



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C Abdullah  
**Respondent:** Krispy Kreme (UK) Limited

**Heard at:** Watford Tribunal  
**On:** 8,9,10,11,12 April 2024  
**Before:** Employment Judge Cowen  
Dr C Whitehouse  
Mr K Chester

## Representation

**Claimant:** Ms Abdullah (in person)  
**Respondent:** Ms Fedipe (counsel)

# JUDGMENT

1. The claims of race discrimination and harassment and claims of religious discrimination and harassment prior to 17 June 2021 were not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claims are therefore dismissed.
2. The Claimant's claims of race discrimination and harassment and claims of religious discrimination and harassment in relation to her dismissal are dismissed

# REASONS

## Background

1. The hearing occurred over five days in front of a full tribunal panel. The panel were provided with an agreed bundle provided via the document upload portal. Witness statements of the Claimant and Ms Tasmin Simmons for the Respondent were received and read by the Tribunal. Both gave oral evidence to the Tribunal.
2. At the start of the hearing, the parties were asked to confirm the issues to be considered. The parties added two, and therefore the complete list was identified as being:

EQA, section 26: harassment related to race

EQA, section 26: harassment related to religion

Told go home on 14 October 2020 religion (Muslim)

3. Did the respondent engage in conduct as follows:
  - 3.1 On 14 October 2020, Ovidiu Togan told the Claimant to go home for no reason.
  - 3.2 Employees Liliana Rosu, Ovidiu Togan, Nicholas Hobbs, Harrison Baldwin, Elijah Louis Ablen made false accusations against claimant.
  - 3.3 Employees Liliana Rosu, Ovidiu Togan, Nicholas Hobbs, Harrison Baldwin, Elijah Louis Ablen conspired against claimant with intention of getting her dismissed or else forcing her to resign.
  - 3.4 Failed to train the Claimant in the Loadout work.
  - 3.5 Failed to allocate shifts to the Claimant doing the Loadout work.
  - 3.6 Gave the Claimant duties which were outside her contractual duties (described as “manual labour work”, “back of house work” or “sanitation area work” but all descriptions seemingly meaning same thing).
  - 3.7 Gave the Claimant duties which were outside her contractual duties (described as “manual labour work”, “back of house work” or “sanitation area work” but all descriptions seemingly meaning same thing) with the intention of forcing her to resign.
  - 3.8 Gave the Claimant an unfair allocation of the “manual labour work”, “back of house work” or “sanitation area work”.
  - 3.9 Gave the Claimant an unfair allocation of the “manual labour work”, “back of house work” or “sanitation area work” with the intention of forcing her to resign.
  - 3.10 On 9 or 10 December 2020, Ovidiu, Joanne and Gemma accused the Claimant of threatening to kill them.
  - 3.11 On 9 or 10 December 2020, Kesia accused the Claimant of making her cry .
  - 3.12 On 20 December 2020, Feyi Alakiu told a manager (Rory Martin) that the Claimant was “state benefit sponger”.
  - 3.13 On 20 December 2020, Feyi Alakiu stated or implied to a manager (Rory Martin) that the Claimant was dishonestly claiming benefit .
  - 3.14 On or around 5 August 2021, the Respondent dismissed the Claimant.
  - 3.15 Feyi called me a state benefit sponger on 20 December 2020.

3.16 Ovidius told other staff including agency staff about C's family background in Feb 21, in particular he said "She's from Urhobo".

4. If so was that conduct unwanted?
5. If so, did it relate to the protected characteristic of (a) race and/or, in the alternative, (b) religion
6. Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

EQA, section 13: direct discrimination because of race

EQA, section 13: direct discrimination because of religion

7. Did the respondent subject the claimant to the following treatment:
  - 7.1 (same as alleged for harassment).
8. Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?
9. If so, was this because of any of the following:
  - 9.1 the claimant's race?
  - 9.2 the protected characteristic of race more generally?
  - 9.3 the claimant's race?
  - 9.4 the protected characteristic of race more generally?

#### Remedy

10. If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded.

#### **Findings of Fact**

11. Having considered all the evidence, we find the following facts on a balance of probabilities.
12. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.
13. The Claimant was employed by the Respondent as a member of the processing team from 1 September 2020 to 5 August 2021. She worked a permanent night shift from 9pm to 5am in the Respondent's factory manufacturing doughnuts. Her role included boxing the product and helping

to load it. She was also expected to help to clean the work area once the product had been loaded and to clean trays in the sanitation area.

