EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr Festus George Sawyerr	**v**	**Clipfine Limited**

Heard at: London Central (in person, in public)

On: 29 – 31 January, 3 - 4 February 2025

Before: Employment Judge P Klimov (sitting alone)

Appearances:

For the claimant: in person

For the respondent: Mr R Bhatt, counsel

JUDGMENT with oral reasons having been announced to the parties at the hearing on 4 February 2025, the written Judgment having been sent to the parties on 7 February 2025, and written reasons having been requested by the claimant on 13 February 2025, in accordance with Rule 60(4)(b) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided

REASONS

Introduction

1. On 11 December 2023, following a period of ACAS early conciliation between 3 October 2023 and 14 November 2023, the claimant presented a claim, containing complaints of race discrimination, unfair dismissal, wrongful dismissal (notice pay), arrears of pay and other payments.

2. The respondent presented a response, resisting all the complaints.

3. At the second case management preliminary hearing on 15 April 2024, before Employment Judge Spencer, the complaints were clarified, case management

directions given, and the final list of issues settled[1]. For ease of reference the full list of issues is reproduced as Annex 1 to these Reasons.

The hearing

4. The claimant represented himself. Mr Bhatt of counsel appeared for the respondent. The parties presented a 442-page bundle of documents in evidence. At the start of the hearing, the parties presented additional documents, which I admitted in evidence. The claimant also presented a 33-sec. video clip of the incident on 12 May 2023, which I admitted in evidence. The clip was played during cross-examination of the witnesses. As was agreed with the parties at the start of the hearing, I only read the documents in the bundle, which were referred to in the witness statements, or to which my attention was drawn during the hearing. Both parties presented a chronology. The respondent also prepared a cast list.

5. There were 9 witnesses: the claimant, and 8 witnesses for the respondent:
   (i) **Blake Wickham**, HR Manager,
   (ii) **John Stoddard**, HR/IR Consultant,
   (iii) **Fahad Butt**, Security Manager,
   (iv) **Waqas Suleria**, Security Supervisor (the claimant's direct line manager),
   (v) **Sheik Khan**, who heard the claimant's appeal against his dismissal,
   (vi) **Muzammel Iqbal**, security officer (the claimant's colleague),
   (vii) **Ammar Dar**, security team leader, and
   (viii) **Erhan Yildiran**, head of security.

6. All witnesses gave sworn evidence and were cross-examined[2].

7. The claimant presented a statement by Paul Arnill. However, Mr Arnill did not come to give evidence. I have read his statement. It does not contain any relevant evidence of the factual matters in dispute. Instead, it contains various broadbrush allegations about the respondent and its staff and praises the claimant. Furthermore, the respondent's documentary evidence suggests that Mr Arnill left the respondent's employment on 15 September 2022 (well before many of the events pertinent to this claim) in the circumstances when he was facing a disciplinary process for gross misconduct, which could have resulted in his dismissal. Considering these circumstances, and because Mr Arnill's evidence were not tested in cross-examination, I gave little weight to his statement.

8. On day 3 of the hearing, the claimant said that he wanted to call Mr Ilori as his witness, instead of Mr Arnill. The claimant did not provide a witness

[1] The List of Issues was in two parts: the first part recorded in the case management orders dated 24 April 2024, and the second – in the EJ Spenser's subsequent orders dated 18 July 2024 (allowing the claimant's application to add a complaint of automatic unfair dismissal for making a protected disclosure, contrary to s.103A of the Employment Rights Act 1996).

[2] The claimant said that he had no questions for Mr Yildiran, and only asked Mr Yildiran to confirm that they had had limited contact with each other during the claimant's employment with the respondent, which Mr Yildiran confirmed.

statement of Mr Ilori, in accordance with the case management directions (these should have been exchanged on 4 December 2024), or at the hearing. The claimant was unable to explain what relevant evidence Mr Ilori would be giving to the Tribunal, or why Mr Ilori was not called as his witness earlier. The claimant said that because he had Mr Arnill as his witness, who was not going to attend the hearing, he should be allowed to bring another person as his witness in Mr Arnill's place. I did not find that argument persuasive and refused the application.

9. The respondent presented a short statement by Mr Ahmed Issa, but did not call Mr Issa to give evidence under oath. The statement dealt with a very short point, namely whether Mr Issa told the claimant on 17 June 2023 that he (Mr Issa) felt unwell and could not continue with his work duties. Mr Issa's statement corroborated the evidence of Mr Dar and Mr Iqbal, whose evidence were tested in cross-examination. It was also in alignment with the contemporaneous documentary evidence in the bundle. I, therefore, accepted Mr Issa's statement as corroborating evidence.

10. Having reviewed with the parties the list of issues (which both parties confirmed was agreed), I decided to deal with the time limit point first. The claimant's claim for unlawful deduction from wages was with respect to a single alleged deduction of £360 in September 2021 (2 years out of time). The claimant's entire race discrimination/harassment claim was out of time, with the latest alleged discriminatory conduct being on 12 May 2023 (issue 2.2.8(c) on the list of issues) – 4 months out of time.

11. The claimant said that it was a "continuing act" extending until his dismissal. However, the claimant did not complain that his dismissal was an act of race discrimination or harassment related to race. There were no other incidents or events after 12 May 2023, which he alleged were acts of direct race discrimination or harassment related to race.

12. The only allegation that could be said to be "conduct extending of a period" (within the meaning of s.123(3) of the Equality Act 2010 ("**EqA**")) was the alleged failure to recognise the claimant's good work (issue 2.2.8). However, because this allegation was put as "failure to do something" (i.e. to recognise the claimant's good work), as I explained to the claimant at the hearing, under s.123(3) and (4) the time limit started to run from the moment when the putative discriminator had decided not to do that something (i.e. to recognise the claimant's work). Therefore, as the latest "good work", for which the claimant says he should have been recognised, but was not, was the failure in the incident report on 12 May 2023 to mention the claimant's involvement in assisting a member of the public, who fell on the pavement, it meant that the time limit with respect to that latest alleged discriminatory failure had started to run from the date of that report – i.e. 12 May 2023[3].

[3] Issue 2.2.8 (d) – according to the claimant's complaint (p.434 of the bundle) he wrote to Mr Arnil about patrol reports on 14 March 2022.
Issue 2.2.8 (e) – according to the claimant's complaint (p.431 of the bundle) the security morning briefings started on 14 January 2023.

13. I then adjourned the hearing to allow the parties to prepare their submissions on the time point. The claimant requested 30 minutes, which I gave him. Before adjourning the hearing, I explained to the claimant the relevant legal tests I would be applying in deciding the time issues, and that his submissions cannot be in the form of him giving fresh evidence, but he could and should refer me to the relevant evidence (including in his and the respondent's witnesses' statements, and in the hearing bundle) in support of his arguments why the time limits should be extended for these complaints.

14. Having considered the parties' submissions, I decided that the complaint of unauthorised deduction from wages had not been presented within the applicable time limit, and it was reasonably practicable to do so. I also decided that the complaints of direct race discriminations and harassment related to race had not been presented within the applicable time limit, and it was not just and equitable to extend the time limit. I, accordingly, dismissed these complaints for lack of jurisdiction to hear them. I gave the reasons orally at the hearing. Written reasons for these decisions are set out in Annex 2 to these Reasons.

15. I then proceeded to hear the remaining complaints in the claim. On day 2 of the hearing, while giving his evidence, the claimant accepted that he had no contractual rights to be reimbursed for £50 he said he had paid to Oli Opticians as a deposit for spectacles that he intended to purchase. He withdrew that part of his breach of contract claim. I dismissed it upon withdrawal.

16. Following the conclusion of the claimant's evidence on day 2 of the hearing, the respondent put the claimant on notice that it would be seeking costs against the claimant if he decided to continue with the claim. I explained to the claimant in some detail what it meant and potential costs risks he was facing. I also explained to the claimant that since his compensation claim was limited to the alleged pension loss over several weeks (which he had not quantified), one week's notice pay, and one expense item (taxi fare) in the sum of £34.90, the total value of his claim (even if he were to succeed on all of his complaints) was likely to be no more than a few hundred pounds. I urged the claimant to seriously consider the adverse costs order risk and, if possible, take legal advice. I ordered the claimant to produce a schedule of loss to quantify his compensation claim, which he did not do, despite me reminding him again on day 3.

17. The following morning (day 3 of the hearing) the claimant confirmed that he wished to continue with the claim. At the end of the third hearing day, when all but one (Mr Khan) of the respondent's witnesses had been heard, the respondent applied to strike out the claimant's automatic unfair dismissal for making a protected disclosure complaint on the ground that it had no reasonable prospect of success, because the claimant had not challenged in cross-examination the respondent's witnesses' evidence as to the reason for his dismissal. The claimant resisted the application. In particular, he argued that he would be inviting the Tribunal to draw adverse inferences from the

facts, which he said he would establish, and which facts would show the unfairness of the dismissal process, as proving that the real reason for his dismissal was him making a protected disclosure.

18. I refused the strike out application, because in deciding whether the claimant's claim had no reasonable prospect of success I had to take his claim at its highest (essentially disregarding the respondent's explanations for the the dismissal), and because of the claimant's submissions that he would be making a positive case on causation by inviting me to draw inferences from the alleged unfairness of the dismissal process. There was another respondent's witness (Mr Khan), who was involved in the claimant's dismissal process (the appeal manager), yet to be heard. In the circumstances, I decided that it would be premature to strike out the claimant's whistleblowing dismissal complaint until the conclusion of the evidence taking and hearing the parties' closing submissions.

19. I, however, explained to the claimant that this issue might come back in play in the context of the costs warning given by the respondent. I also explained to the claimant that my decision not to strike out his whistleblowing dismissal complaint did not mean that I found his complaint as having reasonable prospect of success, but simply that in the circumstances the strike out sanction was not appropriate. I explained to the claimant that the burden to establish the relevant facts (if these were in dispute), from which he would be asking me to draw adverse inferences, was on him. I observed that whilst not all the evidence had been heard, as things stood at that stage of the proceedings, the claimant's evidential case did not look strong at all.

20. The respondent issued another costs warning. I, again, explained in some detail to the claimant what it meant, and the risk associated with the claimant continuing with his claim. In particular, I explained the relevant legal test I would have to apply if the respondent were to make a costs order application. I also explained to the claimant that if he would be asking the Tribunal to take into account his ability to pay, he would need to make a full and frank disclosure of his financial situation (his income, outgoings, capital, liabilities, etc.) All that would need to be supported by documents (pay slips, bank statements, etc). I told him that he would need to come ready to deal with these matters at the next hearing day, Monday, 3 February 2025, and urged him to seriously consider all these issues over the weekend. The claimant said that he understood all that.

21. On Monday, 3 February 2024, day 4 of the hearing, the claimant said that he wanted to continue with his claim in its entirety. After Mr Khan gave his evidence and was cross-examined by the claimant, the parties made their closing submissions (in addition to written closing submissions exchanged earlier that day).

22. On day 5 of the hearing, I announced my judgment with oral reasons, dismissing all the complaints in the claim. These are written Reasons for this decision. The respondent applied for a costs order against the claimant. The claimant asked for an adjournment to prepare to respond to the application,

which I granted, and then, at the claimant's request, further extended the adjournment. Having heard the parties' arguments on the costs order application, I reserved my judgment until 2pm on that day. I announced my decision on the respondent's costs order application with oral reasons at 2pm, granting it in part. The written reasons for that decision are in Annex 3 to this Judgment.

