



EMPLOYMENT TRIBUNALS

Heard at: Croydon (by video) **On:** 14 to 17 April 2025

Claimant: Miss Ruvarashe Jesse

Respondent: Utopia Leisure Limited

Before: Employment Judge E Fowell

Ms L Lindsay

Ms C Edwards

Representation:

Claimant In person

Respondent Adeola Fadipe of counsel, instructed by Lonsdale & Mayall Solicitors

JUDGMENT ON LIABILITY

The unanimous decision of the Tribunal is as follows:

1. The claim of victimisation on grounds of race is upheld.
2. The claims of harassment and discrimination on grounds of race are dismissed.
3. The claim of unfair dismissal is struck out on the basis that the claimant had less than two years' service.
4. A remedy hearing will be listed in due course for half a day, on receipt of dates to avoid.

REASONS

Introduction

1. These written reasons are provided at the request of the claimant. As usual, some editing has taken place to remove repetitions and unnecessary detail, and these written reasons now stand as the final version.
2. This claim was brought in the name of Miss Dhliwayo. She has since changed her surname to Jesse so that is the name we have used throughout.
3. By way of a brief introduction, she worked as a spa receptionist at the Rowhill Grange Hotel and Spa but was dismissed during her probation period. By that point, she had raised a grievance against her line manager, Ms Routley, alleging race discrimination, and she also brings claims of harassment on grounds of race and victimisation.
4. The issues to be decided are set out in the case management orders made at the preliminary hearing on 20 September 2024 and we will work through them in due course. One small change, made without objection from the respondent, (who was neutral on the point) was the addition of a further alleged protected act for the purpose of the victimisation claim. The act in question was an email Miss Jesse sent on 8 October 2023 in which she said that she had been advised to her keep her claim of race discrimination secret.
5. It was noted and agreed at the preliminary hearing that the claim of unfair dismissal would be struck out because Miss Jesse lacked the necessary two years' service. No order to that effect has been issued and so it is now included in this judgment.
6. All of the events in question took place in 2023 so we will not include the year as a matter of course.

Procedure and evidence

7. We heard evidence from Miss Jesse, and on behalf of the company from:
 - (a) Ms Nicola Routley, the Front of House Manager at the spa, who was Miss Jesse's line manager and the subject of most of the complaints;
 - (b) Ms Melissa Coleman, her assistant;
 - (c) Mr James Perry, the former General Manager at the hotel and Miss Jesse's second line manager, who took the decision to dismiss her.
 - (d) Mr Chris Roberts, Operations Manager at the hotel, who also reported to Mr Perry;

- (e) Ms Kirby Green, who managed the spa administrators; and
 - (f) Ms Sophie Rawlinson, a manager on the hotel side of the business.
8. The two sets of witness statements are in stark contrast. Miss Jesse's runs to 44 pages and includes a good deal of argument about why she believes the acts in question were discriminatory. The respondent's six witness statements on the other hand are all quite brief. In total they are shorter than Miss Jesse's and left a good deal to be explored. By way of example, Mr Perry, who took the decision to dismiss Miss Jesse, sets his account out over 15 paragraphs on four pages. Most of that, paragraphs 1 to 7, describes events before he became involved. Paragraphs 8 to 15 appear under the heading "allegations made by the claimant", in which he refutes the complaints put forward but does not give a clear account of what he personally did or when, let alone why.
 9. Unusually therefore, the events in question had to be pieced together in oral evidence. We could, of course, have taken the view that unless witnesses gave evidence about what happened in their witness statement we should simply leave it at that, but Miss Jesse put few questions to the witnesses and we felt that it would be a breach of our core duty not to explore the various complaints raised with the witnesses for the company. The company's witness statements did at least deny the allegations in question. My colleagues and I therefore explored those points in open questions with the company's witnesses.
 10. We also had a bundle of 273 pages. Having considered all that evidence and the submissions on each side, we make the following findings of fact. Not every point is dealt with, only those necessary to deal with the list of issues and to support our conclusions. Where other members of staff are mentioned, those who are not witnesses or closely involved in the case, we will generally just give their first names, unless there is some particular reason to identify them by name.

