EMPLOYMENT TRIBUNALS

Claimant: **Miss Firmene Kayembe**

Respondent: **Tesco Stores Limited**

Heard at: **Reading** **On: 31 July—2 August 2024**

Before: **Employment Judge Reindorf KC**
Mrs A Brown
Ms H.T. Edwards

Representation:

Claimant: Dr K P Tshibangu (lay representative)
Respondent: Mr J Cook (counsel)

JUDGMENT

(1) The complaint of direct race discrimination was presented outside the statutory time limit for the presentation of claims and it is not just and equitable to extend time for the presentation of the claim. The claim is dismissed.

(2) The complaint of direct age discrimination was presented outside the statutory time limit for the presentation of claims and it is not just and equitable to extend time for the presentation of the claim. The claim is dismissed.

(3) The Claimant did not suffer an unauthorised deductions from her wages. The complaint of unauthorised deductions from wages is dismissed.

(4) The Claimant was fairly dismissed. The complaint of unfair dismissal is dismissed.

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INTRODUCTION

1. The Claimant worked for Tesco Stores Ltd, latterly as a Team Manager at the Respondent's Yiewsley store, from 22 May 2012 until her dismissal for redundancy with effect from 27 April 2023.

2. After a period of ACAS Early Conciliation from 25 July to 1 September 2023, she presented her ET1 on 1 October 2023. She complained of unfair dismissal, age discrimination, race discrimination and unauthorised deductions from wages. The Claimant is black and in her late forties.

3. The Respondent denied the claims in its ET3 of 5 December 2023.

THE EVIDENCE AND HEARING

4. The case came before us for final hearing. We had an agreed bundle of 221 pages. The Claimant gave evidence on her own behalf and the Respondent called Mr Lumm and Brian Leworthy. All witnesses produced written witness statements.

THE ISSUES

5. At a Preliminary Hearing on 23 April 2024 the claims were clarified as follows:

    5.1. The unauthorised deductions from wages complaint related to:

        a. an alleged shortfall in the Claimant's pay while she was on the Options Placement, training to be a Team Manager, from 11 April 2022 until 5 September 2022;

        b. overtime which the Claimant said she had worked during the same period.

5.2. The discrimination claims related to the Claimant's allegation that her line manager, Roland Lumm, failed to present her with a certificate for having completed the Options placement. Her comparator was a younger white woman named Julia Zonotaryova.

5.3. The unfair dismissal claim was based on the allegation that the Claimant's line manager, Roland Lumm, had selected her for redundancy because she had repeatedly made complaints about her pay, about Mr Lumm's failure to present her with a long service award when she reached ten years' service on 22 May 2022 and about his failure to give her a certificate for completing the Options placement in or around September 2022.

AMENDMENT APPLICATION

6. On the first day of the hearing both parties applied to amend their pleadings.

7. The Claimant applied to add a race and age discrimination complaint relating to the ten years' service award.

8. The application arose because Mr Tshibangu had mentioned in a letter dated 12 June 2024 that the Claimant pursued this complaint. At the final hearing the Employment Judge noted that the allegation was not pleaded and informed Mr Tshibangu that he would need to make an application to amend if he wished to add it.

9. In making his application Mr Tshibangu said that he thought that the complaint was "implied" in the Case Management Summary. In that Summary, EJ Anstis had set out the Claimant's complaints as summarised above. The length of service award did not feature as a discrimination complaint. EJ Anstis noted that the Claimant had specifically confirmed that she did not wish to make any amendment applications.

10. Addressing the factors in *Selkent Bus Co v Moore* [1996] IRLR 661, Mr Cook for the Respondent said that amendment was a substantial one, adding an entirely new claim. The complaint was not mentioned in the ET1 at all. He said that the complaint was almost two years out of time and no reasons had been given which would support an extension of time on the just and equitable basis. The application was made very late, despite an invitation having been given by EJ Anstis at the Preliminary Hearing to make any amendment applications at the Preliminary Hearing. The Claimant had had plenty of opportunities to make the complaint earlier. The prejudice to the Claimant was the prejudice of not being able to litigate the point. That was outweighed by the prejudice to the Respondent of having to defend a very stale allegation which would turn entirely on oral evidence. The manager who had been responsible for giving the long service award was not Mr Lumm, who was recently bereaved at the time. The Respondent would have to ascertain who to call to give evidence on the matter and make further investigations. The Claimant had not raised the

matter as part of her grievance in April 2023, so it had never been internally investigated.