14. The Claimant's line supervisor was Mr Ovidiu Togan. The manufacturing Manager was Ross Bucklar, who was replaced by Darren King. The Claimant was told by Mr Bucklar that there was no problem with her work. She successfully completed a 3 month probationary period.
15. The Claimant was not a person who engaged with her colleagues or became an integral part of the team at work. She did not like to engage socially with others. She was willing to speak to them about work related matters, but felt uncomfortable speaking to them on a more personal level.
16. During the shift of 12/13 March 2021, in the early hours of 13 March, there was an incident which led to the Claimant being suspended and disciplined. This was investigated by Darren King. The incident involved the Claimant's team leader Mr Togan, who asked the Claimant to fill three pack boxes, in order to assist with a backlog. Subsequently, Mr Togan told the Claimant to fill one box at a time, rather than the multiple boxes she had open on the table. The allegations were that the Claimant, refused to follow an instruction, swore at Mr Togan, threw a tray at Mr Togan which hit him and had thrown boxes of donuts to the floor.
17. The Claimant was interviewed on 6 April 2021, where she admitted that she pushed boxes off a table although she asserted that this occurred after Mr Togan had pushed some boxes off the table initially. The Claimant said that this had occurred because Mr Togan had told her she was too slow in her work.
18. An image taken by a work colleague was shown to the Claimant during her interview which showed the aftermath of the incident. In response the Claimant denied that she swore at Mr Togan. She said she did not recall whether she threw a tray, nor whether it hit Mr Togan.
19. The Claimant had also refused to go home when Mr Togan told her to leave. She asserted this was because it was dangerous to leave the workplace during the night and that she had no bus home until 5.30 am. She therefore went to the canteen to wait until the time for her bus home. During her time there she called the police to say that she felt unsafe at work. A number of colleagues who were present at the time of the incident were interviewed by Mr King who completed the investigation.
20. During the investigation of the disciplinary matter, whilst the Claimant was suspended, she raised a grievance on 26 March 2021 about incidents which she said were a course of practice within the department throughout her employment. Initially the Claimant said she did not want her grievance to be investigated as a formal complaint. But she later changed her view on 15 April 2021 when she sent the same grievance to the HR department.
21. She alleged bullying and harassment by a number of her colleagues including her team leader Mr Togan on the grounds of her race and her religion . The Claimant identifies as being of Arab descent and is a Muslim.
22. The Claimant's grievance centred around her belief that a Somalian employee was having sex with a manager of the company. She believed that

one of her colleagues was sending male employees to speak to her, in order to identify whether the Claimant would also be prepared to have sex with them. The Claimant asserted that for this reason she avoided speaking to them. She asserted that this behaviour was unacceptable to her on grounds of her race and religion.

23. The Claimant also complained that due to her unwillingness to act in the same way as the Somali women, it was the desire of some of her colleagues and managers to remove her from her post, so that she could be replaced by a Somali woman.
24. The Claimant complained that she was bullied and treated less favourably by Mr Togan when she was asked to undertake cleaning duties.
25. She also complained that an unnamed team- leader was smoking cannabis in the factory.
26. The Claimant also asserted that a colleague Feyi called her a 'state benefit sponger'.
27. She outlined that she did not feel safe in the workplace, as there was no night shift manager to observe what was going on.
28. She also asserted that Mr Togan failed to provide her with training which was given to others and not to inform her about new products.
29. The Claimant also complained about Mrs Otchere-Pobie, a manager at another site, whom she said had initiated the spreading of private information about the Claimant's family around the staff in Watford.
30. An investigation was carried out by Stephen Bibby who interviewed two members of staff and the Claimant. The outcome letter (p76) dated 20 May 2021 indicated that Mr Bibby found no evidence of discrimination on grounds of race or religion by Mr Togan, but rather a breakdown in communication. He offered the Claimant a facilitated meeting to resolve the breakdown in the relationship with Mr Togan.
31. The Claimant appealed against this outcome. Mr Steven Hayden carried out a review by way of an appeal meeting. In this, the Claimant made further assertions which had not been dealt with as part of the original grievance. These included the issue in relation to Ms Otchere-Pobie which the Claimant had not wanted to pursue in the original grievance. Mr Hayden's outcome letter on 14 July 2021 held that as the Claimant had not worked with Ms Otchere-Pobie and was asserting that any actions by her were outside the workplace, he did not uphold this point. He also did not uphold the accusation about Ms Rosu encouraging men to speak to the Claimant.
32. The Disciplinary process continued with a hearing on 4 August 2021 chaired by Mr Kasirye, at which the Claimant was represented by her TU rep. The allegations were;
  - Unreasonable refusal to follow an instruction by a manager or supervisor.
  - Attempted physical assault on a team member ie. throwing trays at a team member.