The Facts[4]

23. The respondent is a construction support services company. The claimant commenced his employment with the respondent as a security officer on 9 August 2021[5]. The claimant place of work was the HS2 Euston construction site. The claimant's first shift was on 16 August 2021.

24. By 3 September 2021, there were three instances when the claimant arrived for work late. On one occasion, on 2 September 2021, he failed to attend work without giving a valid reason.

25. On 3 September 2021, Mr Suleria and Mr Butt spoke with the claimant about his unsatisfactory attendance.

26. On 9 September 2021, the claimant did not turn up for work. Mr Butt tried to contact the claimant. The claimant eventually informed Mr Butt that he was not feeling well and had some cold symptoms. Mr Butt told the claimant to book a Covid-19 test and send the results before coming back to work.

27. On 10 September 2021, the claimant texted Mr Butt that his Covid-19 test was negative and he would be coming back to work "in the morning". The claimant did not send a proof of his negative Covid-19 test. Mr Butt asked the claimant to send by email to him and to Liviu Plesu (the respondent's health and safety manager) a proof of the negative Covid-19 test before returning to work. The claimant did not do that.

28. On 12 September 2021, at 7am, the claimant turned up for work. Mr Suleria told the claimant that he could not come to work without a proof of the negative Covid-19 test. The claimant became aggressive and started to shout and swearing at Mr Suleria. The claimant ignored Mr Suleria's instructions and pushed his way to enter the construction site. He then started to shout and swearing at other security officers, in response to them telling him to leave the site. The claimant refused to leave the site. Contrary to the claimant's allegations, I find that he was not abused, threatened, or assaulted in any way by any of the respondent's staff. I prefer the

[4] These findings are not intended to cover every point of evidence given but are a summary of the principal findings from which I came to my conclusions on the complaints.

[5] The claimant disputed the start date, contending that it was 28 July 2023. I, however, prefer the respondent's evidence on this issue, which was supported by the documentary evidence, in particular the claimant's contract of employment. In any event, nothing of substance in this dispute turns on the start date of the claimant's employment.

respondent's witnesses' evidence on this point for the reasons I explain later in the judgment.

29. Mr Suleria complained about the claimant's behaviour to Mr Butt, who escalated the matter to Henry Young, security operations manager.

30. On 13 September 2021, the claimant raised a complaint of harassment against Mr Suleria. The complaint was investigated by Mr Young, who found the claimant's complaints without merits. Mr Young also found that the claimant's performance was falling short of the required standard and needed improvement, in particular in relation to timekeeping, communication, and duties.

31. On 7 October 2021, Mr Young informed the claimant about his findings and decision.

32. On 8 October 2021, the claimant emailed Mr Young, stating that he wished to escalate his complaint. He also requested a copy of his employment contract.

33. On 11 October 2021, Steward Milne, a former HR manager, responded to the claimant, saying that he would look into his complaint and asked the claimant to summarise it. The claimant replied, refusing to send a summary of his complaint before receiving a copy of his employment contract. On 18 September 2021, Mr Milne said that he would send the contract within a few days.

34. It appears that the matter was not progressed further until the following September.

35. The claimant received a contract of employment on 28 June 2022, which he signed at return. The contract stated that his start date was 9 August 2021.

36. On 1 September 2022, the claimant wrote to Mr Milne, saying that he had received and signed the contract, but before sending a summary of his complaints against Mr Butt he had raised a year ago, he wanted to know whether Mr Milne would be investigating them. It does not appear that Mr Milne replied to that question.

37. In October 2022, the claimant asked to be reimbursed for a £50 deposit for prescription glasses. He was informed that the respondent did not have a policy paying for prescription glasses and requested to provide a proof of authorisation from his management. The claimant's management did not authorise or otherwise made the claimant believe that he could claim costs of prescription glasses on expenses. The claimant knew that, however, pursued that complaint further, later making it part of his Tribunal claim, until abandoning it at the hearing.

38. On 22 December 2022, the claimant had a meeting with Wayne Price, Security Manager, to discuss the claimant's historic concerns, in particular related to safety boots, prescription glasses, and blank briefing sheets.

39. On 9 February 2023, the claimant sent a lengthy email to Mr Price about the meeting on 22 December 2022, where he also listed 13 additional matters of concern, which he had not raised at the meeting. In that email the claimant, for the first time, said that on 12 September 2021 he was physically assaulted and verbally abused by Mehraj Mohammed (one of the security officers) and attacked, shouted at and threatened by Mr Suleria and Mr Dar. The claimant alleged that he was discriminated against at work by Mr Butt, harassed and bullied by Mr Suleria, and made other serious allegations about several members of the respondent's staff.

40. On 10 February 2023, Mr Wickham acknowledged the claimant's email, saying that the respondent would fully investigate the claimant's "extremely serious allegations".

41. On 13 February 2023, the claimant met with Mr Suleria for his performance review, at which Mr Suleria recorded that the claimant needed to improve his attitude towards his colleagues, his teamwork and communication.

42. On 22 February 2023, the claimant met with Osman Bolukbasi, security contracts manager, who was appointed to investigate the claimant's complaints. As part of his investigation, Mr Bolukbasi met with Mr Suleria on 24 February 2023 and with the claimant again on 6 March 2023.

43. On 7 March 2023, Mr Bolukbasi presented his investigation report and recommendations. Mr Bolukbasi overall finding was that "*..despite many allegations made by [the claimant], [he didn't] believe there [was] enough evidence to prove these allegations to be true*".

44. On 17 March 2023, Mr Wickham held a grievance meeting with the claimant. The outcome of the grievance was sent to the claimant on 20 March 2023. Mr Wickham found that the claimant's allegations were not substantiated and did not uphold the grievance. The claimant was afforded the right to appeal the outcome, which he did on 24 March 2023.

45. The appeal was heard by Mr Stoddard on 3 April 2023. On 6 April 2023, Mr Stoddard sent a letter to the claimant, in which he informed the claimant that his appeal was not upheld. In the same letter, Mr Stoddard warned the claimant that raising his complaints directly to the respondent's client (as the claimant had done) had the potential to bring the respondent's name into disrepute, which, in turn, amounted to gross misconduct, and that the claimant falsely denying doing that amounted to a fundamental breach of contract by the claimant. Therefore, these actions by the claimant may result in further investigation and disciplinary proceedings.

46. On 12 May 2023, there was an incident on the public road next to the construction site. A member of the public (an elderly lady) tripped and fell at the pedestrian crossing. The claimant witnessed the incident. He went to bring a chair for the lady to sit down while waiting for medical help. Another security officer called the ambulance. A paramedic on a bicycle arrived a few minutes later and gave the first aid to the lady. Muhammad Raza completed an incident report form, recording the incident.

47. On 18 May 2023, the claimant raised a complaint to Mr Butt and Mr Wickham against Mr Suleria. The claimant alleged that Mr Suleria had failed to properly recognise the claimant's role in helping the victim of the incident on 12 May. The claimant called for Mr Suleria removal from the site and alleged that Mr Suleria was "..*putting lives in danger..", "…not working in the interest of [the respondent] and the Client but his own agender" [sic], "…discouraging the team's awareness of health, safety and general well-being on Site…", "…compromising safety at work*". Mr Wickham asked Mr Plesu to investigate the claimant's complaints and informed the claimant that the matter would be investigated.

48. On 19 May 2023, Mr Suleria emailed Mr Butt and Mr Wickham raising a complaint about the claimant making false allegations against him, including about the claimant previously making false allegations against Mr Suleria, which, following an investigation, had been shown to be unfounded.

49. On 24 May 2023, Mr Wickham wrote to the claimant, inviting him to attend a formal grievance hearing to discuss his complaints against Mr Suleria. In response to that email, on 26 May 2023, the claimant sent another email, in which he expanded his allegations against Mr Suleria, alleging that Mr Suleria and Mr Raza collaborated to prepare a falsified report of the 12 May incident. The main complaint was that the report did not correctly state the elderly lady's age (65+ instead of 77), and that it was the claimant and not the paramedic who gave her the first aid, and that was not recorded in the report.

50. On 30 May 2023, Mr Plesu submitted his investigation report. In summary, Mr Plesu found that the claimant's allegations with respect to the incident report and the handling of the incident were wrong, and that the claimant himself did not follow the correct procedure in reporting the incident.

51. On 6 June 2023, Mr Wickham held a grievance meeting with the claimant.

52. Later the same day, Mr Suleria emailed Mr Wickham and Mr Butt, complaining about the ongoing harassment and bullying by the claimant, by reason of the claimant making numerous false allegations against him. He asked for the matter to be addressed urgently, because it was taking "*a severe toll on [his] mental health and adversely affect [the respondent's] team's overall performance*".

53. On 7 June 2023, Mr Wickham sent to the claimant a letter with the outcome of the grievance, which was that his grievance was not upheld and his allegations against Mr Suleria were found to be unsubstantiated. In the same

later, Mr Wickham informed the claimant that Mr Suleria had raised a grievance against the claimant for making false allegations against him. The claimant was given the right to appeal.

54. On 9 June 2023, the claimant emailed Mr Wickham, repeating his allegations of Mr Suleria and Mr Raza falsifying the incident report. He also alleged that Mr Butt was harassing him but provided no details.

55. On 9 June 2023, Mr Suleria made another complaint to Mr Wickham and Mr Butt about the claimant's conduct during the security briefing, when the claimant had shown disrespectful behaviour towards one of his colleagues, undermining teamwork and creating a hostile and unpleasant working environment.

56. On 12 June 2023, Mr Raza complained about the claimant falsely reporting an alarm in the canteen.

57. On 12 June 2023, Mr Butt raised a complaint against the claimant for making baseless allegations against him, causing a disruptive and negative work environment by fabricating incident.

58. On 12 June 2023, the claimant appealed the grievance outcome to Erhan Yildiran.

The first alleged Protected Disclosure

59. On 12 June 2023, the claimant emailed Mr Butt as follows:

Date: Mon, 12 Jun 2023 at 07:57
Subject: Toilets/Welfare
To: Fahad Butt <fahadbutt@dipfine.com>

Dear Fahad,

We have been working in complex and unhealthy conditions for the past few months, as we noticed cleaning facilities removed when the security teams are on Site at weekends and bank holidays.

I would like to know if this is your area or if I need to speak to John Coyle or Conor Murphy, the project manager, as this has been happening for a few months; whenever there is only the security team on Site, no cleaning occurs.

We have two shifts that maintain twenty-four hours of security, and to do that on twelve hours of modifications without any clean toilets is very challenging and unhealthy.

Like everyone else, our well-being should be considered on weekends and bank holidays.

Yesterday I felt sick when I walked into one of the toilets in TSS; I had to tip-toe around urine on the floor since Friday night; it was very unpleasant.

When I was in the NTH area, the toilet floors were awash with water and urine; the toilet pans made you feel sick as they had not been cleaned for a few days.

However, whenever other contractors work at weekends or bank holidays, cleaners ensure they work in a clean, safe and healthy environment; why can't the same happen for the security team working at weekends and bank holidays?

Would you be good enough to look into this for us so we can be safe at work?

I am looking forward to hearing from you.

Thanks.

Best regards,

Festus.

60. Mr Butt forward the claimant's email a few minutes later to Conor Murphy, Operations Manager, stating: "*Please see the concerns raised by one of the security officers*".

61. The claimant also sent to Mr Butt several photographs of the toilet, showing the toilet bowl with a faecal smear and the toilet floor with some liquid on it. The claimant later, on 29 June 2023, sent these photographs to Mr Stoddard. Mr Stoddard then spoke with Mr Butt, who told Mr Stoddard that the claimant had raised this issue with him several weeks before.