11. The Tribunal dismissed the application for the reasons given by Mr Cook in his submissions. Overall we considered the prejudice to the Respondent to significantly outweigh any possible prejudice to the Claimant.

12. The Respondent applied to amend its Grounds of Resistance to address the manner in which the issues were set out in EJ Anstis' Case Management Summary. EJ Anstis had given the Respondent permission to amend, but the Case Management Summary had not been sent to the parties when the Respondent first did so. The Summary presented the issues in a different way than the Respondent's solicitor had recalled. Some factual corrections were also made to the Grounds of Resistance.

13. Mr Tshibangu did not object to the amendment. The Tribunal was satisfied that the application should be allowed.

FINDINGS OF FACT

14. The Claimant started working at the Respondent's Teddington store in May 2012, where she worked her way up to Shift Leader by 2018. On 11 April 2022 she left Teddington and moved to the Yiewsley store to train to become a Team Manager on the Options programme.

15. As a Shift Leader the Claimant was hourly paid and entitled to payment for overtime, which had to be agreed in advance. During her Options placement she remained on the same terms and conditions, except with regard to pay and overtime. Although this was not communicated to the Claimant in writing, she knew that her pay and overtime conditions had changed and she willingly worked under those terms.

16. As to pay, as an Options trainee the Claimant was entitled to 90% of the full Team Manager's annual salary of £26,400, which amounted to £23,760. In fact, during this period the Claimant was overpaid at an annual rate of £24,590. Over the period of her Options placement the overpayment amounted to £350.24.

17. As for overtime, the expectation was that Team Managers would only be paid for Sunday shift overtime or overtime worked in exceptional circumstances, both of which were subject to advance agreement. We were shown no records of the Claimant having worked any overtime during her placement, and nor did the Claimant give evidence about specific overtime that she had worked.

18. On 22 May 2022 the Claimant reached her ten year service milestone. At this time Mr Lumm was absent from work because of a bereavement. Therefore he did not arrange a presentation for the Claimant's length of service award, nor for those of a number of other employees. When he returned to work there were numerous celebration awards outstanding, but he was not able to deal with them as he was on a phased return to work due to ill health. He passed

them over to another manager to deal with. Ultimately the Claimant did not receive her length of service award until her last day of employment in April 2023.

19. On 5 September 2022 the Claimant was signed off as having completed the Options placement by Kiran Sudan, Regional Manager. Ms Sudan is a woman of Indian origin in her fifties. Mr Lumm was not at work on that day. Ms Sudan did not present the Claimant with a certificate for completion of the programme. The Claimant did not print up the completion certificate from the Respondent's intranet, although the Respondent's Recognising Colleagues policy suggests that this is the responsibility of the individual employee and not the manager.

20. The Claimant was appointed as a Team Manager on day shifts with effect from 7 September 2022. She was not issued with new written terms and conditions of employment. Her salary should have increased to the Team Managers' rate of £26,400. In fact it only increased by £1,000 to £25,590. Over the period from 5 September to 11 November 2022 she was underpaid in the sum of £155.76.

21. On 13 November 2022 Team Managers were awarded a cost of living pay rise to £28,600p.a. The Claimant was correctly awarded this pay rise, so her salary from this date until 2 April 2023 was correct.

22. In January 2023 the Respondent decided to reduce the number of Team Managers employed across the business and to replace them with Shift Leaders. This was because of a reduction in custom in specific areas. It was decided that the Yiewsley store would reduce its day shift Team Manager headcount by three. The Claimant was placed in a pool for selection for redundancy with the other day shift Team Managers.

23. In early 2023 The Claimant contacted her previous manager at the Teddington store and told him she was considering resigning. He advised her to wait and speak to the Area Manager.

24. On 30 January 2023 Mr Lumm told each of the managers in the store about the impending redundancies. He told them that selection criteria would be used to decide which employees to make redundant. The Claimant was on holiday at this time so Mr Lumm did not speak to her face to face. Instead he telephoned to tell her about the restructure.