- Verbal abuse or comments deemed offensive by their audience.
- Deliberate damage or misuse of the organisation's property."

33. The outcome letter of 5 August 2021, dismissed the Claimant for refusing to follow a reasonable management request, hitting Mr Togan with a metal tray, using verbally abusive language and damaging company property.

34. The Claimant appealed her dismissal and an appeal hearing was conducted by Mr Naidoo on 3 September 2021. The Claimant asserted that the witness statement allegations were fabricated, but she had no evidence to support this assertion. The outcome letter dated 15 September refused the appeal.

## **The Law**

### Time bar

35. s. 123 Eq Act states that (1)(a) a period of 3 months less one day is the time limit for a claim of discrimination of any kind (including direct and harassment). If it has not been brought within 3 months, then the ET have a discretion under (1)(b) to apply any other period which they consider just and equitable.
36. The case law on this point initially reflected s.33 Limitation Act 1980 and the considerations made there. This is still a helpful checklist to consider, but only as part of the exercise to include consideration of the balance of prejudice to the parties.
37. Case law in the ET has set out considerations for the ET in the exercise of its discretion;
38. Miller v Ministry of Justice EAT 0003/15 – time limits are to be observed strictly. There is no presumption that time will be extended unless not justified. The converse is true- exercise of discretion is the exception rather than the rule. The factors considered by the ET and how to balance them is a matter for the ET.
39. Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576 states that the burden is on the Claimant to persuade the Tribunal that the discretion should be exercised in their favour.

### Direct Discrimination

40. Section 13 of the Equality Act 2010 provides that  
'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'.
41. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or a hypothetical comparator.
42. In order to find that discrimination has occurred, there must be some evidential basis on which the Tribunal can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. The Tribunal can take into account a number of factors including an examination of

circumstantial evidence.

43. The Tribunal must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.
44. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, Lord Rodger at paragraph 125, intimated that the key to a claim of direct discrimination will, generally be the determination of the reason for the treatment in issue: whether it was “because of” the relevant protected characteristic.
45. In determining claims under the EqA, the burden of proof operates as provided by section 136:
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
  - (3) But subsection (2) does not apply if A shows that A did not contravene the provision
- 46 The approach to be adopted in applying section 136 was laid down in **Igen Ltd v Wong; Chamberlin Solicitors v Emokpae; Brunel University v Webster** [2005] EWCA Civ 142, [2005] ICR 931 and approved by the Supreme Court in ***Efobi v Royal Mail Group Ltd*** [2021] UKSC 33. This is set out that if the Tribunal is satisfied (on a balance of probabilities) that the Claimant has established facts from which it could, in the absence of an adequate explanation, conclude that the respondent had committed an act of unlawful discrimination (having regard to all the evidence, and drawing such inferences as are legitimate from its primary findings of fact at that preliminary stage), it will then be for the Respondent to prove (again, on the balance of probabilities) that the treatment was in no sense whatsoever because of the relevant protected characteristic. In discharging this burden, a Respondent would normally be expected to adduce cogent evidence that the relevant protected characteristic was not the reason for the treatment in question.
- 47 In considering whether the claimant has established a prima facie case of discrimination, an ET must have regard to all the evidence, not just that adduced by the claimant (*Efobi*).
- 48 In the case of ***Reynolds v CLFIS (UK) Limited*** [2015] EWCA Civ 439 the Court of Appeal considered whether, for the purposes of establishing whether direct discrimination has taken place, a tribunal should consider the mental processes of those employees who have significantly influenced the alleged discriminatory outcome, or only those of the actual decision-maker. The Court of Appeal stated,
- “...it is a fundamental principle of the discrimination legislation that liability can only attach to an employer where an individual employee or agent for whose act he is responsible has done an act which satisfies the definition of discrimination. That means that the individual employee who did the relevant act (that is, effected the dismissal) must have been motivated by the protected characteristic.”*

Harassment

49. Section 26 of the Equality Act provides:

“(1) A person (A) harasses another (B) if – a. A engages in unwanted conduct related to a relevant protected characteristic, and b. The conduct has the purpose or effect of – i. Violating B’s dignity, or ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) .....

(3) .....