Findings of Fact

Background

11. We will set out our findings of fact. In each case that involves making the best assessment we can, on the basis of the evidence presented, as to which version of events is, on balance, more likely to be correct. We cannot hope to be *sure* of what happened unless it was clearly documented at the time. In most cases, one person's recollection or perception has to be set against that of the other and viewed against such background facts as we can establish.
12. According to the response form the company operates the Alexander group of hotels, with about 450 staff in total, 120 of whom worked at Rowhill Grange. It is a four-star hotel and spa and staff seem to be divided between the two branches

of the operation. There are no HR staff at Rowhill Grange. Nor, it seems, are there any elsewhere in the company, or at least none was involved in this case.

13. Miss Jesse worked on the reception desk at the spa, booking in guests for treatments, taking payment and showing guests around the facilities. Her colleagues there were Abigail, Hannah, Niamh and Ruth. She was the only black person in the group. The spa also employed various therapists and a team of spa assistants who, among other things, did the bulk of the cleaning work. They reported to Ms Kirby Green.
14. Miss Jesse joined the company on 14 August having had an interview with Ms Coleman and Ms Routley, her managers. She was 25 at the time and had previous experience as a receptionist, working in a family business, but this new role marked a change for her, a move to working in a more corporate environment with well-defined systems and procedures.
15. Her employment began with a two-week training period. Her contract of employment was not included in the bundle and nor was the staff handbook but it was not disputed that there was a three-month probation period with an expectation of a meeting with her managers to review progress at about the half-way point.

Initial meeting on 24 August

16. She also had a meeting with Mr James Perry, the General Manager, on 24 August, to see how she had been getting on in her first week or so. This was a standard part of the induction process and the fact that he personally took the time to check on people in this way is a sign of a supportive approach on his part.
17. Their discussion was recorded on a form [63]. It covered practical points like whether she had received her uniform and knew the fire assembly point, and checked that she had been taking her breaks. It also recorded that Miss Jesse felt that it had gone well; everyone had been helpful, she had got to know the calendar for bookings, learned how to meet and greet guests and how to handle calls. She also had had a group induction session that she said that had gone really well. Overall she gave the week a nine out of ten.
18. In the document accompanying her claim form, Miss Jesse said that this meeting led to problems with her manager, Ms Routley, who wanted to know whether Miss Jesse had said anything negative about her to Mr Perry. It is a very clear allegation, starting:

“However, from this day onwards, Nicola, my manager started instructing me to do the opposite of what the rest of my colleagues who are white, were instructed to do and were doing.”

19. It is difficult to understand why that would be so. Even in that document Miss Jesse stated that she told Mr Perry that everything was fine with her manager and that she told Ms Roberts the same thing.
20. This suggestion that things deteriorated from then on was not repeated in her witness statement. It may be that on reflection she did not see this meeting as a turning point. There is also a certain amount of evidence that the two of them had a good working relationship to begin with. Miss Routley attached to her witness statement a number of text messages or WhatsApp messages between the two of them with smiley face emoji and a "Well done ... You're getting there, you done well today.." That came from Ms Routley on 2 September and there are several "well dones" about that time. So, we take the view that any deterioration in their relationship came later.

Meeting on 5 September

21. The first indication of any disharmony was on 5 September, about three weeks after Miss Jesse started. Ms Routley and Ms Coleman had a meeting with her in the office. It was an informal meeting, no records were kept, but we can see something of what was discussed from the email Miss Jesse sent to Mr Perry afterwards [82].
22. It is a very surprising communication. Without looking any further than the email itself it is clear that Ms Routley had pointed out to her some things she needed to correct, and instead of noting what was said to her she took it on herself to email Ms Routley's manager to complain.
23. The email itself is addressed to the three of them – Mr Perry, Ms Routley and Ms Coleman. It starts by addressing her immediate managers but it soon becomes clear that the real audience was Mr Perry. An early paragraph starts:

"I would like to point out also to Mel and Nic [Ms Coleman and Ms Routley] that people have a little different methods in working to achieve the same results ...
24. There were two specific issues she was unhappy about. One related to the relaxation room and one related to being interrupted or talked over when talking to guests.
25. The first of those requires some further explanation. One of jobs for the receptionists was to show the guests around so that they knew what facilities there were at the spa, which included a relaxation room. It would defeat the purpose of a relaxation room if members of staff came in with other guests on a guided tour, so they were supposed to just point out the location to guests.

