



## EMPLOYMENT TRIBUNALS

Claimant: Miss A Emmons  
Respondent: Krispy Kreme UK Ltd

Heard at: Watford (by CVP)

On: 26, 27 and 28 February 2025  
Before: Employment Judge Mr J S Burns  
Members Mr F Wright and Mr N Boustred

### Representation

Claimant: In person  
Respondent: Mr A Ross (Counsel)

### JUDGMENT

The claims are dismissed

### REASONS

1. These were claims of unfair dismissal, for notice pay, direct race discrimination and harassment related to race. The issues were set out in a case summary dated 12/9/24. The main allegations in relation to the claims of direct race discrimination and harassment related to race are set out for convenience in the schedule to these reasons.
2. We were referred to a bundle of 591 pages and a supplementary bundle of 14 pages. We listened to an audio recording of a WhatsApp audio message sent by the Claimant to other employees in the period 8-10/10/23. We heard oral evidence from the Claimant and then from the Respondent's witnesses Ms M Adamova, Ms S Saha, Mr L Forde, Ms D Clifford.

### Findings of fact

3. The Claimant who describes her race/ethnicity as Black British Caribbean, was employed as a retail store manager, at the Respondent's Glades Shopping Centre store in Bromley until her dismissal on 20 February 2024
4. The Claimant did not perform her duties to the satisfaction of the Respondent's Area Manager Ms Adamova. On 17/10/22 and again on 1/12/22 Ms Adamova had to write to the Claimant giving her instructions to follow her rota according to scheduled hours, ensure daily work records were completed correctly, and to observe the Respondent's holiday booking and rota procedures
5. Ms Adamova and the Respondent were concerned about the Claimant's management style - as evidenced for example by the Claimant's treatment of a former Respondent employee, Ms E Taylor whom the Claimant had dismissed during her probationary period; Having heard Ms Taylor's appeal Ms Adamova reinstated her in December 2022. The appeal raised various further concerns about the Claimant's conduct, management, procedures, timekeeping and working hours.
6. Ms Adamova with the support of HR implemented a performance improvement plan to try to support the Claimant but this did not go smoothly as the Claimant did not engage or comply, would not prepare for one-to-one meetings and would make comments such as "whats the point". She also raised a grievance about the PIP following which in mid 2023

the written version of the PIP was shortened and Ms Adamova continued trying to apply it to the Claimant.

7. On 11/10/22, 26/10/22, 17/01/23, 25/1/23, 16/7/23, and 3/9/23 the Respondent received complaints about the Claimant, apparently from customers, members of the public and other employees, claiming that she had been selling illegal drugs including crack cocaine and marijuana both at work and on Westminster Bridge, and was incompetent, arriving late at work, angry at work and making ageist, racist and body-shaming comments. Ms Adamova tried to investigate the October 2022 complaints by talking to other staff who worked at the store. In relation to the complaint made on 11/10/22 she told the Claimant about the complaint and discussed it briefly with her at the time. Ms Adamova did not tell the Claimant about the other complaints and Ms Adamova's investigation into these at the time when they were made.
8. On 11 October 2023, Mr Popazu (a former Respondent employee and direct report to the Claimant) raised a grievance against the Claimant. This included providing Ms Adamova with a WhatsApp recording of an audio message the Claimant had sent to the staff that she managed a few days earlier. The Tribunal listened to the message during the hearing. It is nearly two minutes long and takes the form of a monologue from the Claimant to her junior staff (which we were told were typically youngsters between the ages of 18 and 21 years doing their first jobs). The message is angry, loud, aggressive and threatening and includes the sound of the Claimant hitting a desk or table to provide emphasis. The message is entirely inappropriate and unacceptable and without more, showed that the Claimant was unfit to continue in her employment as store-manager.
9. On 30 October 2023, Mr G Hughes complained to Ms Adamova that the Claimant had, without his permission, posted the news of his partner's pregnancy on the Respondent's "Yapster" feed (an internal social media/messaging platform), which posting had upset him.
10. A decision was made to suspend the Claimant to allow an investigation to take place, primarily into the complaints about her alleged racist language and drug dealing. On 10/11/23 Ms Adamova went to the store, told her she was suspended and handed her a letter which explained clearly that allegations had been made and that they would be investigated. The letter does not state that any conclusions had been reached.
11. Ms S Saha, the Respondent's HR people partner for retail, lead the investigation. The Claimant attended an investigatory meeting on 22/11/23 with her.
12. In addition to interviewing the Claimant, Ms Saha reviewed records regarding the Claimant's attendance, and training records, and she interviewed a range of the Claimant's colleagues.
13. While Ms Saha did not find any supporting evidence to corroborate the allegations of drug dealing and use of racist language, she did discover evidence of potential breaches of health and safety regulations. For example during a visit to the store on 21/11/23, Ms Saha observed that the yellow tongs (which are supposed to be used for nut-containing doughnuts only) were placed amongst other doughnuts, creating a risk of contamination, and that sale-boxes of doughnuts which the Respondent advertises under the slogan "To good to go" had already been prepacked into boxes in the absence of the customers whom it was hoped would buy them. Both these practices were serious breaches of the Respondent's protocol which is aimed at implementing "Natasha's law" - that is the laws and regulations which must be observed in UK food businesses to ensure that persons who suffer nut or other life-threatening allergies to various food ingredients do not unwittingly ingest potentially fatal allergens.
14. Ms Saha took a photo of the misplaced tongs.