25. At some point in January or February 2023 Ms Zonotaryova was signed off by Mr Eggleton as having completed the Options programme. Mr Eggleton presented Ms Zonotaryova with her completion certificate in a small ceremony. At this time Team Manager vacancies had been frozen, so Ms Zonotaryova was not appointed to a Team Manager post. She carried on acting up into duty management shifts of her own volition until a vacancy arose in another store in July 2023, to which she was appointed.

26. On 31 January, 11 February and 9 March 2023 Mr Lumm raised Colleague Help Tickets with the Respondent's payroll department on behalf of the Claimant to try to get to the bottom of what had happened with her rate of pay.

We find that Mr Lumm did so willingly and in a genuine attempt to resolve the issues. He did not experience the Claimant's complaints about her pay – which she had made intermittently over the previous few months – as a burden or a problem.

27. On 25 February 2023 Mr Lumm and Oliver Eggleton, Area Manager, allocated scores to the managers in the redundancy pool. Mr Lumm gave his reasons for his scores and Mr Eggleton wrote them onto the scoresheet. The criteria were: whether the employee had any live disciplinary or conduct warnings; the employee's overall performance rating for 2021/2022, or where the employee had been in post for a short time the 2022/2023 half year review; and performance against key accountabilities of the role. Preference to leave or stay was used as a tie-breaker. The Claimant scored 12 points out of 20 and came second to last on the scoring matrix.

28. Ms Zonotaryova was not placed in the pool because she had not been appointed to a Team Manager role.

29. At a redundancy consultation meeting on 26 February 2022 Mr Lumm told the Claimant that she had been unsuccessful in the scoring exercise and that her role was at risk of redundancy. The Claimant said that her preference was to leave with a redundancy payment.

30. By letter dated 3 March 2023 Mr Lumm confirmed to the Claimant that her role was at risk of redundancy.

31. A first formal redundancy consultation meeting was held on 6 March 2023 between the Claimant and Mr Lumm. The Claimant again stated that it was her preference to leave. She said that she had decided to study for a Master's degree and to move into social work. She also said that she had started to apply for other jobs in the social work sector.

32. A second formal redundancy consultation meeting took place on 20 March 2023. The Claimant asked to see a calculation of her redundancy pay. Mr Lumm told the Claimant that she could apply for alternative employment within Tesco.

33. On 2 April 2023 an increase was applied to the Claimant's salary to £30,696 for no apparent reason, resulting in an overpayment of £161.28 in the month of April.

34. During April the Claimant submitted a grievance relating to her pay since the beginning of her Options placement. She did not mention any other issues in her grievance. The grievance was allocated to Mr Leworthy to investigate.

35. A third formal consultation meeting was held on 24 April 2023 between the Claimant and Mr Lumm. The Claimant had not applied for alternative employment within Tesco, and she again confirmed that she wished to leave the Respondent with redundancy pay. Mr Lumm told her that her grievance would still be dealt with.

36. The Claimant's dismissal for redundancy took effect on 27 April 2023. Her redundancy pay was based on the incorrect salary which had been applied to her on 2 April 2023. As such, it was £1,081.47 more than she should have been entitled to.

37. The Claimant attended a grievance meeting with Mr Leworthy on 3 May 2023. Mr Leworthy sent her the outcome to her grievance on 9 May 2023. He concluded that in the period since the beginning of her placement she had been overpaid by £1,437.23 (including the overpayment on her redundancy payment). The Claimant did not appeal the outcome.

38. At some stage, the Claimant was paid for five Sunday shifts worked as overtime at the Yiewsley store.

THE LAW

Direct discrimination

39. By s.13(1) of the Equality Act 2010 ("EqA") an employer directly discriminates against an employee if it treats him less favourably because of a protected characteristic than it treats or would treat others. The protected characteristics include race and age.