62. On 17 June 2023, the claimant falsely reported that Mr Issa was unwell and could not continue patrolling. He told Mr Iqbal to call Mr Dar for Mr Dar to come and replace Mr Issa on the patrol. Mr Dar came and spoke to Mr Issa, who said that he was feeling fine and could continue his duties. Mr Iqbal made a complaint about the claimant about making this false report and about an incident a few days earlier, when the claimant accused Mr Iqbal of doing nothing and just sitting at the reception (which was Mr Iqbal's security post) and watching television. That was done during a morning briefing in the presence of other staff members, which made Mr Iqbal felt humiliated.

63. On 18 June 2023, Mr Raza emailed Mr Butt, complaining about the claimant falsely reporting on 17 June 2023 that Mr Issa was unwell and was unable to continue patrolling. Mr Raza said that following receiving that information he had immediately contacted Mr Issa, who had told him that he was fine and was able to continue, but he still had decided to instruct another security officer to replace Mr Issa on the patrol. Mr Raza also said that during the daily briefing he had told all members that there were limited cleaning facilities during the weekend and the security staff were expected to clean after themselves when using the facilities. He said that the claimant had "*exhibited an unusual reaction, seemingly disapproving of his responsibility in this matter*". Mr Raza complained that it was "*the third consecutive week in which [the claimant had] manufactured issues that do not actually exist, presumably to portray supervisors or team leaders as neglectful towards their team members. However, this portrayal [was] entirely untrue.*"

64. On 20 June 2023, Mr Butt wrote to Mr Wickham, complaining that the claimant's "*..behaviour is becoming extremely concerning. We have observed that his interactions with colleagues are unprofessional and inappropriate.*

One of his patrol team members who worked with him last week has also expressed concerns about his behaviour….".

Second alleged Protected Disclosure

65. On 20 June 2023, the claimant emailed Mr Butt again about the cleanliness of the toilet facilities. He wrote:

From: Festus George-Sawyerr < usgeorgesswyerr@gmail,con >
Date: Tue, 20 Jun 2023 at 14:40
Subject: Fwd: Toilets/ Welfare
To: Fahad Butt <fahadbutt@diofine.corT >

Dear Fahad,

This is a follow-up to my email over a week ago about the inadequate sanitation facilities on weekends, bank holidays and Christmas when there are only Security Guards on Site.

I am concerned about the unsanitary conditions and the risk of illness and disease transmission on Site; for example, one of my colleagues, Issa, fell ill towards the end of the shift on Saturday and could not continue the patrol schedule, even though there was some cleaning going on while other contractors were on Site for half a day or so.

Please give this your urgent attention, and if this is not your area of concern, please let me know.

I look forward to hearing from you.

Thank you.

Best regards,

Festus.

66. A few minutes later, Mr Butt forward the claimant's email to Conor Murphy.

67. On 23 June 2023, Mr Yildiran heard the claimant's grievance appeal, which he did not uphold. Mr Yildiran found that there was no basis whatsoever to remove Mr Suleria. The claimant was advised of the outcome on 28 June 2023.

68. On 29 June 2023, the claimant was suspended from work pending the investigation into the disciplinary matter against him. The letter listed the allegations against the claimant as follows:

• Making false allegations against your supervisors
• Refusing reasonable instructions
• Raising grievances on issues that are unfounded
• Raising grievances on issues that dated back 12 to 18 months or more
• Causing disruption on site and creating animosity among your peers and supervision
• Raising a grievance with our client then denying your actions
• Trying to undermine supervision
• Lying to colleagues
• Bullying, intimidation & threating behaviour
• Bringing false allegations and denying your actions is considered to be a fundamental breach of your contract of employment

69. The letter warned the claimant: "*You should be aware that should the allegations be proven, they could constitute Gross Misconduct under the*

Company Disciplinary Procedure and the penalty awarded may result in a summary dismissal without notice".

70. The claimant was invited to attend a disciplinary hearing on 4 July 2023. At the claimant's request, the meeting was rescheduled to 6 July 2023. Before the disciplinary hearing, the claimant was provided with the statements made by his colleagues, in which they complained about the claimant.

71. On 6 July 2023, the disciplinary hearing was held. The claimant attended with a companion, Frank Oto. The disciplining hearing panel comprised of Mr Wickham and Aiden Sterling, Senior Security Manger. During the hearing, Mr Sterling asked the claimant why he was glaring at him, which made the claimant very agitated.

72. On 11 July 2023, Mr Stoddard wrote to the claimant confirming his decision to dismiss the claimant with immediate effect for gross misconduct.

73. On 14 July 2023, the claimant appealed his dismissal.

74. On 31 July 2023, Mr Khan heard the claimant's appeal. He upheld the decision to dismiss the claimant.

Taxi expense claim

75. The respondent's policy allows security staff to claim taxi/Uber fare to and from work on Christmas day. However, the security staff must submit a proper receipt, showing the start and end points of the journey and the fare paid.

76. The claimant claimed that he used Uber to travel to work and back on 25 December 2022. He claimed that he should be compensated for the fare (£34.90), however he never submitted proper receipts despite being reminded several times to do that.

77. As part of the appeal hearing, Mr Khan decided:

"I do not believe there will be any merit in spending a great deal of company time on investigating this issue further given the total amount is less than £40. Regardless of the evidence I would suggest you provide VAT receipts to John Stoddart for payment. This should show:
- *Your name*
- *The date of the journey*
- *The journey start and finish destinations*
- *The amount*

This would be in line with section 6.9 of the Employee Handbook.
Upon satisfactory receipt I am, by way of this decision, instructing the company to pay this."

78. The claimant did not submit the receipts. Consequently, the respondent did not pay the claimed Uber fare.

The Law

Automatic unfair dismissal (s. 103A ERA)

79. S.103A ERA states:

> ***103A. Protected disclosure***.
>
> *An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure*.

80. The principal reason is the reason that operated on the employer's mind at the time of the dismissal, per Lord Denning MR in *Abernethy v Mott, Hay and Anderson* 1974 ICR 323, CA.

81. Technically the burden of proof in automatically unfair dismissal is on the employer to show the reason for dismissal. However, where the employee lacks the requisite two years' continuous service to claim ordinary unfair dismissal, he or she will acquire the burden of showing, on the balance of probabilities, that the reason for dismissal was an automatically unfair reason — *Ross v Eddie Stobart Ltd* EAT 0068/13.

Protected Disclosure

82. S43A and 43B ERA define a "protected disclosure" as

> "*..any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
> *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
> *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
> *(e) that the environment has been, is being or is likely to be damaged, or*
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*"

83. This means that a disclosure to satisfy the statutory definition of the qualifying disclosure:
    - must contain information, as opposed to bare allegations – i.e. include "*sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection*" (*Kilraine v London Borough of Wandsworth* [2018] ICR 185 at [35]),
    - such information must in the worker's reasonable belief tend to show one of the listed matters;
    - the worker at the time of making the disclosure must believe that he/she is making it in the public interest, and
    - the worker's belief about both "tending to show" and the public interest must be reasonable.

84. The need to consider all these elements when deciding whether a particular disclosure was a qualified disclosure was confirmed by the EAT in *Williams v Michelle Brown AM* UKEAT/0044/19.

85. Additionally, in *Blackbay Ventures Ltd (t/a Chemistree) v Gahir* 2014 ICR 747, the EAT gave the following guidance to the Tribunals at [98]):

"98. It may be helpful if we suggest the approach that should be taken by Employment Tribunals considering claims by employees for victimisation for having made protected disclosures.
1. Each disclosure should be identified by reference to date and content.
2. The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered or as the case may be should be identified.
3. The basis upon which the disclosure is said to be protected and qualifying should be addressed.
4. Each failure or likely failure should be separately identified.
5. Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the Employment Tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a check list of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the Employment Tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the Employment Tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest of act or deliberate failure to act relied upon and it will not be possible for the Appeal Tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an Employment Tribunal to have regard to the cumulative effect of a no of complaints providing always have been identified as protected disclosures."

86. In *Chesterton Global Ltd v Nurmohamed* [2017] IRLR 837, the Court of Appeal provided guidance on the public interest test at [27]-[31], [34] and [37]. The Court held that when considering whether a disclosure was made by a worker in the reasonable belief that it was made "in the public interest", there were no absolute rules, and it was instead for the employment tribunal to decide whether a disclosure was made in the public interest on the circumstances of a particular case. The essential point is that to be in the public interest the disclosure must serve a wider interest than the private or personal interest of the worker making the disclosure. In deciding this question, the tribunal will be assisted by examining such factors as the numbers in the affected group, the nature of the interests affected and the extent to which they were affected, the nature of the wrongdoing, and the identity of the alleged wrongdoer. The Tribunal must, however, recognise that there could be more than one view as to whether a particular disclosure was in the public interest, and must not substitute its own view of whether the disclosure was in the public interest for that of the worker.

87. Pertinent to this case, the Court of Appeal said at [29]-[31] :

"*29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.*

30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para 17 above, the new sections 49(6A) and 103(6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation - the phrase "in the

belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it."

Breach of Contract/Wrongful dismissal

88. Under S.3 of the Employment Tribunals Act 1996 (ETA), read together with the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 ('the Order'), the Tribunal has jurisdiction to hear claims for breach of contract where the claim "*arises or is outstanding on the termination of the employee's employment and relates to any of the following: (i) a claim for damages for breach of the contract of employment or other contract connected with employment; (ii) a claim for a sum due under such a contract; or (iii) a claim for the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract*".

89. A breach of a contract of employment occurs when a party fails to fulfil an obligation imposed by the terms of the contract.

90. Each contract of employment contains an implied term of mutual trust and confidence, which obliges each party not, without reasonable and proper cause, to conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between the parties (see *Malik v Bank of Credit and Commerce International SA (in compulsory liquidation)* 1997 ICR 606, HL).

91. A breach of the implied term of trust and confidence will be regarded as repudiating the contract of employment (see *Woods v WM Car Services (Peterborough) Ltd* 1981 ICR 666, EAT).

92. The test is objective, meaning that there is no need to show that the party, in acting in impugned manner, intended to destroy or seriously damage the relationship of trust and confidence. However, the hurdle should not be lowered by the Tribunal to include conduct when a party simply acts unreasonably (see *Frenkel Topping Ltd v King* EAT 0106/15).

93. A dismissal by the employer of its employee with no notice or inadequate notice where summary dismissal is not justifiable will be in breach of contract, giving rise to an action for wrongful dismissal at common law.

94. The test is objective, meaning that it is for the Tribunal to determine whether on the facts of the case the employer was within its rights to dismiss the employee for the impugned conduct summarily.

95. In *McFarlane v Relate Avon Ltd* 2010 ICR 507, EAT, Mr Justice Underhill (President (as he then was)) said: "*Although in almost any case where an employee has acted in such a way that the employer is entitled to dismiss him the employer will have lost confidence in the employee (either generally or in some specific respect), it is more helpful to focus on the specific conduct rather than to resort to general language of this kind*".

Analysis and Conclusions

Witnesses' credibility

96. I found all the respondent's witnesses were credible and helpful witnesses. All their evidence were cogent and consistent with the contemporaneous documentary evidence in the hearing bundle. The claimant did not challenge their evidence on many key issues in his claim. On the matters that he chose to challenge their evidence, their answers were clear, consistent and supported by the contemporaneous documentary evidence. In short, I reject the claimant's submission that the respondent's witnesses were "lying" to the Tribunal. As many of the claimant's other submissions, it was a bare allegation not supported by anything of any substance.