26. There seems to have been a certain amount of confusion on this point among the staff at the spa. Ms Coleman confirmed to us that the receptionists should not go in, or take guests in, but Ms Green (who supervised the spa assistants) said that it was okay to take a look into the relaxation room and if it was empty to invite the new guests in. She added that therapists had to go in and out of the relaxation room from time to time. Ms Routley agreed with Ms Coleman's approach but when it was put to her that Ms Green had said it was okay to look inside, she agreed with that too.
27. We conclude that the correct procedure was not to go in and check if it was empty, but that the people sometimes did so, particularly if the new guest asked to have a look.
28. In her email on 5 September Miss Jesse explained that she had been taking guests in because they had asked her to. There hardly seems any need to need to justify herself in writing in this way but, given her later complaints, she seems to have viewed this instruction to her as unfair and inconsistent behaviour by Ms Routley. In her Particulars of Claim she states, as an example of the conflicting instructions she was given:

For example; she called me to her office and told me not to open the relaxation lounge room door, when showing guests around. This was the opposite of what the rest of my white colleagues were doing and what they had taught me. In fact, it was not the expected thing to do that she was demanding me only to do.

29. That must be the same occasion when they met in Ms Routley's office. The nub of the complaint therefore was that she had seen her colleagues taking guests in, or opening the door, and she was being told to do something else.
30. The other point was about being interrupted:

“I have had instances where Nic and Mel quickly come to take over the job I would be doing, while I am in the middle of talking with customers.”
31. It has to be remembered that Miss Jesse had only spent three weeks at the spa by this time. The first two weeks were training. She was getting the hang of the computer system and the way the spa operated. It seems to us understandable that on occasion her managers, if nearby, might step in to help her with a task or query.
32. But she did make clear that she felt very strongly about these points. The email states:

“It is my feeling that some of us are acting on gossip and hearsay or rather character assassination most probably spread to the extent of acting in line with the hearsay.”

33. To describe these small instructions as character assassination seems to us an altogether extreme reaction, but she repeated it:

“Gossip and character assassination can destroy someone's confidence if not pointed out. That is why I am bringing it out now.”

34. She ended:

“I am looking forward to learning more but as I say I humbly request someone who leaves a little room for me to be me, like what the rest of the team have been.”

35. The reference to leaving a little room for me to be me is noteworthy in the circumstances. She had been spoken to on two, apparently minor, points. There had been no wholesale criticism of her work. The implication here is that any such correction was inappropriate.
36. So, we have this early picture of an employee who is very sensitive to criticism, who does not really seem to accept that her managers ought to correct any mistakes, who is very ready to complain about any such correction and who sees it as her being treated differently from the rest of the team – an implicit reference to race discrimination.
37. Ms Routley might well have taken offence at this email, which is essentially a complaint to the General Manager about her, but in fact her response was considerate and measured. She emailed Miss Jesse the next day [84] to say that she would schedule a meeting with her during her shift on 7th. At that meeting she told Miss Jesse that she and Ms Coleman were there to support her, and that when they pointed out things she was doing incorrectly it was done for her benefit and to help her get more confident in the role. There is no record of that discussion, which is described by Ms Routley in her witness statement, but Miss Jesse makes no complaint about it and there is no suggestion of any further difficulties for the next few weeks.

Mental health issues

38. It is not clear whether Miss Jesse's mental health began to deteriorate as a result of this incident or whether there were other causes but we are satisfied that it did begin to suffer. Ms Green gave evidence that at first Miss Jesse came across as extremely friendly, confident and always had a smile on her face but that after about a month at the hotel her mood changed, that on some days she was bubbly, talkative and engaged while on others she could barely get a hello.