15. Ms Saha also uncovered evidence that the Claimant had not completed audits properly, that the Claimant had continued to ignore Ms Adamova's repeated management instructions relating to provision of shift rotas, and had been late or absent from work when scheduled to be working.
16. Ms Saha prepared a detailed investigation summary that there was a case to answer that the Claimant's actions may amount to gross misconduct.
17. The Claimant was sent the investigation pack and an letter dated 25/1/24 requiring her attendance at a disciplinary hearing to face the charges, as follows; falsification of records and reports; serious breaches of the Respondent's policies and rules; gross negligence by virtue of a serious breach of health and safety legislation (namely, Natasha's Law); unreasonable refusal to follow an instruction issued by the Claimant's line manager; persistent bad timekeeping; and making comments that were deemed offensive by their audience.
18. The disciplinary hearing was delayed at the Claimant's request and then took place on 7/2/2024 chaired by Mr L Forde, the Respondent's Retail Area Manager, accompanied by an HR note-taker. During the hearing, both the Claimant and her TU representative were given the opportunity to put forward their case. At the end of the Hearing, Mr Forde adjourned to consider all of the evidence, salient points of which were as follows:
19. The audit reports which the Claimant was supposed to fill out each month were important not only to ensure the maintenance of health and safety standards, but also to provide evidence of this. Although it was the Claimant's responsibility, her recollection of who had completed the health and safety audits was inconsistent. She had been unable initially to produce them when asked during an audit at the store. The Respondent's computerised system shows the time taken to complete an audit. In several instances the Claimant was shown to had taken just a few minutes to complete answers to hundreds of questions which should have taken far longer to answer properly. The Claimant acknowledged that the time taken for her to complete audits was too short and that she had filled them in without looking at any of the required supporting evidence, simply saying that she known that "the evidence would be there somewhere".
20. In another instance she had signed off an audit suggesting 100% compliance when she had failed to remedy a list of shortcomings highlighted by Ms Adamova during her previous audit on 22 September 2023. This indicated that the latter audit was false.
21. The evidence of the breach of the Natasha's law protocol consisted in the pre-packed TGTG doughnuts and tongs being stored in the wrong place on 21/11/2023. Also, when the Claimant when questioned about this, she displayed confusion about what the protocols required, especially with regard to the important prohibition against assembling TGTG doughnut packages in the absence of customers.
22. It was not in dispute that the Claimant had been instructed not to make any changes at all to the working rota once it had been approved by Ms Adamova, without the latter's consent. The Claimant's attitude to this at the disciplinary hearing was that she could not be in constant contact with Ms Adamova due to the fluid nature of the Bromley store's needs. The Claimant also admitted that she changed rotas due to sickness or other unavoidable commitments from staff but that she let Ms Adamova know of changes only if they were serious in her opinion.
23. The Claimant disputed that her timekeeping was persistently poor but confirmed that she had been late to work and to meetings. The Claimant said this was because she was serving customers or because the speed limit had changed from 30mph to 20mph on her route to work and therefore, her commute took longer.