97. Regrettably, I cannot say the same about the claimant's evidence. I found his evidence far less credible and helpful. Whilst I appreciate that, as a litigant in person, the claimant can (and should be) excused for straying away from giving evidence into making arguments, in this case, the issue with the claimant's evidence was not in him raising arguments when giving his evidence, but in the inconsistent and contradictory nature of his evidence.

98. I agree with Mr Bhatt's observation at paragraph 5 of his closing submission that the way the claimant gave his evidence as to when he raised the allegation of the assault is a prime example of the unreliable and evasive nature of the claimant's evidence to this Tribunal.

99. However, this case does not turn on my assessment of what the claimant said in his evidence to this Tribunal, but rather more on what he did not say in his evidence in chief, what the respondent's witnesses said in their witness statements, which the claimant accepted without a challenge, and on the contents of the contemporaneous documentary evidence before me.

100. For completeness, I shall say that the statement prepared by Mr Arnill is of no assistance to the claimant. Leaving aside the fact that Mr Arnill did not attend the hearing to give his evidence, and therefore what he says in his statement has not been tested in cross-examination, and the fact that it appears (based on the documentary evidence submitted by the respondent) that Mr Arnill, when he left the respondent, was facing serious disciplinary charges against him, his statement does not contain any factual evidence with respect to the relevant issues in the claim. As Mr Bhatt rightly pointed out in his closings, on Mr Arnill's own evidence, he left the respondent's employment on 15 September 2022, well before the claimant's alleged protected disclosures and the claimant's dismissal, and indeed well before the complaints against the claimant by Mr Suleria, Mr Butt and others, which led to the disciplinary procedure against the claimant and his dismissal. It is, therefore, surprising to read in Mr Arnill's statement that he was tasked to investigate those complaints.

101. I will now turn to deal with the substantive issues in the claim, starting with the complaint of automatic unfair dismissal.

Automatic Unfair dismissal (s.103A ERA)

102. The short answer to this complaint is that it fails on causation. Based on the evidence I have heard and the documentary evidence in the hearing bundle I have been referred to during the hearing, I am fully satisfied that the sole reason for which the claimant was dismissed was his conduct, which the respondent genuinely and reasonably considered amounted to gross misconduct justifying the claimant's dismissal.

103. That was the evidence of Mr Stoddart, which evidence the claimant chose not to challenge in cross-examination. Mr Stoddart's evidence is amply supported by the contemporaneous documentary evidence (complaints against the claimant by various staff members, notes of the disciplinary meetings, the dismissal letter itself).

104. I reject the claimant's submission that the disciplinary process was unfair. Other than making this bare allegation, the claimant has failed to substantiate it by any evidence. In his final closings, the claimant was unable to present any cogent submissions on the alleged unfairness in the disciplinary process either, and that is despite me specifically asking him to elaborate on that point.

105. For completeness, the fact that Mr Sterling was part of the panel made the process more and not less fair. He did not know the claimant. He was not involved in any of the claimant's grievances. Thus, he came to this process as an independent arbiter without any burden of prior involvement. The fact that he asked the claimant why he was glaring at him at the start of the hearing, and that caused the claimant to become very agitated (I accept Mr Stoddart's evidence on this) is wholly insufficient as the evidence that the entire hearing was unfair, let alone to draw from that evidence any inference that the claimant's alleged protected disclosures was the real reason for his dismissal.

106. This conclusion is sufficient to dismiss the claimant's whistleblowing dismissal complaint. However, for the sake of completeness, I shall also give my conclusions on the alleged protected disclosures.

Alleged Protected Disclosures

107. The claimant claims that his emails of 12th and 20th June 2023, in which he complained that the toilets were not cleaned and raised health and safety concerns, were protected disclosures.

108. As recorded in the list of issues (p.49[6]), the claimant's case is that when sending these emails he reasonably believed that the information in those emails tended to show that the respondent was failing to comply with its

[6] Here and below all references in the format (p.xx) are to the relevant page number in the hearing bundle.

legal duties of health and safety and its duty of care to its employees, and that he also reasonably believed he was disclosing that information in the public interest because "*a lack of good sanitation and decent eating areas could affect the whole security team and their attention to public safety*".

109. I pause here to observe that despite this allegation being the centrepiece of the claimant's entire claim, in his witness statement his evidence on this issue is limited to two sentences with generic allegations of unhygienic facilities. The claimant does not give any evidence as to why he believed those emails contained information tended to show a breach of a legal obligation, what that legal obligation, he says the respondent was in breach of, was, the source of that legal obligation, on what basis he says he believed that he was making the disclosure in the public interest, what that public interest was, why he says his belief was reasonable.

110. In short, the claimant's evidential case on this central aspect of his whistleblowing dismissal claim is woefully inadequate. Nevertheless, I must still examine his case based on the evidence before me, and in particular by looking at these two emails, to see whether all these necessary elements of a qualifying disclosure could be ascertained from their contents.

111. I find that although the emails contain "information", the only information they contain is the following:

a. in the 12 June email, that a toilet pan was not clean and there was water and urine on the floor, which the claimant found very unpleasant, and that he noticed that cleaning facilities removed at weekends and bank holidays; and
b. in the second email of 20 June, that Mr Issa fell ill because of the unsanitary conditions in the toilets.

112. Neither email identified the relevant legal obligation the claimant claims the information tended to show was being breached by the respondent. On a fair reading, the first email is no more than a complaint about an untidy toilet.

113. The claimant does not say in his email that the respondent was in breach of any legal obligation by reason of this particular toilet not being cleaned properly when the claimant happened to attend it, or, generally, because, according to the claimant, the toilets are not being cleaned on weekends and bank holidays.

114. The highest he puts it in that email is that working a twelve-hour shift when one needs to use such not properly cleaned toilets is "*very challenging and unhealthy*". It is not reasonably obvious from all that what legal obligation the claimant say is engaged, which the respondent is subject to.

115. As unpleasant as one might find the sight of a toilet bowl not being properly cleaned by a previous user, and some water or urine spilled on the toilet floor, this, in my view, does not mean that these matters by themselves are sufficient to demonstrate that some legal obligation was being engaged

and breached. Accordingly, in my judgment, the information provided by the claimant in that email, which was essentially him conveying these matters, did not have the quality of tending to show that the respondent was failing to comply with a legal obligation, namely (as pleaded by the claimant) "*its legal duties of health and safety and its duty of care to its employees*".

116. In other words, whilst in theory one can always build a causative chain between almost any complaint of any kind and a legal obligation of some sort, for the information in a complaint to have the quality of tending to show a failure to comply with a legal obligation, there ought to be a much more proximate and ascertainable link between the matter complained of and the corresponding legal obligation.

117. Simply complaining about a toilet not being cleaned properly, in my judgment, does not have the necessary proximity to a legal obligation, nor a legal obligation can be readily ascertained from such a complaint.

118. For these reasons (and in the absence to any evidence from the claimant to the contrary), I find that the claimant did not believe that the information in his email of 12 June tended to show that the respondent was failing to comply with "*its legal duties of health and safety and its duty of care to its employees*". In the alternative, if the claimant did genuinely believe that the information in his 12 June email had that quality, for the same reasons, I find that his belief was unreasonable.

119. The second email had more in it, in the sense of containing information that tended to show a breach of a legal obligation. That is because there the claimant says that Mr Issa fell ill because of the unsanitary conditions in the toilets. That information, in my judgment, is sufficient as showing that the respondent's legal duty to take reasonable care and reasonable steps to ensure the safety of their employees while at work was engaged and might have been breached (by reason of Mr Issa being taken ill).

120. However, I find that the claimant did not reasonably believe that this information tended to show that the respondent was failing in its health and safety obligation towards Mr Issa or its other employees. I say that because, based on the evidence before me, I find that the allegation that Mr Issa fell ill (let alone fell ill because of the unsanitary conditions in the toilets) was false, and the claimant, at the time of making it, knew that. I say more on this factual finding later in the judgment, when dealing with the wrongful dismissal complaint.

121. Therefore, knowing that he was disclosing false information, the claimant could not have reasonably believed that such false information tended to show a breach of a legal obligation, when he knew all along that there was nothing wrong with Mr Issa and the alleged unsanitary conditions in the toilets had no relevance whatsoever, and therefore the respondent was not and could not have been in breach of any of its legal obligations to Mr Issa or any other employees.

122. I also find that the claimant did not reasonably believe that he was making the disclosure in the public interest. Firstly, considering:

(i) a rather trivial nature of the matter the claimant was complaining about (a toilet, not being properly cleaned by a previous user and some water or urine spilled on the floor),

(ii) a relatively small number of people affected by the matter the claimant was complaining about (a handful of security staff on duty over the weekend),

(iii) none of whom complained about that matter (I accept Mr Dar's evidence on that at [11] and Mr Wickham's at [36], and Mr Butt's at [22], which evidence the claimant did not challenge in cross-examination), and

(iv) the total lack of any credible evidence that the security officers' health or performance was in any way affected by them using the toilet facilities in that uncleaned state (as I have already said the claimant's allegation of Mr Issa falling ill because of the unsanitary conditions in the toilets was false and the claimant knew that),

the claimant could not have genuinely believed that the information about the not properly cleaned toilet he attended, or generally about the toilets not being properly cleaned over the weekend would serve the interests of the society at large. Any such belief, even if genuinely held by the claimant, would have been wholly unreasonable.

123. Furthermore, considering the claimant's propensity of making various allegations and complaints against his managers, all of which, after being investigated by the respondent, were found not only unsubstantiated but falsified, in my judgment, these two emails was just another example of the claimant befouling his managers. It was self-serving and had no wider societal interest.

124. I, therefore, find that the claimant did not make a protected disclosure by reason of either or both of these two emails.

125. If, however, I am wrong on this, as I have said earlier, the claimant's automatic unfair dismissal complaint must still fail because of my finding that the sole reason for his dismissal was his conduct. It had nothing to do with the claimant's complaints in those two emails.

Expenses claim

126. Moving on to deal with the breach of contract claim with respect to the taxi fare.

127. The burden is on the claimant to show that the respondent was in breach of his contract by failing to reimburse the claimant for a taxi fare of £34.90. The respondent does not dispute that the claimant was entitled to be reimbursed for a taxi fare of up to £20 for commuting to/from work on Christmas day. However, the respondent says that it was subject to the

claimant providing accurate receipts, showing the date and time of the journey, and the start and end points of the journey, which, the respondent says, the claimant never produced.

128. It is an implied term in employment contacts that the employer will reimburse its employees for reasonable expenses properly incurred in the performance of their duties for the employer. However, before reimbursing the employee, the employer is entitled to ascertain that the expense claimed was properly and reasonably incurred by the employee for the purposes of performing his duties for the employer

129. Furthermore, the respondent's employee handbook contains the express terms (p.287, 288) related to the reimbursement of expenses, which specifically state that all expenses must be backed up by VAT receipts for the relevant time.

130. This matter was explored at some length during the claimant's cross-examination. The claimant did not dispute that he was required to provide the relevant receipts but was unable to present cogent evidence to demonstrate that he in fact had done so. The evidence he referred me to in the bundle (p. 330) does not show that the claimant had in fact provided the receipts containing all the necessary details.

131. Furthermore, the evidence shows (p.348) that Mr Khan, who heard the claimant's appeal against his dismissal, wrote to the claimant on 3 August 2023, again inviting the claimant to submit a proper VAT receipt, upon which submission the respondent would make a payment to the claimant for the claimed taxi fare. The claimant did not do that.