40. In a discrimination case, the Claimant must prove on the balance of probabilities facts from which the Tribunal "could conclude", in the absence of an adequate explanation, that the Respondent has committed an act of unlawful discrimination ("the first stage"). This means that the Claimant must show facts from which the Tribunal could conclude that:

    40.1. the Claimant has been subjected to a detriment (s.39(2)(d) EqA); and

    40.2. in being subjected to the detriment the Claimant has been treated less favourably than a real or hypothetical comparator was or would have been treated (s.13(1) EqA). There must be no material difference between the circumstances of the Claimant and the comparator (other than the protected characteristic) (s.23 EqA); and

    40.3. an effective cause of the difference in treatment was the protected characteristic (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor* [1997] ICR 33 EAT).

41. At the first stage the Tribunal should consider all the primary facts, not just those advanced by the Claimant. The Tribunal should assume that there is no adequate explanation (*Hewage v Grampian Health Board* [2012] ICR 1054 §31, Guideline 6 in *Igen*). "Could conclude" means "a reasonable tribunal could properly conclude" from all the evidence before it (*Madarassy v Nomura International plc* [2007] ICR 867 CA).

42. The decision that the Tribunal "could conclude" that there was discrimination may rely on the drawing of inferences from primary facts: guideline 5 in *Igen v Wong* [2005] IRLR 258 CA.

43. If the burden of proof shifts, the Respondent must show that it did not commit those acts and that the treatment was not on the prohibited ground: guidelines 9 and 10 in *Igen* ("the second stage").

44. At the second stage the Tribunal must assess not merely whether the Respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that the prohibited ground was not a ground for the treatment in question: guideline 12 in *Igen*.

45. In an age discrimination case, the employer may argue that its treatment of the employee was justified as a proportionate means of achieving a legitimate aim.

46. In every case the Tribunal should consider the totality of the primary facts and examine indicators from the surrounding circumstances and the previous history (*King v Great Britain China Centre* [1992] ICR 516 CA). The question is a fundamentally simple one of asking why the employer acted as he did (*Laing v Manchester City Council* [2006] ICR 1519 at §63).

47. A complaint of discrimination contrary to the EqA must be presented within three months of the act complained of, allowing for ACAS Early Conciliation (s.123 EqA).

48. The Tribunal may extend time for the presentation of the claim if it would be just and equitable to do so (s.123(3) EqA). This is a broad discretion and a matter of fact and judgment (*Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327 CA).

49. The factors to take into account may include:

    49.1. the length of and reason for the delay;

    49.2. the extent to which the cogency of the evidence is likely to be affected by the delay;

    49.3. whether the Claimant was aware of his right to claim, and/or of the time limit;

    49.4. whether the Respondent cooperated with any requests for information;

    49.5. the promptness with which the Claimant acted once he knew of the facts giving rise to the cause of action;

    49.6. the steps taken by the Claimant to obtain professional advice once he knew of the possibility of taking action; and

49.7. the prejudice that would be suffered by the employer if the claim was permitted to proceed (necessarily balanced against the prejudice to the Claimant if he is refused the extension of time).

(See *British Coal Corpn v Keeble* [1997] IRLR 336)

Unauthorised deductions from wages

50. By s.13 of the Employment Rights Act 1996 ("ERA 1996") an employer must not make a deduction from the wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction.

51. In order to be "properly payable" for the purposes of a claim under ss.13 and 23 ERA, wages must be "capable of quantification": *Coors Brewers Ltd v Adcock* [2007] ICR 983 CA.

52. An unauthorised deductions from wages claim cannot be brought in respect of unpaid expenses: s.27(2)(b) ERA.

53. By s.23(1) ERA 1996 a worker may present a complaint to the Employment Tribunal that his employer has made a deduction from his wages in contravention of s.13 ERA. The time limit is 3 months beginning with the date of payment of the wages from which the deduction was made (s.23(2)(a) ERA 1996) with an extension for early conciliation, unless it was not reasonably practicable to present the claim in time and it was presented within such further period as the Tribunal considers reasonable.

54. If the complaint is about a series of deductions or payments, the three month time limit starts to run from the date of the last deduction or payment in the series (s.23(3) ERA 1996).

Unfair dismissal

55. By section 94 of the Employment Rights Act 1996 ("ERA") an employee has the right not to be unfairly dismissed.

56. In a claim for unfair dismissal, the employer must show the reason (or, if more than one, the principal reason) for the dismissal, and that it is a potentially fair reason (s.98(1) ERA). Potentially fair reasons include redundancy (s.98(2(c) ERA).