(4) In deciding whether conduct has the effect referred to in subsection 1(b), each of the following must be taken into account –

a. The perception of B;

b. The other circumstances of the case;

c. Whether it is reasonable for the conduct to have that effect. “

50. In order to determine whether the conduct is related to the protected characteristic, it is necessary to consider the mental processes of the alleged harasser (*Henderson v General & Municipal Boilermakers Union* [2016] EWCA Civ 1049). This may be conscious or unconscious: as stated by Underhill LJ in *Unite the Union v Nailard* [2018] EWCA Civ 1203: “it will of course be liable if the mental processes of the individual decision taker(s) are found (with the assistance of section 136 if necessary) to have been significantly influenced, consciously or unconsciously, by the relevant protected characteristic.”

51. The EHRC Code identifies, “unwanted conduct” can include “a wide range of behaviour” (at paragraph 7.7) and it is not necessary for the employee to expressly state that they object to the conduct (at paragraph 7.8).

52. A single incident can be sufficient provided it is sufficiently serious (*Bracebridge Engineering Ltd v Darby* (1990) IRLR 3).

53. When looking at the effect of harassment, this involves a subjective and objective test. The subjective test is to assess the effect that the conduct had on the complainant, and the objective test is to assess whether it was reasonable for the conduct to have that effect (*Pemberton v Inwood* 2018 ICR 1291, CA). The conduct complained about must however “reach a degree of seriousness” in order to constitute harassment, so as not to “trivialise the language of the statute” (*GMB v Henderson* [2015] IRLR 451, at 99.4).

54. In relation to the subjective element, different individuals may react differently to certain conduct and that should be taken into account. However, as set out in *Richmond Pharmacology v Dhaliwal* 2009 ICR 724 by Mr Justice Underhill: “*if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question.*”



## Decision

### Time Limit

55. We accept the calculation made at the CMO which indicates that matters prior to 17 June 2021 are out of time. The ACAS certificate was issued on 16 September 2021, the same day the Claimant contacted them. The ET1 was not issued until 16 October 2021. The acts of discrimination range from 14 October 2020 to 5 August 2021. Working backwards from the EC certificate, three months prior to 16 September is 17 June 2021.
56. The only claim which is therefore in time is the claim of dismissal as an act of both discrimination and harassment, on grounds of both race and /or religion.
57. With regard to the out of time claims. Firstly we considered whether they are a continuing act of the dismissal and secondly whether we should use our discretion to extend time on a just and equitable basis.
58. We see no evidence which suggests that the previous acts were part of the dismissal. The dismissal occurred on 5 August 2021. The other incidents were in 2020 and had nothing to do with the same incident. There could therefore not be said to be a continuing act link between them.
59. In weighing up the balance of prejudice we took into account all the evidence we had heard in relation to the bringing of the claim. The Claimant asserted that she took advice from both her GMB representative and from the Legal Advice Centre after she was suspended on 13 March 2021. We also noted that by 15 April 2021 the Claimant had raised a formal grievance indicating many of the points which she now relies upon. Together with a lack of evidence of any health incapacity, we concluded that the Claimant was capable by April 2021 of bringing a claim about the issues she had experienced.
60. We noted that there was no evidence shown to us by the Claimant or explanation given by her in her evidence, which indicated why she had not been able to go to ACAS prior to 16 September 2021. We note that she waited until all the internal procedures were completed, but we also note that the law does not require a Claimant to do so.
61. Whilst we did not allow the admission of the ET judgment in another case brought by the Claimant, we were aware that one existed and that it occurred around the same time as these matters were occurring. The Respondent told us that that case included an issue about time limits. We are satisfied that the Claimant was likely to have had the requisite knowledge of time limits and this was not a reason to extend the period.
62. In balancing the prejudice to the parties, we understand and acknowledge that to deny the extension of time would deny the Claimant the opportunity to bring these matters before the Tribunal and that she has no recourse in any other court.

63. We also note that she is currently not represented, but we are aware that she has had trade union and legal advice throughout.
64. In respect of the prejudice to the Respondent, we understand that the Respondent no longer has access to any of the relevant witnesses to the incidents or the disciplinary. However, there is nothing to suggest that this would have been different if the case had been brought earlier.
65. We return therefore to the burden of proof on this point, which lies with the Claimant, who must show us reason to extend our discretion. We have no explanation by the Claimant as to why she did not bring the claim in time, despite the advice she was receiving and no justification for the delay which did occur.
66. Having looked at all these points, we have concluded that it would not be just and equitable to extend time. This means that points 3.1 to 3.13 on the list of issues, together with the two additional items identified as 3.15 and 3.16 which were added at the start of the hearing are out of time and no decision on discrimination will be made.
67. If for any reason we are wrong in our application of our discretion, we feel it appropriate to let you know what we would have said in relation to each of the allegations we have heard, but which we consider to be out of time. Briefly in relation to what we would have decided on them, we say as follows:

In respect of allegation 3.1

68. The Claimant in her answers to the ET confirmed that the reason given by Mr Togan for sending her home on 14 October 2020 was because three colleagues had said that the Claimant had made threats to kill and that she had caused Kesia to cry. The ET rejects this evidence, as this relates to a later incident.  
There is no evidence to support this incident having taken place and therefore it would be dismissed in relation to all claims.