39. Miss Jesse's case is that after her dismissal she was diagnosed with PTSD and severe anxiety and depression. In fact, she put to Ms Green that she was suffering with those conditions at the time, as a way of accounting for this behaviour. That was a surprise to us, because her witness statement makes no mention of such difficulties during her employment and the few pages of GP records she has disclosed indicate that she went to see her GP with stress in December that year. (We do not appear to have records from during her employment.) Nevertheless, that passage of evidence shows that Miss Jesse also believed that her mental health was suffering at the time. That unfortunate fact also helps to explain the difficulties she was having at work, such as making mistakes on the booking system. There was a relatively straightforward computer system for entering bookings and moving them about, so mistakes in those steps would be unusual, certainly more than once.
40. One of the complaints is that she was told by Ms Routley that she lacked happiness and was not bubbly and smiley. The complaint puts this in the period from 25 August to 5 September, i.e. between the initial meeting with Mr Perry and the first meeting with Ms Routley. We think it more likely that it came after the meeting on 5 September, in keeping with Ms Green's evidence that for the first month she had been very cheerful. Again, there is no mention of it in her email of 5 September. We take the view that comments of that sort may well have been made if Ms Routley saw her being silent or withdrawn, but not as a criticism.

5 to 17 September

41. Ms Routley was on holiday from 17 September for a couple of weeks. (In fact, she calculated that she only ever spent 35 hours at work at the same time as Miss Jesse.) One of the complaints made, which must relate to the couple of weeks before or after the meeting on 5 September, is that Ms Routley told her to copy how the other receptionists spoke to customers and even how they walked. In her particulars of claim she put it like this:

"In one of these daily meetings in her office she told me to copy how the others spoke with customers word for word. She told me I should walk like them. She demanded I go and watch how my colleague who is white, called Abigail, was walking to the restaurant to drop off lunch sheets. To me this was becoming too weird and personal as I had done this in my own way of walking to the best of my ability. On the other hand, she let others be themselves."

42. Ms Routley was baffled when asked about this point in her evidence. If true it would indicate an extraordinary degree of micro-management. There is no mention of any such treatment in the email of 5 September, and it seems rather more serious than the points which are raised there. Later, she raised a formal grievance about her experiences at the spa and this is not mentioned there either,

although the points about the relaxation room and being interrupted do persist throughout. We think it is unlikely that Miss Jesse has invented this but we can only assume that she has misconstrued or misinterpreted something about learning how her more experienced colleagues did things.

4 October, Cleaning duties

43. Ms Routley returned to work on 3 October. By then Miss Jesse was due for the half-way probationary review meeting so she arranged it for the next day. As it turned out, that was not the ideal day.
44. From time to time the reception staff had to help out with cleaning duties in the spa. There are spa assistants, for whom this is a core part of their duties, but when they were off for any reason one of the receptionists would be designated as the spa assistant for the day. The managers also helped out with this, including Ms Green. Usually this would happen at least once a month but 4 October was Miss Jesse's first time. Ms Coleman was also down to cover in the spa that day.
45. We have the staff rotas which show that Miss Jesse was rostered from 8 am to 4 pm. (She had been given a succession of these early shifts as part of helping her to settle in.) The duties involved some cleaning of the showers and a good deal of floor mopping to keep them dry, also making sure there were enough clean towels and taking away the old ones. None of that was particularly onerous but it may well have been an unwelcome change from working on the reception desk.
46. In her witness statement at paragraph 45 Miss Jesse describes this in the following terms:

"On 04/10/23, my manager assigned me a different role for the entire day, asking me to clean the showers and handle laundry duties. These tasks were not part of my job description and were outside the scope of my usual responsibilities. I had no experience with cleaning chemicals, and they ended up affecting my eyes. I wasn't trained in handling these chemicals, and my unfamiliarity with them made the situation even worse.

To make matters worse, my manager followed me aggressively throughout the day, which created a very uncomfortable and hostile work environment. The combination of physical distress from the chemicals and the emotional stress from her behaviour led to me breaking down and crying."

47. There are various elements to this complaint. Putting to one side the idea that it was not part of her duties, it involved accusations of lack of training, use of chemicals and being followed aggressively by her manager throughout the day.
48. We can piece together some of the events from her text messages that she shared with Hannah at the end of the day, from page 181 onwards. In them she told

Hannah that she had come in in a black top and leggings and been made by Ms Routley to wear a uniform top, which was smelly and which she eventually took off, that Ms Routley came 'a few times' to see if she was folding towels properly, told her she was not mopping enough and to leave her phone upstairs. Later on, Ms Coleman gave her a list of jobs to do, including cleaning inside the whole showers, even though she had no idea what products to use.