57. If the employer has shown that the dismissal was for a potentially fair reason, the Tribunal must determine whether the employer acted reasonably or unreasonably in treating that reason as sufficient reason to dismiss the employee. In determining this question the Tribunal must have regard to the circumstances of the case, including the size and administrative resources of the employer's undertaking and equity and the substantial merits of the case (s.98(4) ERA).

58. In conducting its enquiry under s.98(4) ERA the Tribunal should keep in mind that:

    58.1. the "band of reasonable responses" test applies to all aspects of the dismissal (*British Home Stores Ltd v Burchell* [1980] ICR 303; *Graham v Secretary of State for Work and Pensions (Jobcentre Plus)* [2012] IRLR 759 CA); and

    58.2. the question is not whether there was something else which the employer ought to have done, but whether what it did was reasonable (*Sainsbury's Supermarkets v Hitt* [2003] IRLR 23 CA).

59. Redundancy is defined in s.139(1) ERA, which provides (in relevant part) that an employee will be taken to have been dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

60. Guidance as to the proper approach to redundancy dismissals is set out in *Williams v Compair Maxam* [1982] ICR 156. The employer should give as much warning as possible of impending redundancy, consult the union (where there is one) as to the best means by which redundancies can be achieved fairly and to agree the criteria for selection, establish objective criteria and offer alternative employment where possible.

61. The approach set out in *Williams* presupposes that a pool of employees will be identified from which some will be selected.

62. The principle that a Tribunal should not substitute its own view for that of the employer, and should consider instead whether a decision lay within the range of reasonable responses also applies to selection pools (*Green v A & I Fraser (Wholesale Fish Merchants) Ltd [*1985] IRLR 55).

63. The question of how the pool should be designed is primarily a matter for the employer to determine. The Tribunal should not interfere with that determination if it is satisfied that the employer has genuinely applied its mind to the issue of who should be in the pool (*Capita Hartshead Ltd v Byard* [2012] IRLR 814 EAT).

64. A fair consultation involves giving the consultee a fair and proper opportunity to understand fully the matters about which he is being consulted and to express his views on those subjects with the consultor thereafter considering those views properly and genuinely (per Glidewell LJ in *R v British Coal Corpn Ex p Price* [1994] IRLR 72 at 75).

65. If the Claimant was unfairly dismissed a reduction may be made to her compensation on the basis that she would have been dismissed even if a fair procedure had been followed (*Polkey v A E Dayton Services Ltd* [1988] ICR 142 HL, *Hill v Governing Body of Great Tey Primary School* [2013] IRLR 274 EAT). This reduction may be made on a percentage basis to reflect the chance that the Claimant would have been dismissed. The question is whether if there

had been a fair procedure the result would still have been a dismissal (*Whitehead v The Robertson Partnership* UKEAT/0378/03, [2004] All ER (D) 97 (Aug) (17 August 2004, unreported). The assessment must made by reference to how the particular employer in question would have acted and not by the standards of a hypothetical reasonable employer. The burden is on the Respondent to show that the employment would have ended in any event (*Britool Ltd v Roberts* [1993] IRLR 481).

CONCLUSIONS

Direct discrimination (race and age)

66. The Tribunal finds that the complaints of direct discrimination because of race and age were presented outside the statutory time limit and it would not be just and equitable to extend time for the presentation of the complaints. On that basis the complaints are dismissed.

67. The Claimant submitted her ET1 on 1 October 2023. Taking into account the ACAS Early Conciliation period, complaints about any acts occurring before 25 April 2023 were, on the face of it, out of time. The discrimination complaints related only to the Claimant's allegation that she should have been presented with a certificate for completing the Options programme on or about 5 September 2022. They were therefore around 7.5 months out of time.

68. The comparator, Ms Zonotaryova, was presented with her certificate in January or February 2023. The Claimant did not act quickly thereafter to present her complaint.

69. No application was made to us for an extension of time for the presentation of the complaints, and nor did the Claimant give any evidence in chief addressing the time point. We find that no good reason has been shown for the substantial delay. This was an issue which relied principally on oral evidence. The Claimant had not raised the issue internally, although she had presented a grievance during the latter stages of her employment. The Respondent was therefore prejudiced in relation to its ability to investigate the matter so long after the event. The cogency of the evidence would clearly have been affected.