24. Mr Forde discussed with the Claimant her audio message sent to her junior staff in October 2023. The Claimant said she did not understand why people may have been be offended by it. She did not appear to show any remorse and was dismissive of the fact that it may be considered aggressive and intimidating. Mr Forde also discussed Mr Hughes grievance about the Claimant having publicised Mr Hughes's partner's pregnancy. The Claimant was dismissive about this also, did not accept that it was wrong and instead focused on how this had made her feel.
25. Mr Forde concluded that all the charges were made out, that the Claimant was guilty of gross misconduct and that the appropriate sanction was summary dismissal. This outcome was confirmed by a letter dated 20/2/24, which also confirmed the Claimant's right of appeal.
26. On 14 March 2024 the appeal hearing was chaired by Ms D Clifford, the Respondent's Head of Logistics. The Claimant was again accompanied by her TU rep. Following a careful review, the appeal was dismissed.

#### A summary of relevant law

##### Re unfair dismissal

27. Where the conduct of the employee is established by the employer as a potentially fair reason for dismissal under Section 98(1) and (2) of the Employment Rights Act 1996, then section 98(4) must be considered which provides as follows:  
*Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – depends upon whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.'*
28. A dismissal for misconduct will not be unfair if it is based on a genuine belief on the part of the employer that the employee had perpetrated the misconduct, which belief is based on reasonable grounds following a reasonable investigation BHS v Burchell [1978] IRLR 379.
29. An Employment Tribunal should not substitute itself for an employer or act as if it were conducting a rehearing of or an appeal against the merits of an employer's decision to dismiss. The employer not the Tribunal is the proper person to conduct the investigation into the alleged misconduct. The function of the Tribunal is to decide whether that investigation is reasonable in the circumstances and whether the decision to dismiss, in the light of the result of that investigation, is a reasonable response. HSBC v Madden [2000] ICR 1283.
30. The range of reasonable responses test (or to put another way, the need to apply the objective standards of the reasonable employer) applies as much to the question whether the investigation into the suspected misconduct was reasonable in all the circumstances, as it does to the reasonableness of the decision to dismiss for the conduct reason. Sainsbury v Hitt 2002 EWCA CIV 1588
31. The ACAS Code of Practice No.1, Disciplinary & Grievance Procedures (2009) provides that an employer wishing to discipline an employee should carry out an investigation to formally establish the facts; inform the employee in writing of the problem; after a proper interval, hold a meeting to discuss the problem; decide fairly on the appropriate action, and provide an opportunity to appeal.

##### Regarding race discrimination

32. Section 4 Equality Act 2010 (EA) provides that race is a protected characteristic and section 9 provides that race includes a person's colour, nationality or ethnic or national origins.

#### Direct Racial Discrimination

33. Section 13 EA provides that a person discriminates against another if because of a protected characteristic, he treats another less favourably than he treats or would treat others.
34. The requirement is on the Claimant to show less favourable treatment by comparison with an actual or hypothetical comparator whose relevant circumstances must be the same or not materially different.

#### Harassment

35. Section 26 provides that a person harasses another where he engages in unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating the others dignity or creating an intimidating hostile degrading humiliating or offensive environment for him. In deciding whether conduct has this effect the following must be taken into account: the perception of the other, the other circumstances of the case and whether it is reasonable for conduct to have that effect.

#### Onus of proof

36. Section 136 provides that if there are facts from which a court could decide, in the absence of any other explanation that a person has contravened a provision under the EA, the court must hold that the contravention occurred, unless the person shows that he did not contravene the provision.

#### Conclusions

37. The decision makers Mr Forde and Ms Clifford had a genuine belief in the Claimant's misconduct.
38. The belief was based on reasonable grounds - those being the evidence found by Ms Saha and Mr Forde, the salient points of which are summarised above.
39. The main criticism the Claimant made about the procedure both at her internal appeal and at the tribunal hearing was that she had been dismissed for matters different from those relied on when suspending her. However, this was because the investigation failed to find sufficient evidence to corroborate the allegations of racist language and drug dealing, but did find evidence of other misconduct some of which had been ongoing for some time.
40. The Claimant was made aware in advance of the disciplinary hearing of the allegations in respect of which she was later found guilty, and received in advance all of the relevant evidence. She was accompanied by her chosen TU rep and allowed to advance her arguments and explanations at length before the decisions were taken. The disciplinary process was reasonable and in accordance with the ACAS Code.
41. It was incorrect to blame the Claimant for the breaches of the Natasha's law protocol found on 21/11/23, because the shop had been left without a shop manager, was being run by junior staff and the suspended Claimant had not been there for ten days. The Respondent's view was that the Claimant should be held vicariously liable for those matters because she should have taught the junior staff better before she was suspended. We do not agree with this. As has been shown by the fact that the Claimant herself did not obey the repeated instructions of Ms Adamova, sometimes even the best manager will find that their instructions are disobeyed.