132. I, therefore, find that the claimant has failed to prove that the respondent was in breach of contract by not paying £34.90 for the alleged taxi fare to work on Christmas day. This complaint fails and is dismissed.

Wrongful dismissal/Notice pay

133. The remaining complaint in the claim is for notice pay. Under the terms of his employment contract the claimant was entitled to receive one week notice. It is not in dispute that the claimant was dismissed without notice or pay in lieu.

134. However, the respondent's employee handbook (p.286) gives the respondent the right to dismiss an employee without notice when the employee commits an act of gross misconduct. A non-exhaustive list of offences is set out in the handbook, which includes "using threatening and offensive language towards anyone", "behaviour likely to bring the company into disrepute", and "refusal to carry out reasonable duties or instructions".

135. Furthermore, each employment contract contains an implied duty of trust and confidence, that is a duty without reasonable and proper cause, not to act in a manner calculated or likely to destroy or seriously damage the

relationship of confidence or trust between employer and employee. The duty is mutual, meaning that it equally falls on both parties. A breach of that duty is a fundamental breach of contract, entitling the other party to terminate the contract forthwith.

136. The respondent's case is that the claimant was dismissed summarily for gross misconduct, namely the claimant making false allegations against his colleagues, refusing to follow reasonable management instructions, raising vexatious grievances, lying to colleagues, bullying, intimidation and threatening behaviour.

137. To resolve this dispute, I must decide whether the claimant committed the alleged acts which amounted to gross misconduct, entitling the respondent to dismiss him without notice, (or in the alternative, whether by reason of his conduct the claimant was in breach of the implied duty of trust and confidence), and if so, whether the respondent dismissed him for that conduct.

138. I have already found that the sole reason for the claimant's dismissal was his conduct (which the respondent considered gross misconduct), therefore the question of causation has already been answered.

139. However, whether the respondent was entitled to dismiss the claimant with no notice or pay in lieu, depends on whether, as a matter of law, I agree or disagree with the respondent's assessment that the claimant's conduct was indeed an act of gross misconduct and/or amounted to a breach of the implied duty of trust and confidence.

140. Turning to this key issue in the complaint. The respondent chiefly relies on the claimant's conduct in repeatedly raising false allegations against his supervisors and his unacceptable behaviour towards his colleagues as demonstrating that he was guilty of gross misconduct and in breach of the implied duty of trust and confidence.

141. The details of the alleged false allegations and unacceptable behaviour were provided in the complaint statements made by Mr Suleria on 6 June (p.185), on 9 June (p.201), Mr Butt on 12 June (p.204), Mr Raza on 12 June (p.205), Mr Iqbal on 17 June (p.206), Mr Butt again on 20 June (p.210), Mr Suleria on 3 July (p. 219), summarising all previous allegations the claimant had made against him.

142. The respondent submits that "*it is beyond doubt that C's actions are such that they undermined (R would go as far as to say destroyed) the relationship of trust and confidence and R should no longer be required to retain C in its employment … and ..is a clear example of an employee who has committed an act of gross misconduct*."

143. The claimant denies that he made false allegations or otherwise acted inappropriately. He says the respondent's investigations into his allegations

was inadequate, in particular by reason of not viewing the relevant CCTV footage.

144. On the balance of probabilities, I find that the claimant did make the false allegations he was accused of and acted in the way the respondent's witnesses complained about.

145. In particular, I find that the claimant's allegation of being physically assaulted by his colleagues was false and the claimant knew that. I reject the claimant's submission that he had made that allegation shortly after the incident. As the contemporaneous documents show (his WhatsApp messages of 12 /09 – p.19 of his witness statement) the only allegation he made at that time was that he had been sworn at twice.

146. The allegation the claimant made some 17 months after the incident was that he was hit by a metal bar on his leg. At this hearing, he went further and said that as a result of being hit by a metal bar, his ankle got swollen, and he had difficulty moving around because of that. This is a very serious allegation of a crime – a physical assault causing bodily injury. Yet, the claimant said nothing of the kind to anyone at that time or shortly after that.

147. I reject the claimant's evidence that the reason for not raising it at the time was because he was new to the job. Firstly, that directly contradicted his evidence that he had raised the matter at that time to Henry Young (which, as I have just said, I reject). Secondly, being new to the job hardly explains why a person (especially a security officer, whose duties include reporting an assault on him to the police) would not report this very serious matter to his supervisor or the police. Thirdly, the claimant being new to the job did not stop him from complaining about being sworn at. Finally, the respondent conducted a thorough investigation into the alleged incident and reasonably came to the conclusion that it did not happen as was alleged by the claimant. Based on the evidence before Mr Wickham (which I have examined myself), it is hard to see how he could have reasonably come to any other conclusion.

148. For completeness, I reject the claimant's submission that the investigation process was unfair because the respondent did not review the relevant CCTV footage. Firstly, there is no evidence before me that the CCTV footage was available to the respondent (by that time the alleged incident had occurred some 17 months earlier). Secondly, looking at the notes of the investigation meeting with Mr Bolukbasi on 6 March 2023, the grievance meeting with Mr Wickman on 17 March 2023, and the appeal meeting with Mr Stoddart on 3 April 2023, at none of these meeting did the claimant ask the respondent to view any CCTV footage. In fact, the claimant said to Mr Bolukbasi that he himself had made an audio recording of the incident, which he never produced.

149. In sum, I find that the claimant's allegation of physical assault against him was false, and he knew that he was making a false allegation of criminal conduct against his supervisor and colleagues. The allegation was of a very serious nature. Knowingly making a false allegation of this gravity against

your colleagues, in my judgment, was an act of gross misconduct and conduct that was calculated to or having the effect of destroying or seriously damaging the relationship of trust and confidence. The claimant did not have a reasonable and proper cause to act in that way. This means that this conduct alone was sufficient to put the claimant in breach of the implied duty of trust and confidence.

150. Furthermore, this was not an isolated incident of the claimant making a false allegation against his supervisors and colleagues. He made further false allegations, including of race discrimination, against Mr Suleria with respect such matters as not being given safety boots, a dirty stab vest, not reimbursing him for prescription glasses, not providing him with an ID card, telling other staff not to work with the claimant. I accept Mr Butt's, Mr Suleria's, Mr Wickham's, and Mr Stoddard's evidence on all these issues. In particular, that the claimant was given safety boots and a new stab vest at the same time as other security staff, and the delay in providing him with an ID card was due to the claimant failing to send his photo, despite being reminded several times to do that.

151. He also made false allegations of race discrimination against Mr Butt, including accusing Mr Butt of following the claimant around and taking pictures of him, when all that Mr Butt was doing was taking a picture of a box placed near the security fence, which he considered to be a safety hazard. I accept Mr Butt's and Mr Suleria's evidence on all these issues.

152. His false allegation against Mr Butt of falsifying the record of the incident on 12 May 2023 shows that the claimant was not doing that out of some genuine confusion or misunderstanding, but as a calculated and deliberate attempt to cause trouble for his supervisors through such false allegations against them. The claimant did not hide his intention of having Mr Suleria and Mr Butt removed from their positions, either.

153. I reject the claimant's evidence that he wanted to have them removed because of his genuine health and safety concerns for others. The evidence concerning the alleged false reporting of the 12 May incident, in my view, unequivocally shows that it was a self-serving attempt to undermine his managers and advance his personal interests. The unsustainable nature of the claimant's position has been fully exposed in cross-examination. I agree with Mr Bhatt's submissions at paragraph 31 – 33 of his closings that this incident is yet another good example of the claimant fabricating complaints.

154. The claimant's conduct of raising a false alert about Mr Issa's health and then using it as the evidence of security staff falling ill due to the toilets not being cleaned over the weekends is yet another example of the claimant's fabricating complaints, as is the false reporting of the fire alarm in the canteen, as described by Mr Raza (p.205).

155. In short, I find that the claimant's conduct was not simply of him being recalcitrant. It went much further. It was aimed at creating serious troubles for his supervisors (Mr Suleria and Mr Butt) and for the colleagues he disliked,

such as Mr Iqbal, which the claimant hoped would result in them being removed from their positions, thus threatening their continued employment and livelihood. It is of little surprise that Mr Suleria felt that he was being harassed and bullied by the claimant and his mental health suffered as a result. The claimant's conduct had the effect of seeding discontent amongst the staff and creating unpleasant and hostile workplace environment.

156. I, therefore, have no hesitation in finding that the claimant was guilty of gross misconduct and his conduct was in breach of the implied duty of trust and confidence.

157. In those circumstances, I do not see how any reasonable employer could have maintained any trust or confidence in the claimant. To put it simply, by his conduct the claimant has unequivocally shown that he was not working for the respondent, but working against the respondent, by seeking at every opportunity to undermine his managers and colleagues through generating against them numerous vexatious complaints founded on a false narrative.

158. It follows, that I find that the respondent was within its rights to dismiss the claimant for gross misconduct, and as accepting the claimant's repudiatory breach of contract (the breach of the implied duty of trust and confidence). This means that the claimant's claim for notice pay fails and is dismissed.

Employment Judge Klimov

18 March 2025

Sent to the parties on:
26 March 2025
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For the Tribunals Office

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant (s) and respondent(s) in a case.

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/

Annex 1 – List of Issues

Time limits

1. Were the discrimination and harassment complaints set out below made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1. Was the claim made to the Tribunal within three months (plus the early conciliation extension) of the act to which the complaint relates?

1.2 If not, was there conduct extending over a period?

1.3 If so, was the claim made to the Tribunal within three months (plus the early conciliation extension) of the end of that period?

1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.4.1 Why were the complaints not made to the Tribunal in time?

1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

Direct race discrimination (Equality Act 2010 section 13)

2.1 The claimant is black African.

2.2 Did the respondent do the following things:

2.2.1 Not provide the claimant with full PPE when he started work. (The claimant says he was told in interview that he would receive safety boots, a high vis jacket and trousers, a safety helmet and protective glasses. When he arrived for work he was not given safety boots or protective glasses. He only received the protective glasses a few days later and did not receive the safety boots until April 2022. The boots he received then were not fit for purpose. He repeatedly asked his supervisor, Mr W Suleria, for the boots. Other colleagues who were Pakistani got full safety gear.)

2.2.2 On 11 September 2021, Mr Suleria, Mr M Mohammed and Mr A Dar attacked the claimant. (The claimant says they came to his position at work and said the claimant should leave as he was not booked in, and that Mr Mohammed would replace him. In a public place – Eversholt Street – they told him he should get off the site. They all then went to the security compound where the clamant says that Mr Mohammed struck him a number of times on the thigh area with a metal bar usually used as a barrier. Mr Dar

jumped on a concrete pilar and exhorted the claimant not to take action against Mr Mohammed or to fight back. The claimant texted the manager, Mr Butt, to tell him what was happening, but Mr Butt did not take any action.)

2.2.3 That shift and the following two shifts, Mr Suleria gave instructions to other staff not to work with the claimant. The claimant says that as a result, when he came to work, he was ignored by other staff on duty and, when he tried to sign out, the night supervisor, Paulo, prevented him from doing so despite the claimant being booked for work.

2.2.4 From 9th August 2021 to June 2022 Mr Butt and Mr Suleria refused to provide the Claimant with a company ID (whereas all other employees were given IDs on their first day.)

2.2.5 Mr Suleria refused to give the Claimant a stab vest.
(The claimant says Mr Suleria told the claimant that he did not have one for him and it needed to be ordered, but when a white employee, Ephraim, joined he was given the stab vest which was in a drawer and had bee meant for the claimant.)

2.2.6 On 17 February 2023 Mr Butt followed the Claimant around the site and took photos of his locker.

2.2.7 On 6 April 2023 Mr Stoddard falsely accused the Claimant of taking his grievance to a client (Mr Coleman).

2.2.8 The Claimant's good efforts at work were not recognised by Mr Suleria or Mr Butt: specifically

a. They did not recognise that the Claimant had done a good job by closing Coburg Street on 17 October 2022 for safety reasons because there were syringes in the road.
b. They did not recognise his good work in closing the Hampstead Road footpath for safety reasons (this was sometime after 17 October 2022
c. They hid an incident report which the Claimant had done on 12 May 2023 and falsified a report by incorrectly stating what had happened with a member of the public – Ms Smith.
d. They failed to recognise that he had recommended to Mr Arnil, and instigated, the introduction of patrol reports
e. They failed to brief security guards before their shifts started (at least until the Claimant complained).

2.3 Was that less favourable treatment? The Claimant relies on a number of actual comparators, namely Mr Mohammed Mr Dar and Mr Hamza as well as a hypothetical comparator who is white, or of Pakistani origin.

2.4 If so, was it because of race?

Race related harassment (Equality Act 2010 section 26)

3 Did any of the above conduct amount to unwanted conduct related to race?

4. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Breach of contract

6. Did the claimant commit acts which amount to gross misconduct?

7. If so, did the Respondent dismiss the claimant on grounds of gross misconduct such that it was not required to give the claimant a period of notice of termination?

8. Did the Respondent fail to reimburse the claimant for the following expenses:

8.1 £50 paid by him to Oli Opticians for spectacles that the claimant intended to purchase?

8.2 £34.90 incurred by the claimant for a cab to travel to work [o]n Christmas day?

Unlawful deductions from wages

9. Did the Respondent make an unlawful deduction of £360.00 from the Claimant's wages in September 2021. (The Claimant says that this was in respect of wages when the Claimant attended work on 11 September 2021 without first providing a negative Covid-19 test).

Time limits

10. Were the claims for unpaid expenses and unlawful deduction from wages presented in time?

2. The list of issues to be determined at the final hearing is also to include

the following:

a. Did the Claimant make any protected disclosures as defined in section 43A of the Employment Rights Act 1996

(i) in an email dated 12th June 2023 to Mr Suleira or Mr Butt in which he complained that the toilets were dirty and raised health and safety concerns.

(ii) In an email of 20th June 2023 the Claimant followed up on his complaint about inadequate sanitation.

b. If so, was the principal reason for the Claimant's dismissal that he made those disclosures

3. It is the Claimant's case that the above disclosures were protected because they were (i) made to his employer, (ii) disclosed information which in his reasonable belief tended to show that the Respondent was failing to comply with its duties of health and safety and its duty of care to its employees and (iii) were made in the public interest because a lack of good sanitation and decent eating areas could affect the whole security team, and their attention to public safety.

Annex 2 – Reasons for dismissing the complaints of unauthorised deduction from wages, direct race discrimination, and harassment related to race[7].

1. This Judgment deals with the time limit issue, namely whether the claimant's complaints of unauthorised deduction from wages, direct race discrimination and harassment related to race are time-barred, and the Tribunal does not have jurisdiction to hear them.

2. As the claimant is a litigant in person. I start by outlining the relevant legal principles, which I briefly explained to the claimant yesterday, upon which Mr Bhatt helpfully expanded in his submissions.

The Law

1. Section 23 of the Employment Rights Act 1996 states:

> ***23.— Complaints to employment tribunals.***
>
> *(1) A worker may present a complaint to an employment tribunal -*
> *(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),*
>
> *2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*
> *(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*
>
> *[…]*
>
> *(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.*
>
> *[…]"*

2. Section 123(1) of the Equality Act 2010 states:

> *"**123 Time limits***
>
> *(1) Proceedings on a complaint within section 120 may not be brought after the end of -*
> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*
> *(b) such other period as the employment tribunal thinks just and equitable."*

Application of time limit provisions in the ERA

3. The following key principles can be derived from the authorities:

   a. s.111(2)(b) ERA "*should be given a liberal interpretation in favour of the employee*" — *Marks & Spencer Plc v Williams-Ryan* [2005] EWCA Civ 470, [2005] I.C.R. 1293, [2005] 4 WLUK 376.

[7]Delivered orally on 30 January at 10:15

b. what is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. Lord Justice Shaw said in *Wall's Meat Co Ltd v Khan* 1979 ICR 52, CA: "*The test is empirical and involves no legal concept. Practical common sense is the keynote….*".

c. the onus of proving that presentation in time was not reasonably practicable rests on the claimant. "*That imposes a duty upon him to show precisely why it was that he did not present his complaint*" — *Porter v Bandridge Ltd* 1978 ICR 943, CA.

d. if an employee misses the time limit because he or she is ignorant about the existence of a time limit or mistaken about when it expires in his or her case, the question is whether that ignorance or mistake is reasonable. When assessing whether ignorance or mistake is reasonable, it is necessary to take into account any enquiries which the employee or his or her adviser should have made - *Lowri Beck Services Ltd v Brophy* 2019 EWCA Civ 2490, CA

e. Even if a claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The tribunal must then go on to decide whether the claim was presented "*within such further period as the tribunal considers reasonable*".

Meaning of 'reasonably practicable'

4. Lady Smith in *Asda Stores Ltd v Kauser* EAT 0165/07 explained it in the following words: "*the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done*".

5. In ***Wall's Meat Co Ltd v Khan*** Brandon LJ said:

> "*… The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical … or the impediment may be mental, namely, the state of mind of the complainant of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such enquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him*."

6. The focus is accordingly on the claimant's state of mind viewed objectively.

7. A claimant's illness as the reason for not submitting a claim in time will usually only constitute a valid reason for extending the time limit if it is supported by medical evidence, particularly if the claimant was aware of the time limit. Medical evidence must not only support the claimant's illness but also demonstrate that the illness prevented the claimant from submitting the claim in time (see *Midland Bank Plc v Samuels* (1992) EAT 672/92). However, the

Tribunal may also consider the claimant's own evidence as to her health condition (see *Norbert Dentressangle Logistics Ltd v Hutton* EATS 0011/13).

8. A mere stress is unlikely to be sufficient. In ***Asda Stores v Kauser*** Lady Smith stated at paragraph 24: "*….It cannot be sufficient for a Claimant to elide the statutory time limit that he or she points to having been "stressed" or even "very stressed". There would need to be more*".

Just and equitable extension

9. In *Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA*, the Court of Appeal held that when employment tribunals consider exercising the discretion under S.123(1)(b) EqA: "*there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule*." The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law simply requires that an extension of time should be just and equitable — *Pathan v South London Islamic Centre EAT 0312/13*.

10. The relevant principles and authorities were summarised in *Thompson v Ark Schools* [2019] I.C.R. 292, EAT, at [13] to [21], and in particular that:
    a. Time limits are exercised strictly;
    b. The onus is on the claimant to persuade the tribunal to extend time;
    c. The decision to extend time is case- and fact-sensitive;
    d. The tribunal's discretion is wide;
    e. Prejudice to the respondent is always relevant;
    f. The factors under s33(3) Limitation Act 1980 (such as the length of and reasons for the delay and the extent to which the Claimant acted promptly once he realised he may have a claim) may be helpful but are not a straitjacket for the tribunal.

11. In *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640 and the EAT's decision in *Bahous v Pizza Express Restaurants Limited* UKEAT/0029/11/DA it was held that the absence of an explanation for the delay does not prevent the Tribunal from exercising its discretion and extending the time limit, and the Tribunal is not obliged to infer that there was no acceptable reason for the delay (see para 25 in ***Abertawe***). However, the reason or the absence of a good reason for the delay is a relevant factor (see para 19 in ***Abertawe***).

12. More recently, in *Jones v. The Secretary of State for Health and Social Care*, 2024 EAT 2 HHJ Tayler having reviewed the relevant authorities, gave further guidance to the employment tribunals, in particular at [30] he said:

> *"It remains a common practice for those who assert that the primary time limit should not be extended to rely on the comments of Auld LJ at paragraph 25 of* ***Bexley Community Centre (t/a Leisure Link) v Robertson*** *[2003] EWCA Civ 576, [2003] IRLR 434, that time limits in the*

> *Employment Tribunal are "exercised strictly" in employment cases and that a decision to extend time is the "exception rather than the rule" as if they were principles of law. Where these comments are referred to out of context, this practice should cease. Paragraph 25 must be seen in the context of paragraphs 23 and 24:*

13. He then set out the well-known passages from these two paragraphs in full, concluding that read in the context it means that the Employment Tribunal has a wide discretion to extend time on just and equitable grounds and that appellate courts should be slow to interfere, and no more.

14. Later, at [35] he said:

> *"35. Without meaning any disrespect to Auld LJ, there might be much to be said for Employment Tribunals focusing rather less on the comments in **Robertson** that time limits in the Employment Tribunal are "exercised strictly" and an extension of time is the "exception rather than the rule"; and rather more on some of the other Court of Appeal authorities, such as the concise summary by Leggatt LJ in **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] EWCA Civ 640, [2018] ICR 1194 at paragraph 17-19:*

15. He then quoted those paragraphs in full, emphasising at [36] what Leggatt LJ said at [25] of Abertawe:

> *"As discussed above, the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what it "thinks just and equitable" is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard".*

Analysis and Conclusion

16. With these legal principles in mind, I shall turn to analyse the case before me.

17. The main difficulty I have is that the claimant produced no evidence to explain why he was late with presenting these complaints, or with respect to other factors he said in his submissions I should take into account when deciding the time limit issue.

18. His submissions on the point were akin to him giving fresh evidence, which as I explained to him, was impermissible at that stage. However, recognising that the claimant is a litigant in person, I duly considered the claimant's submissions without taking this technical point against him.

19. Broadly, the claimant puts forward five reasons for not submitting his claim earlier:

    i. that he suffered a serious personal injury when he was allegedly assaulted in September 2021;
    ii. that he had Covid issues he had to deal with;
    iii. that he had stressful time;
    iv. that he trusted the company to deal with his complaints and followed the internal grievance process; and

v. that the company withheld his employment contract.

20. Dealing with each in turn. The claimant did not refer me to any medical or other evidence in the bundle or in his witness statement, showing that he in fact sustained an injury as a result of the alleged assault, or any evidence to show how the alleged injury (he says he sustained on 11 September 2021) prevented him for 2 years (until 11 December 2023) from submitting his claim to the Tribunal.

21. On the contrary, the contemporaneous document (WhatsApp message from the claimant he attached to his witness statement p.19) simply states that he had been sworn at, but does not say that he was physically assaulted, let alone that he suffered a serious injury. On reviewing the evidence before me, I was unable to find any piece of evidence corroborating the claimant's claim that he sustained a personal injury in September 2021. Furthermore, the evidence show that the claimant was able to continue to come to work, despite the alleged injury. I, therefore, do not accept that the claimant suffered an injury that prevented him from submitting his claim in time.

22. The same applies with respect to the alleged Covid-19 issues. The only evidence the claimant gives in his witness statement is that the respondent "mishandled" his Covid-19 test results. His complaint is about not being allowed to the work site despite presenting a negative Covid-19 result (which he attached to his witness statement – p.20). This, however, does not explain how the alleged "Covid-19 issues" prevented the claimant from submitting his claim earlier. In fact, this evidence suggests that the claimant did not have the virus and hence no Covid-19 issues to deal with.

23. With respect to the stressful time point, again, there is nothing by way of documentary or oral evidence before me to show that the claimant suffered from stress, and suffered to such an extent, that he was unable to submit his claim earlier. The evidence before me points in the opposite direction. Despite the alleged stressful time the claimant was able to submit various complaints, grievances and appeals. He continued to attend work. Therefore, I do not accept that "stressful time", the claimant says he had, prevented him from submitting his claim in time.

24. The difficulty with the claimant's submission that he trusted the company to deal with his issues and he followed the process is that, by itself, this is not sufficient to show that it was not reasonably practicable to present the claim in time (see *Apelogun-Gabriels v Lambeth London Borough Council and anor* 2002 ICR 713, CA). The claimant did not submit (nor did he present any evidence) to show that he was operated under some erroneous belief that he needed to exhaust the internal grievance process before taking his complaints to the Tribunal, or that the respondent somehow caused him to believe that all his complaints would be satisfied internally, and that he did not need seek redress through employment tribunals.

25. The claimant did not say that he was ignorant of the possibility of taking his claim to the tribunal or the applicable time limits. He did not say that he was

unaware of the alleged deduction from his wages in September 2021 until much later. On the contrary, in his submissions, the claimant said that the company was aware he was "*taking legal action*", and for that reason, he alleged, the respondent withheld his employment contract (which he said was another reason for not submitting the claim in time). This shows that, at the very least, the claimant was aware of the possibility to take his complaints to the employment tribunal; and possibly that he was contemplating doing that.

26. As the document in the bundle at p. 7 shows, the claimant received his contract on 29 June 2022, and yet he submitted no claim until December 2023, some 18 months later. I do not see how him not having his employment contract before 29 June 2022 stopped the claimant from presenting his claim in time.

27. In short, I find that the claimant had no good reason for not submitting his wages claim in time, and it was reasonably practicable to do so. It follows that his complaint of unauthorised deduction from wages is time-barred and stands to be dismissed for want of jurisdiction.

28. Turning to deal with the two Equality Act 2010 complaints in the claim (direct race discrimination and harassment related to race). The inquiry here is wider, and in deciding whether I should exercise my discretion and extend time I must have regard to all the circumstances of the case, not just whether the claimant had a good reason for not submitting his claim in time.

29. However, as noted above, the absence of a good reason for the delay is a relevant factor.

30. I accept that refusing to extend the time limit would mean that the claimant's discrimination complaints would stand to be dismissed without being considered on their merits. I equally accept that there is a strong public policy interest in discrimination complaints being tried on their merits. These considerations, however, cannot trump all other factors, otherwise the whole 3-month primary limitation period would become meaningless.

31. Conversely, extending the time limit means that the respondent would be losing its statutory time limit defence, and would have to answer historic complaints, which ordinarily should be time-barred.

32. I equally recognise that some allegations within the claimant's discrimination complaints are closer to the time limit "cutoff date" than his complaint of unauthorised deduction from wages. However, the bulk of the allegations go back to August 2021, thus over 2 years out of time.

33. The way the allegations are put shows that the claimant was aware of the relevant facts when the alleged incidents and events took place. Therefore, he was in possession of all the necessary information to bring a claim to the tribunal at that time. As I have mentioned earlier, the claimant did not argue (or present any evidence) that he was not aware of his substantive rights

under the Equality Act, or the right to seek redress in employment tribunals, or the applicable time limits. The evidence shows the opposite.

34. Furthermore, looking at the claimant's discrimination/harassment complaints, and without wishing to conduct a mini-trial, I find that not only these allegations are stale, but, considering the evidence the claimant gives in his witness statement in support of them, it appears to me that the claimant would be in some difficulty not only in establishing a *prima facie* case on causation (i.e. that the treatment he complains about was because of or related to his race), but also in establishing the underlying facts, upon which he relies in support of his discrimination allegations. And that is so even without considering any evidence the respondent's witnesses give in their statements about those matters.

35. For example, the claimant's witness statement does not contain any evidence about the alleged assault on 11 September 2021, the alleged instructions to other staff members not to work with the claimant, the alleged failure to provide a company ID card and a stab vest, the allegation of Mr Butt following him around, the allegation of him being falsely accused of taking grievance to a client, the allegation of the respondent not recognising his good efforts, and so on.

36. However, even with leaving this "merits" consideration out of the equation, I agree with Mr Bhatt's submission that allowing these historic complaints to proceed will create a significant prejudice to the respondent. Most, if not of all of them, are about what was said, or done, or not done by various individuals three and a half years ago. This means that in order to establish the underlying facts the Tribunal would have to rely on the witnesses' recollection of those historic incidents and events.

37. As Mr Bhatt said, memories fade. Although, there are documentary evidence in the bundle (such as grievance meeting notes), which might help to rejig the witnesses' memories, in essence this will still be the case of what the claimant says happened, and what the respondent's witnesses could remember about those incidents, none of which incidents appear to me to be of a particular remarkable character for them to be expected to be stuck in their memories for years to come.

38. The fact that the respondent's witnesses have all prepared their witness statements and are here and ready to give their evidence about those events and incidents does not mean that the forensic prejudice (by reason of it being already visited upon the respondent) should be ignored as a factor in the balancing exercise.

39. Furthermore, as I observed earlier, the claimant's witness statement does not give any detailed account of the alleged incidents and events and, indeed, does not mention some of them at all. This, in my judgment, creates a further forensic prejudice to the respondent. The respondent does not know what the claimant will say about these historic incidents and events. The claimant does know what the respondent's witnesses will say about them. Mr Bhatt would

have to put the respondent's evidential case to the claimant in cross-examination. However, he would have to do that somewhat blindfolded, that is without knowing what the claimant's evidential case is. In that sense, the parties are not on an equal footing.

40. Stepping back and looking at all these factors and circumstances of the case, I find that it will not be just and equitable to extend time.

41. It follows that the claimant's race discrimination and harassment complaints under the Equality Act 2010 were not presented within the applicable time limits under s123(a) or (b) of the Act.

42. These complaints are therefore dismissed for want of jurisdiction.

43. It follows that the only complaints in the claim, which this Tribunal has jurisdiction to consider are: (i) automatically unfair dismissal, contrary to s.103A ERA, and (ii) breach of contract with respect to notice pay and expenses.

44. That concludes my judgment on the time limit issue.

Annex 3 – Reasons for granting (in part) the respondent's costs order application[8].

1. This is my judgment on the respondent's costs application.

2. In the interest of time, I will proceed straight to my conclusions without delving into the relevant legal principles. These were helpfully summarised by Mr Bhatt in his note[9], which I accept as representing the correct statement of law, which I applied to my decision.

3. The respondent seeks a costs order in the total amount of £16,425, representing legal costs for the attendance of the hearing on 31 January and 3 February by its counsel and solicitor, and on 4 February - by counsel only.

4. The legal basis of the application is Rule 74(2)(a) and (b) of the Employment Tribunal Procedure Rules 2024. The application relates to the claimant's entire claim.

5. In summary, the respondent says that the claimant's claim was based on lies, and therefore had no reasonable prospect of success, and it was unreasonable for the claimant to bring it and to pursue it all the way to the judgment.

6. The respondent further submits that by the end of day 3 (Thursday, 30 January), when the claimant finished giving his evidence, the false foundation of the claimant's claim was fully exposed. The claimant was given the first costs warning. Instead of withdrawing his claim there and then, the claimant decided to press ahead. This was unreasonable conduct by the claimant.

7. Furthermore, despite pressing ahead with his claim, the claimant did not even put his case to the respondent's witnesses on the key issues in his claim. The respondent also highlights the manner, in which the claimant gave his evidence to the Tribunal, and the Tribunal's findings concerning his credibility as a witness, as reinforcing the point that the claimant's case was based on false allegations, which he continued to repeat in these proceedings, thus lying to the Tribunal.

8. The claimant opposes the application by largely trying to reargue his substantive claim, which, as I explained to him several times during his submissions, was not permissible at this stage. I must decide the respondent's application based on my findings and conclusions, as I have announced them in the liability judgment this morning.

9. The only relevant submissions the claimant made in his opposing speech was that he is a litigant in person, and that he did not have all the evidence made available to him to present his claim.

Discrimination/Harassment complaints

[8] Delivered orally on 4 February 2025 at 14:00

[9] Reproduced below for ease of reference

10. As I have not dealt with the claimant's complaints of race discrimination and harassment related to race, and the complaint of an authorised deduction from wages on their merits, I make no decision as to whether those complaints had reasonable prospect of success, and whether it was reasonable for the claimant to bring them or to pursue them further.

11. However, I note that many allegations in the discrimination complaints were based on the alleged facts, which I found to be false. For example, the allegation that Mr Suleria, Mr M Mohammed and Mr A Dar attacked the claimant on 11 September 2021, that the claimant was not given a company ID card, safety boots, and a stab vest, that he was followed by Mr Butt, that the respondent falsified the 12 May incident report.

12. Furthermore, as I have said in my judgment dismissing those complaints as being time-barred, based on the evidence the claimant gives about those allegations in his witness statement, it was hard to see how he would have been able to meet the initial burden of proof, both as a matter of causation and to establish the relevant underlying facts.

Expenses claims

13. With respect to the remaining complaints in the claim, I find that the claimant's complaints of breach of contract concerning the two expense claims had no reasonable prospect of success, and it was unreasonable for the claimant to bring or pursue these complaints.

14. With respect to the prescription glasses, the claimant knew all along that he was not entitled to be reimbursed for that expense. Yet, he decided to take this complaint to the Tribunal and run with it all the way, just to abandon it when giving his evidence, as he was simply unable to explain on what basis he was saying that he was entitled to be reimbursed for that expense. He said that it was "now clear" to him that he had no contractual entitlement to be reimbursed for that expense. He, however, did not explain why it wasn't clear to him before. In short, I find that the claimant knew all along that this claim had no proper legal basis and was doomed to fail. It was unreasonable and indeed vexatious for the claimant to bring and pursue it.

15. Similarly, his claim to be reimbursed of the £34.90 taxi fare, had no reasonable prospect of success for the very simple reason that the claimant never provided a proper taxi receipt, against which the respondent could have reimbursed him.

16. The claimant did not dispute that he had to provide such a receipt, or that he knew that he had to do that, in order to be reimbursed. He was repeatedly asked by the respondent to provide a valid receipt and promised to be reimbursed upon the receipt being provided. The evidence the claimant had from the start clearly shows that he never provided the requisite receipt. What he provided was insufficient and the claimant clearly knew that. Hence, he

had no proper basis, upon which he could claim that the respondent was in breach of contract by not reimbursing him for the claimed taxi fare. In those circumstances, this claim had no reasonable prospect of success, and it was unreasonable for the claimant to bring and pursue it.

17. These, however, are relatively minor complaints in the overall claim.

"Whistleblowing dismissal complaint"

18. His main complaint was of automatic unfair dismissal for whistleblowing. For the reasons I gave this morning this complaint has failed, both on causation, and because the two emails the claimant was relying upon were not protected disclosures.

19. I accept that this area of law is quite technical, and the claimant, being a litigant in person, would not necessarily understand all the intricacies of the relevant legal tests.

20. Nevertheless, it is hard to see why, if the claimant genuinely believed that he was dismissed because of him raising a complaint about the state of cleanliness of the toilets, his evidential case on this central matter was limited to the general allegation of unsanitary conditions in the toilets, and lacked any evidence as to why he believed those emails were protected disclosures, and crucially - on what factual basis he alleges that him sending those emails was what caused his dismissal.

21. Even with giving full allowance to the fact that the claimant is a litigant in person, by the end of his evidence on Thursday, 30 January, it should have been obvious to the claimant that he had failed to establish a *prima facie* case that his complaint about the toilets was the principal reason for his dismissal.

22. At the end of the hearing on Thursday, I took time to explain to the claimant in some detail the relevant legal tests and the evidential basis, upon which I would be making my decision on his "whistleblowing" dismissal complaint. I emphasised that the burden of proof was on him. He said he understood all that.

23. The respondent gave the first costs warning to the claimant. I explained to the claimant what it meant and potential consequences for him. I encouraged the claimant to think about all that overnight and, if possible, to take legal advice.

24. On Friday, 31 January, the claimant said that he still wanted to pursue his claim in its entirety. However, he did not even put to the relevant respondent's witnesses (in particular, to Mr Stoddart, who took the decision to dismiss the claimant) that him complaining about the "unsanitary conditions" in the toilets was what made Mr Stoddart to decide to dismiss him.

25. At the end of the hearing on Friday, the respondent applied to strike out the claimant's whistleblowing dismissal complaint. I refused the application, because in deciding whether the claimant's claim had no reasonable prospect

of success I had to take his claim at its highest (essentially disregarding the respondent's explanations for the dismissal), and because of the claimant's submissions that he would be making a positive case on causation by inviting me to draw inferences from the alleged unfairness of the dismissal process.

26. I explained to the claimant that my refusal to strike out his "whistleblowing" dismissal complaint did not mean that I considered it as having reasonable prospect of success. I repeated my preliminary observations about the apparent weakness of his evidential case.

27. The respondent issued the second costs warning. I again explained to the claimant the risks he was running by continuing to pursue this complaint further. I also explored with the claimant that it appeared that any potential compensation he might receive, if he were to succeed on all his complaints, would be in the region of a few hundred pounds, versus the risk of a potential adverse costs order against him, which could run into many thousands of pounds. I encouraged the claimant to seriously think about all that over the weekend, and, if possible, to take legal advice or speak to someone he trusts. He said that he understood all that.

28. On Monday morning, 3 February, the claimant said that he had considered all that and still wanted to press ahead with his entire claim. The case proceeded further with the claimant cross-examining the respondent's final witness - Mr Khan. However, the claimant was unable to make any ground on the alleged unfairness of the disciplinary process, nor did it appear that he was making any real attempt to do so.

29. Upon conclusion of Mr Khan's evidence, the claimant said that he was ready to proceed with his final submissions straightaway. However, in his final submissions he did not come anywhere near of presenting a coherent case to explain on what basis I could possibly conclude that his complaint about the "unsanitary conditions" in the toilets was the real reason for his dismissal.

30. In summary, I find that even giving as much latitude to the claimant, as a litigant in person, as I can, by the end of his evidence on Thursday, 30 January, and most certainly by the end of the respondent's evidence on Friday, 31 January, the claimant's "whistleblowing dismissal" claim was doomed to fail, and that would have been obvious to the claimant. Yet, he decided to pursue it further. This, in my judgment, was unreasonable.

Wrongful dismissal/Notice pay

31. The remaining complaint in the claim is of wrongful dismissal. I find that it was not unreasonable for the claimant to put the respondent to proof that his conduct amounted to gross misconduct, or a breach of the duty of trust and confidence. Therefore, in my judgment, the claimant bringing this complaint was not unreasonable. Equally, until the claimant knew what the respondent's evidential case was, it cannot be said that this complaint had no reasonable prospect of success.

32. However, during the hearing, the false premise of the claimant's allegations against his managers and fellow employees, for which he was dismissed, was fully exposed. The way the claimant gave his evidence further highlighted the falsehood of his allegations. I have dealt with that in my liability judgement this morning in some detail.

33. Therefore, by the end of Thursday, 30 January, by reason of all that coming into the open, the claimant should have realised that his complaint of wrongful dismissal was, if not dead and buried, was hanging by a thread. He was given a costs warning.

34. He decided to carry on regardless. As I have said earlier, it was not unreasonable for the claimant to put the respondent to proof on its wrongful dismissal defence. However, the claimant did not seriously challenge the respondent's witnesses on any of the key issues in the respondent's case.

35. Therefore, by the end of the evidence on Friday, 31 January, it should have been reasonably apparent to the claimant that any remaining hope of making good his claim of wrongful dismissal had evaporated. Yet, he pursued it further. I find it was unreasonable.

Conclusion

36. It follows, I find that both gateways: no reasonable prospect of success (Rule 74(2)(b), and unreasonable conduct (Rule 74(2)(a) are engaged on the facts.

Discretion

37. The next question is whether I should exercise my discretion and make a costs award against the claimant. In doing so, I must consider the extent, nature and gravity of the claimant's unreasonable conduct by looking at the whole picture of what happened in the case.

38. I find that this case is one where it would be just and proper for me to exercise my discretion and make a costs award. My findings above speak for themselves. The claimant's unreasonable conduct in pursuing his complaints that had no reasonable prospect of success (or that have lost any such prospect as the hearing evolved), and doing so despite being given:
    a. two costs warnings,
    b. several detailed explanations as to the applicable legal principles,
    c. explanation about the risks he was running in continuing with the claim, and
    d. at least two opportunities to gracefully bail out,

    is a prime example of the circumstances when the litigant's unreasonable and unjustifiable obstinance must face costs consequences.

39. The claimant's unreasonable conduct meant further unnecessary and avoidable costs for the respondent. His unreasonable conduct wasted valuable Tribunal time and resources.

40. Furthermore, given my findings that many allegations the claimant was advancing in this claim were based on his false narrative, and the fact that the respondent had to call eight witnesses to put the record straight, further reinforces me in my conclusion that it will be just and proper to make a costs award against the claimant.

Quantum

41. The next question is how much I should award.

42. As I explained to the claimant, if you wished me to take into account his ability pay, he should have presented evidence of his financial means. He ignored that direction. Therefore, I do not have any detailed evidence as to the claimant's means. However, the claimant is employed. He says his salary is over £34,000. The respondent submits that the claimant writes books, which he publishes and sells. The claimant did not dispute that. He, however, did not give any details of royalty payments or other income generated from his book writing or other activities.

43. Looking at the respondent's costs schedule, I find that it would not be just to award costs of both counsel's and the principal solicitor's attendance of the hearing. It was only Mr Bhatt, who appeared for the respondent, and it was essentially the respondent's choice to have both counsel and the principal solicitors present at the hearing.

44. I also find that even if the claimant had never brought his expenses claims and had abandoned his whistleblowing dismissal claim (as he should have done) on Thursday 30 January, the respondent's counsel would have still had to attend on Friday, 31 January, to put the respondent's wrongful dismissal evidential case to the claimant.

45. Stepping back and looking at all these factors in the round, I find that it will be just and fair for me to order the claimant to pay to the respondent **£5,000** with respect to the respondent's legal costs, being counsel refresher fees for the last two days of the hearing, 3 and 4 February 2025.

46. That concludes my judgment on the respondent's costs order application.

IN THE CENTRAL LONDON EMPLOYMENT TRIBUNAL **Case No: 2217111/2023**

B E T W E E N:

MR FESTUS GEORGE-SAWYERR

Claimant

-and-

CLIPFINE LIMITED

Respondent

RESPONDENT'S NOTE ON THE LAW (COSTS)

Introduction

1. This note on the law is provided in advance of a costs application R intends to make.
2. ETs are required to take a two-stage approach when considering whether or not to make a costs order:
    a. Consider whether the paying party's conduct falls within one of the grounds set out in Rule 74(2) ET Rules 2024;
    b. If so, ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against that party.
3. Rule 74 ET Rules 2024, states as follows:

> (1) A Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party….
> (2) The Tribunal must consider making a costs order or a preparation time order where it considers that—
> (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,

> (b) any claim, response or reply had no reasonable prospect of success, or
> (c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.

4. Rule 75 ET Rules 2024 concerns the procedure applicable to costs applications:

> (1) A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.
>
> (2) The Tribunal must not make a costs order or a preparation time order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order).

5. The ET may have regard to a paying party's ability to pay in deciding whether to make a costs order and, if so, the amount of any such order: Rule 82 ET Rules 2024.

6. If the ET does decide to take a party's ability to pay into account, it must do so on the basis of sufficient evidence: **Oni v NHS Leicester City UKEAT/0144/12**.

7. The Presidential Guidance – General Case Management states that if "*judgment on the claims is given at a hearing, it will usually be sensible to make any application for costs or PTOs then, in order to avoid delay and the additional cost of getting everyone back for another hearing*" (Guidance Note 7, ¶8).

8. "Unreasonable" has its ordinary English meaning and is not to be interpreted as if it means something similar to vexatious: **Dyer v Secretary of State for Employment EAT 183/83**.

9. When exercising its discretion, the ET should look at the whole picture of what happened in the case and ask itself whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had. The ET is not required to determine whether or not there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed: **Yerrakalva v Barnsley Metropolitan Borough Council [2012] ICR 420**, CA (at ¶41).

10. As costs are compensatory, any expenses order ought to be limited to expenses that were "*reasonably and necessarily incurred*": **Yerrakalva** (at ¶54).

11. In **Radia v Jefferies International Ltd EAT 0007/18**, the EAT provided guidance as to how ETs should approach an application for costs in which the receiving party claims that the paying party brought and/or continued claims which had no reasonable prospects of success. The EAT held that the assessment consists of a 3 stage process (¶64):

    a. Did the complaints in fact have no reasonable prospects of success?

    b. If so, did the complainant in fact know or appreciate that?

    c. If not, ought they, reasonably, to have known or appreciated that?

12. The EAT went on to state in **Radia** that the question as to whether the claim had no reasonable prospects of success is judged on the basis of information that was known or reasonably available at the start and considering how at that point the prospects of success would have looked. However, "*as long as [the ET] maintains its focus on how things would have looked at the time when the claim began, it may, and should, take account of any information it has gained, and evidence it has seen, by virtue of having heard the case, that may properly cast light back on that question*…" (¶67).

13. When determining whether proceedings have been conducted unreasonably on grounds of the paying party's evidence, the EAT provided the following guidance in **Topic v Hollyland Pitta Bakery and others EAT 0523/11** at ¶27:

> What emerges, in our judgment, from the authorities to which we were taken is this: first that the fact that a claimant has based his or her claim on lies does not lead automatically to a finding either that the proceedings have been conducted unreasonably or that they have been commenced and conducted on the basis that they were misconceived; secondly, the fact that there have been no lies, equally, does not mean that there cannot be a finding that the proceedings have been brought or conducted unreasonably or as misconceived; and thirdly, it is a question in each case for the Tribunal, in making their findings within rule 40(3) of Schedule 1 to the 2004 Rules and in exercising their discretion, if they have found as a matter of fact that there has been unreasonableness in conducting the proceedings or that the bringing or conducting of the proceedings has been misconceived, to look at the whole picture, bearing in mind that costs are rarely awarded in the Employment Tribunal and that the ordinary common law principles under the CPR do not apply.

14. **Peat v Birmingham City Council UKEAT/0503/11** is an example of a case where the EAT upheld the ET's decision to award costs against ten claimants because: (1) their claims were misconceived and (2) they acted unreasonably in failing to engage with the respondent's costs warning letter which would have led them to an earlier assessment of the merits of their claims.

RAJIV BHATT

Gatehouse Chambers

1 Lady Hale Gate

Gray's Inn

rajiv.bhatt@gatehouselaw.co.uk

3 February 2025