70. Even if the direct discrimination complaints had been presented in time, we would have dismissed them on their merits. The failure to present the Claimant with a certificate was a detriment and amounted to less favourable treatment by comparison to Ms Zonotaryova. However there was no evidence whatsoever on the basis of which we could draw an inference that the reason for the less favourable treatment was the Claimant's race or age. This was conceded by Mr Tshibangu in his submissions. The Claimant did not shift the burden of proof.

Unauthorised deductions from wages

71. In closing submissions the Claimant withdrew her complaint that she suffered an unauthorised deduction from wages in relation to a shortfall in pay during her Options placement, and pursued the complaint in relation to her overtime claim only.

72. We find that the evidence as to the Claimant's entitlement to overtime payments following the start of the Options placement was somewhat ambiguous, although on balance we were satisfied that the Claimant agreed that as a trainee Team Manager she would only be entitled to payment for overtime worked on Sundays and in exceptional circumstances. We saw no evidence that the Claimant had booked or worked any overtime, other than that she was paid for five Sunday overtime shifts.

73. It is entirely unclear to us how the Claimant calculated the figure of £7,280 claimed in her Schedule of Loss for overtime. Neither the Claimant nor Mr Tshibangu was able to throw any light on it when asked by the Tribunal.

74. That being the case the Claimant has failed to show that she suffered a quantifiable deduction from her wages in relation to overtime. The claim is dismissed.

75. There was some talk during the hearing of the Claimant pursuing an unauthorised deductions from wages complaint in respect of expenses for her travel costs during her Options placement. Whilst this was not pursued with any vigour, and its origin was unclear, for completeness we record here that the Tribunal does not have jurisdiction to entertain such a complaint since s.27(2)(b) ERA excludes expenses from the cause of action.

Unfair dismissal

76. The Tribunal is satisfied that the genuine reason for the Claimant's dismissal was redundancy.

77. The Tribunal is also quite satisfied that the Respondent acted fairly in dismissing the Claimant for redundancy. We find that Mr Lumm did not use the redundancy process as a smokescreen for dismissing the Claimant because of any complaints she made about her pay, about the long service award or about her Options placement certificate. Insofar as the Claimant made any such complaints, Mr Lumm did not resent them. He made efforts to sort out the pay issues, and asked another manager to deal with the long service awards. He was not influenced by these matters in his scoring of the Claimant on the redundancy selection matrix. The scores appeared to the Tribunal to be entirely reasonable and appropriate. They were checked by Mr Eggleton, to whom the Claimant had not complained about her pay or other matters. They were unsurprising scores given the Claimant's relative inexperience in the role.

78. The process followed by the Respondent in making redundancies was reasonable. Warning was given and consultation were undertaken, and the

criteria were fair and objective. The Claimant was offered the opportunity of applying for alternative employment.

79. The Claimant argued that because she was new to the role she should have been exempted from the selection for redundancy, since she had not had an opportunity to prove herself. The Tribunal rejects this argument, which is irrational. In principle it would have been open to the Respondent to adopt a "last in, first out" policy. It did not do so, but there is no principle that it should adopt a policy which would result in it losing more experienced managers in favour of retaining those recently appointed.

80. The Tribunal finds that the Claimant was fairly dismissed.

81. Even if the Claimant was unfairly dismissed, the Tribunal would have made a 100% deduction to her compensation on the *Polkey* basis, since she made it quite clear from the outset of the redundancy process that she wished, in effect, to take voluntary redundancy. Furthermore she had been intending to resign in any event. The redundancy offered her the opportunity of leaving with a substantial redundancy payment. The Tribunal does not accept that the reason for the Claimant's intended resignation was the trouble she was having with her pay, or that it was connected in any way to the Respondent's failure to give her a long service award a year earlier or to present her with a certificate of completion of the Options placement. The Claimant wanted to resign to pursue a career in social work, as she stated to Mr Lumm.

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Employment Judge Reindorf KC
Date 9 August 2024

Sent to the parties on:

26 September 2024

For the Tribunal: