator.

37.1. The Claimant wrote a long email to Ms Crathern objecting to her dismissal and pre-dismissal treatment. Ms Crathern replied asking the Claimant for a precise account if she wished there to be a formal grievance so that she could investigate properly. The Claimant did not reply. The Claimant says that Ms Crathern should have processed the initial email as a grievance and that it was race discrimination not to do so.

37.2. The email from Ms Crathern was not unreasonable. The Claimant was making allegations of race discrimination and before investigation it was reasonable to ask for full detail of what was alleged. Ms Crathern cannot be criticised for her email so asking. This was not race discrimination. There is no reason to think that anyone who was white and dismissed raising allegations of bullying, for example, would not be sent an email on exactly the same lines.

37.3. It is not sustainable to say that Ms Crathern should have progressed a grievance even without a reply from the Claimant.

37.4. The Claimant does not say that not being offered an appeal was racially motivated.

38. Allegation 10: the Claimant was not given a P45 or P60.

39. The Claimant had not been employed long enough to be given a P60. Ms Crathern said that she did payroll and prepared the last payslip and the P45 and gave them to the admin team to post with a compliments slip, which they did. She said there were postal strikes at the time. The Claimant does not dispute that there were. She was never asked to supply a replacement. The Claimant does not say that she asked for the P45 after she left. The account is credible, and the Tribunal accepted it. There was no reason for Ms Crathern to deny the P45 (or the payslip).

## Conclusions

40. The pre-dismissal claims fall into two groups. Those where something happened, and the Claimant asserts that it was race discrimination, and those where the Respondent denies that anything occurred.

41. The Claimant's view is that there is almost literally nothing that a white person can ask a black person about themselves without it being racist. She asked the Tribunal to google "50 things you cannot say to a black person" (The Tribunal did not do so.) Yet she said to Counsel for the Respondent "You need to get some black friends, honey". She was surprised that the Judge knew that Twi is the language of Ghana and said that "You know your jollof!" when it became apparent that the Judge knew something of the dish. But it would, on her assessment of what is proper, have been racist of the Judge to ask her questions that would lead to an understanding of the dish (he did not do so). What occurred in the workplace was no more than genuine interest in someone else's life and culture, in the context of a warm working relationship. That was what the Respondent's witnesses said the

relationship was, and the Claimant did not disagree.

42. The Claimant's assertion of rights was one way. Not only does everyone have rights, but everyone has a responsibility to respect the rights of others. The Claimant was genuinely remorseful and apologetic for twice describing Colleague A as "barren", which understandably caused Colleague A great distress, such that a break had to be taken during her evidence. She had no understanding or empathy with Colleague A, or appreciation of her right to be respected until the Tribunal told her that she was not to use the word.
43. This also adversely affected the credibility of the Claimant as earlier she had asserted that this was Ms Watkins word, not her own.
44. The comment to Counsel, set out earlier, was stereotypical and inappropriate. For all the Claimant knows, Counsel may be married to a black person.
45. The credibility of the Claimant's case was also adversely affected by the allegation about her accent (the Claimant has a soft Canadian accent). She alleged that it was race discrimination for her to be told that she had little or no African accent. (The Tribunal observes that as the Claimant was born in Ghana this is in fact a complimentary remark.) Later in her evidence she complained that after she spoke Twi on the telephone to a potential client it was said that she had a strong African accent. This was completely the reverse of her pleaded case.
46. The credibility of the Claimant's case was also damaged by her fanciful assertion that the contract of employment had been falsified by the addition of the payment in lieu of notice clause, and that the Staff Handbook had been altered before it was sent to her.
47. The "*it's dark in here*" comment could easily be found a racist comment, depending on the context. In this friendly environment and given the circumstances of season and location and context the Tribunal decided otherwise.
48. Some matters were denied completely, particularly the wig allegations. Given the issues with the credibility of the Claimant's evidence the Tribunal did not believe they occurred as claimed. There was some discussion about wigs, but that was because the Claimant brought it up, saying she would wear a different one to the Christmas party. It is not credible that her colleagues touched her wig and asked her to remove it. The Claimant is a feisty lady, clear on her rights, and it is unlikely that she would have either let that happen, or if it had happened, let it pass unremarked.
49. The Tribunal was not greatly assisted by the evidence of the Claimant's husband. He did not witness any of the allegations. He made two witness statements and in the first, short statement, said that Jane Watkins had asked him whether he only liked African women and not Essex girls. This was, as Counsel pointed out, omitted from the much longer second statement, upon which he relied. It was no more than an attempt to undermine Ms Watkins with a highly prejudicial groundless allegation, of which he thought better when putting together a lengthier witness



statement. If it were true, it would not have been left out of the longer witness statement. The exchange between Mr Robinson and the Claimant's colleagues on 09 November 2022 when he visited the office to bring the Claimant some medication could only have been a few moments in duration, and it is not credible that this would have been said on a brief first meeting.

50. The way the Claimant was treated in the manner of her dismissal has caused her enormous distress. She is used to working in large corporations with a formal approach to policies which are followed rigorously. This is not the way the Respondent works.
51. The Claimant was given guidance by Ms Watkins on the approach to take when calling leads from the database. Nothing was formalised. There was never any warning although dismissal as a probation fail was imminent. There was no performance improvement plan. Ms Watkins saw that the Claimant's approach had not changed, she saw little chance that it would change, and she decided to dismiss the Claimant, having discussed this with the directors.
52. On the day she was dismissed she was taken to one side, told "*it's not good news*" and, at most, that her skills were "*not a good fit*" for the company, by the use of standard phrases by Ms Watkins, was told to clear her desk immediately and leave, her departure being announced to the rest of the team, some 5 people, some of whom will have been on the phone – it was a telesales operation – and the door held open for her to leave.
53. It is hard to see this as other than unnecessarily abrupt and humiliating. It is no wonder the Claimant noted her protected characteristic and that she was the only black employee and conflated the two.
54. That reasoning is inaccurate, because the consistent pulse running through the Claimant's evidence submissions and cross examination was the fundamental unfairness of the way she was treated. She said they treated everyone that way and that was not right and was inhumane. When the Tribunal pointed out that this did not assist her claim that the reason she was treated unfairly was her own racial heritage she changed her approach to say that she was only concerned with herself.
55. The Tribunal agrees with the Claimant's analysis that this was not a good way to treat people, but as the underlying complaint is that is how they treat everyone it is fatal to her claim that her dismissal was tainted by race discrimination.
56. There is nothing in the post dismissal claims for the reasons given above.
57. In each allegation either the burden of proof does not shift to the Respondent (as the allegation is not proved) or the Respondent has met the burden of proving that in no sense whatsoever was race discrimination a reason for it.

58. The claim of breach of contract is founded on no notice being given. The Claimant received pay in lieu of notice and so this claim must be dismissed.

**Employment Judge Housego  
Dated: 09 August 2024**