Allegation 3.2

69. The allegations made by the colleagues listed were contained in the disciplinary investigation which led to the Claimant's dismissal. There was an investigation of these points prior to the disciplinary hearing. The disciplinary hearing chair concluded that the Claimant had acted as they suggested and dismissed the Claimant as a result. The Tribunal had no evidence to support the Claimant's assertion that these allegations were false. On a balance of probabilities we concluded that they were not false and that this allegation would have been dismissed in relation to all claims.

Allegation 3.3

70. This allegation is the same as allegation 3. 2 above with the intention to remove the Claimant from the Respondent's employment. We have seen no evidence at all to suggest that there was a conspiracy to remove the Claimant from employment. We therefore cannot say that this act occurred and would dismiss this allegation in relation to all claims.

Allegation 3.4

71. The Tribunal accept that the Claimant was not trained in Loadout work. The Claimant's job description does not include any direct reference to loadout work and we do not accept the Claimant's evidence that references to stock levels or the production plan are references to Loadout work.
72. We concluded that the evidence of Mr Togan, that the claimant was too slow in her own work and the evidence of Rory Martin, manager and a grievance investigation witness, who said the claimant was 'untrainable' as a processor, were the reasons why she was not trained in Loadout.
73. Alternatively, we do not accept the Claimant's assertion that she was denied this training because she wore a hijab. We can see no evidence from which we can infer that this decision was related to her race or religion. Finally we consider that the non-discriminatory reason put forward by the Respondent – that it was not her job to do Loadout - is sufficient to satisfy the claim. This allegation would therefore be dismissed with regard to all the claims.

#### Allegation 3.5

74. It follows that the Claimant would not be allocated shifts to a task which she is not trained to perform. There is no discriminatory act of act of harassment in not giving her loadout shifts. This allegation would be dismissed in relation to all the claims.

#### Allegation 3.6

75. The Tribunal did not see any contract of employment, but consider that the Claimant's job description indicates she is required to "utilize (sic) proper cleaning techniques" and to "comply with sanitation standards. Furthermore her job description refers to "other duties as assigned". We therefore accept that it was within her job description to do some cleaning and that she could be asked by management to do so.
76. We also accept the evidence of Ms Simmons that Mr Togan relied on the fact that the Claimant was slow in packing and that cleaning was not as time critical, when deciding how to allocate tasks.
77. We therefore concluded that the cleaning tasks given were neither outside of the Claimant's job description, nor were they unreasonable management instructions. Further, we also rely on the Claimant's evidence which indicated that Ola and Slavik, the shift leader for back of house, were also asked to do sanitation work. The Claimant's evidence was that neither of them were of Arab decent, nor were they Muslim. Therefore the request by management to do this work was not due to race/religion. Both the harassment and discrimination claims would be dismissed.

#### Allegation 3.7

78. Given that we have dismissed these claims for lack of grounds of race or religion, there is no evidence to support these allegations for the same reasons. Both discrimination and harassment claims would be dismissed.

#### Allegation 3.8

79. The Claimant asserts that she was made to work in the sanitation area on a more regular basis than others and that this was unfair allocation, as she found difficulty with “manual work” involving lifting and cleaning heavy trays. The Claimant has shown no evidence at all from which we can conclude that she was treated less favourably than her colleagues (or a hypothetical comparator). The Claimant’s evidence on this point was that Ola was also asked to clean in the sanitation area on a regular basis. Ola is neither of Arab decent, nor Muslim and therefore this indicates that this was not a reason for the decision to ask the Claimant to do this work. On that basis we can see no evidence which would support discrimination or harassment. All the claims would be dismissed.

Allegation 3.9

80. Given that we have dismissed these claims for lack of grounds of race or religion, there is no evidence to support these allegations for the same reasons.