49. She was also in contact with her mother during this time. We can see at page 198 a WhatsApp message saying that she (presumably Ms Routley) wanted to have a meeting with her at 1pm "for no reason" and that Miss Jesse was debating whether to record the conversation. Her mother tried to calm her down but her responses became quite extreme, stating that she did not want to be alive, that she was basically a cleaner today, and that she felt like dying.
50. It is difficult to understand this depth of emotion. Even if this was her first time on cleaning duties, even if she had not previously understood that from time to time cleaning was part of her role, she must by this point have realised that the others had to do the same thing on a regular basis and so she was not in any way being singled out. Equally, it seems perfectly reasonable that Ms Routley would expect her to wear her uniform and to be spending her time cleaning rather than on her phone.
51. Overall therefore, we are not satisfied that there was any unfair or excessive supervision of Miss Jesse that day, or that she was expected to do any more in the way of cleaning than any of her colleagues when they were rostered as spa assistants.

Probation Review Meeting

52. Against this emotional background, the probation review meeting went ahead at 1 pm. The results are recorded on a form at page 66. It has to be said that the results were not positive. Miss Jesse was graded in various categories on a score of 1 to 5, 1 being unacceptable and 5 being outstanding. In the first category, quality and quantity of work, she got a 1. The comments stated:

"Ruva is struggling to pick important parts of the role up. Ruva relies a lot on other members of the team to help with tasks."

53. Under social skills and enthusiasm she got a 2:

"Ruva lacks enthusiasm and often comes across as she is not enjoying her job"

54. Attendance, punctuality, appearance and hygiene were given a 5:

"Ruva attends all shifts promptly and appearance is a good standard"

55. The form is quite repetitive but there is a final box marked Overall Performance Summary which listed her principal strengths as being friendly with work colleagues and her areas for improvement as diary management – a reference to moving people's treatments to another time without ensuring that they knew about the change; understanding what needs to be charged to the guest; enthusiasm; and payment for individual treatments. That was about ensuring that she took payment upfront and not after the treatment.
56. It is not clear how much of that was fed back to her at the meeting. The usual process would involve a letter to her confirming the outcome. That would not be provided immediately but it would usually follow within 48 hours.

Further complaint

57. Miss Jesse was not happy with that feedback and emailed Mr Perry that afternoon seeking a meeting to discuss "my experiences with my manager." [91]. This time he deflected a personal meeting and arranged for her to see his colleague or deputy, Mr Roberts. Mr Roberts then went to see Ms Routley to understand what this was all about and found out about the various performance concerns. He was therefore armed with these points when they met at 12.45 on 5 October. Perhaps anticipating that this might be a difficult meeting he invited a colleague, Miss Rawlinson, to sit in with him as an observer.
58. Miss Jesse explained to him that she was unhappy with the performance review where she had been given feedback about the diary system, about not being sufficiently welcoming with guests, and also mentioned to him the issue about the relaxation room. Mr Roberts gave a clear account of that meeting in his witness statement. He explained, for example, that he suggested that Ms Coleman could go through with her any areas of training that she was lacking in and she replied, "She digs out my work too." Miss Jesse added that Ms Routley should understand that different people have different personalities and different ways of interacting with customers. He responded that she wasn't trying to make things robotic but it was her job to ensure that tasks were being carried out to a certain standard. This concern about having more latitude is apparent from Miss Jesse's email of 5 September in which she was asking for more space to be me, so again, this strikes us as an accurate description of the conversation. They also discussed the relaxation room and he assured her that if other individuals did not take that instruction on board they would also be spoken to.
59. At this point Miss Jesse stated that she believed she was being discriminated against due to her race, or at least that that was a possibility. His evidence was that he advised her to take a few days to digest her performance review before coming to that conclusion. From what she had told him there was no reason to conclude that she was being singled out in any way. He also told her that if she

wanted to take it further and raise a grievance about race discrimination it would be investigated thoroughly.