42. In relation to the Claimant's treatment of the Natasha's law protocol prior to her suspension, all the Respondent had was the fact that the Claimant at the disciplinary hearing showed some confusion about its requirements and particularly about those pertaining to the prohibition against pre-packaging the TGTG doughnuts. That confusion, albeit a serious and worrying matter, would have been better treated as a capability or competence issue and not as misconduct.
43. However, all the other matters in respect of which the Claimant was found guilty were serious misconduct matters. The Claimant was a manager who was supposed to set a good example and adhere to standards. Over a prolonged period she had set a bad example, disregarded required procedures and ignored reasonable management instructions.
44. The most serious matters were (i) the Claimant's false completion of the audits and (ii) her audio message to the junior staff in October 2023. Both of these struck at the heart of the employment relationship and were incompatible with the continuation of her employment as manager for any period after they were discovered. Either of these matters taken in isolation constituted gross misconduct justifying summary dismissal, notwithstanding the Claimant's long service and previous clean record.
45. Accordingly, the claim of unfair dismissal and for notice pay must fail.
46. Turning to the allegations of direct race discrimination and harassment related to race as set out in the previous CMO and in the schedule to these reasons:
47. Ms Adamova did tell the Claimant on 10/11/23 that allegations had been made that she had used racist language and had been trying to sell drugs and that she was suspended so that these could be investigated. That did not amount to accusing her of those things. The reason was not the Claimant's race but rather that the allegations had been made and the Respondent wished to investigate them.
48. It is true that between October 2022 and November 2023, the Respondent received a number of complaints or allegations about the Claimant. The Claimant was told about the complaint made on 11/10/22 shortly after it was made, but she was not told about the others until November 2023. There is nothing to suggest that this omission was unfavourable treatment. Sometimes not telling a person subject to a complaint that it has been made can be a way of avoiding unnecessary stress and worry on the part of that person.
49. Ms Adamova following the receipt of numerous serious complaints about the Claimant from various different sources suspended the Claimant on 10/11/23, so that the matters which were then regarded as the most serious could be investigated. The suspension letter which was handed to the Claimant the same day explained the reasons for the suspension. It is true that Ms Adamova did not discuss the matter with the Claimant before suspending her. There was no good reason to do so and this would not have been normal employment practice.
50. In any event the Claimant did not put to Ms Adamova that she did or did not do the things relied on as direct discrimination because of the Claimant's race. There is no evidence that the Claimant's race had anything to do with it. We are satisfied that Ms Adamova would have treated a comparator in the same circumstances but of a different race in the same way. The Claimant has failed to show a prima facie case in this regard.
51. Equally the matters complained of did not relate to race in the sense referred to in section 26 Equality Act 2010 and having regard to the factors in section 26(4) the conduct did not have the effect referred to in subsection 26(1)(b).

52. Hence the Equality Act 2010 claims are also dismissed.

Employment Judge J S Burns  
28/02/25  
For Secretary of the Tribunals

Date sent to parties  
18 March 2025

---

SCHEDULE of allegations relied on for the claims of direct race discrimination  
and harassment related to race

On 10 November 2023, the Respondent accused the Claimant of having pressurised members of staff into buying drugs.

b) On 10 November 2023, the Respondent accused the Claimant of having used racist language at work.

c) Between October 2022 and November 2023, the Respondent received a number of complaints or allegations about the Claimant. The Claimant says they did not provide her with the details of these allegations, and they should have done. The Claimant says she only became aware of these allegations when she was sent the investigation pack after she was suspended on 10 November 2023.

d) In October and November 2023, Monica Adamova received an email from the Claimant's former colleague raising a complaint about her and a communication from the mother of another of her colleagues, about selling drugs to her daughter. The Claimant alleges that Ms Adamova believed these allegations and suspended the Claimant, without first having discussed either matter with the Claimant.

.....