Allegation 3.10

81. There is no record of such a complaint by these people that threats to kill were made by the Claimant. There is no record of action taken by the Respondent in relation to this. The Tribunal are therefore satisfied on a balance of probabilities, that no such allegation occurred and that this claim would be dismissed on all grounds.

Allegation 3.11

82. Likewise there is no record of a complaint by Kesia that the Claimant made her cry. The Tribunal are satisfied that this allegation cannot be proved as a fact, and on a balance of probabilities, and would be dismissed on all claims.

Allegation 3.12

83. The Claimant’s own evidence on this point was that Feyi would not have known that she was in receipt of state benefits. The Claimant could give no explanation as to why Feyi would have this information. There was no supporting evidence to substantiate the claim that Feyi Alakiu in fact said this. The Tribunal therefore concluded that on a balance of probabilities, there was insufficient evidence to support the claim. All claims would therefore be dismissed.

Allegation 3.13

84. There was no evidence to support this claim. The Tribunal could find nothing to support the suggestion and the allegation would be dismissed on all counts.

Allegation 3.15

85. On the same basis that allegation 3.12 was dismissed, the Tribunal could find not evidence to support this allegation and it would be dismissed on all counts.

Allegation 3.16

86. The Tribunal found the Claimant's evidence in relation to this point unclear and contradictory. She was at first reluctant to discuss the allegation at all and was not clear as to why this was an offensive thing to say. There was no evidence to support the fact that Mr Togan had said anything to other staff, let alone the content which the Claimant ultimately asserted. The Tribunal therefore would not have found that Mr Togan made such a comment to agency staff. The claims in relation to this allegation would be dismissed.
87. In summary, had the Tribunal decided to extend time on a just and equitable basis, we would have concluded that none of the claims would have succeeded in any event.
88. In respect of the remaining claim for dismissal ;

Allegation 3.14 – dismissal

89. There is no dispute over the fact that the Claimant was dismissed. The Tribunal considered whether she was treated less favourably than a hypothetical comparator, that is someone who is the same as the Claimant in all material aspects, save for the fact that they are not of Arab descent or Muslim.
90. The Tribunal first considered whether the process applied to the Claimant was less favourable. There was no evidence to suggest that the process would have been different for any other member of staff. The Claimant was provided with the evidence against her in advance of the hearing. The hearing was conducted appropriately and the Claimant was represented by her trade union. Whilst the Tribunal have not seen any of the Respondent's policy, they concluded that the process appeared to be within the ACAS guidelines. The Tribunal also considered that the outcome letter was not less favourable – it set out each allegation and the evidence relied upon to show how the conclusion was reached. The Tribunal could not identify any evidence from which they felt they could infer that the Claimant had been treated less favourably. They also noted that there was no suggestion at the disciplinary hearing or appeal by the trade union representative that the Claimant was being treated unfairly on the grounds of her race or religion.
91. The Tribunal considered the fact that the Claimant was dismissed for gross misconduct in relation to 4 allegations about her behaviour on 13 March 2021, towards her team leader. These included attempting to physically assault her team leader and deliberately damaging property. The disciplining officer Mr Kasirye was satisfied based on the evidence before him that the Claimant was guilty of the allegations. Mr Kasirye was a General Manager and therefore independent and senior of those involved in this incident.
92. The Tribunal were satisfied that Mr Kasirye would have treated any other member of staff in the same way and would have made the same finding for anyone else in this situation.
93. Furthermore, The Tribunal could find no evidence to suggest that Mr Kasirye decision was in any way based on the Claimant's race or religion.

94. Due to these points, the Claimant's claim for direct discrimination based on race or religion are dismissed.
95. In relation to harassment, the Tribunal concluded that a dismissal would amount to unwanted conduct. The Claimant engaged with both the disciplinary meeting and the appeal. It is clear from her evidence that she felt that the dismissal was humiliating and violated her dignity. The Tribunal concluded that whilst that may be a reasonable conclusion when faced with dismissal, it could not be said that the actions of dismissal was 'related to' the Claimant's race or religion. The dismissal was related to her behaviour towards her manager on 12/13 March 2021, which amounted to gross misconduct.
96. We therefore dismiss this claim.
97. To summarise, we find no jurisdiction to consider claims 1-13 and 15-16.
98. We find that the dismissal was not an act of race or religious discrimination, nor was it harassment related to race or religion.
99. All the claims are therefore dismissed.

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Employment Judge S Cowen

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Date: 27 August 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON  
3 September 2024  
FOR THE TRIBUNAL OFFICE

### **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

### **Public access to employment tribunal decisions**

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### **Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>