60. Her account of that passage is different. She says that his reaction was to tell her that there were no racists at the company and that she should think about Ms Routley's mental health before making allegations of that sort. She also interpreted the recommendation that she take some time to think about it as an instruction to keep it a secret. In her later grievance she says that she was told specifically not to tell anyone or any manager that this was ever discussed for 7 days.
61. We also had the evidence from Ms Rawlinson about what was discussed at this meeting and she supported Mr Roberts' account. That certainly adds some weight to his/their version of events. We also have to take into account the unlikelihood that he would try to persuade her to keep any allegations of race discrimination a secret. There seems nothing to be gained from that, particularly if it was only for a limited period. There is also the fact that by this time, as is clear from her earlier emails and the WhatsApp messages the previous day, Miss Jesse did not have a very objective view of matters, particularly things concerning Ms Routley, and was very quick to take things amiss. In those circumstances we have to prefer Mr Roberts' account of that conversation as more likely to be accurate.
62. There was an unusual finale to that meeting. Miss Jesse had not yet received any written outcome from the probationary review meeting. He then went to see him Ms Coleman to chase that up. She then sent out an email on 5 October to Miss Jesse listing the areas for improvement [135]. The list itself is quite a full one. It included diary management, booking treatments, getting payments in advance, generally knowing the systems and procedures and being enthusiastic at work. It ended as follows:

"You have a scheduled meeting with Chris Roberts on Thursday 12th October 2023 at 11 am to discuss your work performance during this period and to discuss if the above improvements have been made. If these targets are met to a satisfactory level, then this may result in the termination of your employment."
63. That struck us as a surprising turn of events. We were not able to question Ms Coleman about it because it was not clear to us when she gave her evidence that she was the author. We assumed that it had come from Ms Rawlinson, the only other person in the meeting apart from Mr Roberts. We then heard that there was a second page to this document which was not included in the bundle, which showed that it had come from Ms Coleman. The result was that we were not able to explore how it came about that Miss Jesse was given this seven day ultimatum. The most likely explanation, we conclude, is that Mr Roberts told her that he was going to have a meeting with Miss Jesse in a week's time and to put that in the

letter. Miss Coleman then interpreted that as a reference to a dismissal meeting. That was not Mr Roberts' intention in arranging that follow up meeting and no such possibility had been discussed. In short, wires had become crossed.

64. However it came about, that email was naturally a shock to Miss Jesse. She came into work the next day as usual but at 1232 she sent an email to Mr Perry again, this time making express reference to race discrimination [95]. It is agreed that this email is a protected act. She mentions in that email that, "it was suggested for me to wait to talk about being discriminated against", which supports our view that Mr Roberts simply encouraged her to think about it rather than banning her from mentioning it.
65. The first example she gives of race discrimination is the letter she received after the probationary review meeting, which we take to be the email from Ms Coleman, But she went on to talk about "my manager's racist assessment of me and my performance".
66. Mr Perry responded very shortly afterwards saying that if she felt that she was being discriminated against she should follow the grievance procedure as outlined in the company handbook and that it should be addressed to Mr Roberts. It is not clear however why the email she had sent to him did not qualify as a grievance.

GP appointment

67. Also that day there was an issue about Miss Jesse leaving work for a GP appointment. It was, she told us, for her to discuss her mental health. There is perhaps a misunderstanding on her part about such appointments. Although we were not shown any company policy, it is usual to expect members of staff to book routine GP appointments out of work hours. If they are already sick they are able to self certify for the first few days and are then encouraged to obtain a fit note from their doctor. But there is no automatic right to have time off at short notice to see a GP in working hours, certainly not at the company's expense.
68. Miss Jesse was therefore surprised to be asked by Ms Routley about the reasons for wanting to see the GP that afternoon. For some reason this request was made to Ms Routley over the phone and having reflected on it Ms Jesse decided to ring her back, this time making a recording of the conversation. According to this, Ms Routley said:

"Yeah, no, absolutely fine. That's not a problem at all. It's just that you are obviously booking an appointment during your shift time and your shift starts at 1:00 PM I mean, you were fine yesterday and I didn't see that you were unwell at all yesterday. So I'm not sure what's wrong with you now, but I mean, obviously like I say, your shift does start at one o'clock. It will be unauthorized absence absences. Your shift does start at one. You haven't

had a re booked appointment and I've only just been informed now last minute of your appointment, and like I say, I'm more than happy for you to go and see the doctor."

69. None of that seems to us unreasonable in any way although the reference to unauthorised absence is perhaps clumsy. We gather that it meant simply unpaid absence, rather than implying some disciplinary issue. One of the allegations in this case is that Ms Routley accused Miss Jesse of lying about the reasons for the appointment, but that is simply not the case from the transcript. It seems to be an inference which Miss Jesse has drawn, in our view unfairly.

Grievance

70. We do not know what else happened this afternoon but at 5.10 Ms Jesse emailed Mr Perry again to reinforce her complaints [98]. This time she emphasised her unhappiness at being told, she suggested, to keep her claims of discrimination secret, something she described as "torture to my mind" and a human rights abuse. It may well be that she was emotional when writing this. It ended,

"I am here crying out loud for the sake of the sanity of other girls in future."

71. In any event, she did not return to work from then on and was later signed off sick to 30 October. The fit note referred to her mental health.
72. Mr Roberts responded promptly to the grievance and wrote to Miss Jesse on 7 October to reinforce the point that she should address any grievance to him directly and he would arrange to hear it [100]. It may well at that point have been intended that Mr Perry would be available for any appeal.
73. She then responded the next day setting out her grievance in writing. This time it was also addressed to Mr and Mrs Hinchliffe who are the owners of the company so again she was trying to appeal over the head of Mr Roberts and Mr Perry.
74. It is not necessary to describe the grievance itself in any detail since it restated the various points we have already considered, including the issue over the relaxation room, interfering with her talking to guests, telling her she was not a happy or bubbly person at work and making it difficult for her when she wanted to see her GP.
75. Mr Perry wrote back to her himself on 11 October to say that her request that the directors of the company hear the grievance was inappropriate [108]. However, he must have thought better of the arrangements for the grievance hearing and wrote to her on 16 October to say that he would hold it, on her return to work [115].
76. There was then something of a lull until 24 October when Miss Jesse wrote again to Mr Perry to say that she would like to have the grievance meeting while she

was signed off sick, i.e. before her return to work [116]. He responded that he was on annual leave until 6 November and that he would hold the meeting that week. He wrote again on 26 October to say that he would extend her probation period by a month given her sickness absence. That was to give her enough time to show that she could pass her probation period.

77. But then, quite suddenly, he changed his mind. On 27 October he sent her a long letter dismissing her grievances and dismissing her [122]. He also dispensed with any meeting with her to discuss her grievances. The explanation for the change was set out at the beginning:

“Due to the detailed information given it has been quite straightforward for me to investigate the events outlined. This can be done without a meeting, given the fact that you are signed off work sick and given the need to respond to your grievance within a reasonable period. I have no questions in relation to the information provided so have spent some time investigating the issues raised.

During that investigation I have spoken to Nicola and Mel in the Spa, Chris and Sophie as well as Pinku Thomas who completed your company induction. In addition, I have reviewed your 1week review form, Your company induction attendance, together with the letter outlining issues with your performance sent to you on the 5th October 2023.

Now that my investigations are completed, I can give you some feedback and decisions on the issues you raise.”

78. It is a long letter and the gist of it is that he had concluded that there was no basis for her complaints of discrimination, that they were in fact valid criticisms of her performance, and since the criticisms were valid there was no point in continuing her probation. No doubt that seemed to Mr Perry the obvious conclusion. There was no real attempt in the letter to weigh one person’s view against the other: it simply stated that she was wrong or mistaken on almost every point. By way of example, at page 125 he dealt with her complaint about excessive monitoring as follows:

4) My manager monitored me in an intimidating way and regularly

“This is one of the few points I can see may have been an issue. Where you continued to ignore your Manager, which you stated was the case in the document you submitted, I am sure she became frustrated with how she was supposed to improve your performance if you would not accept guidance. I am sure her tone did harden with time as she will have realised time was running out if you were to be allowed to remain in your job.

Had you followed guidance given by your manager, and not ignored it, I am sure the level and tone of monitoring would have been less.”

79. The letter concluded:

“It saddens me but I have to confirm that my conclusion is that the claims you make are based on your inability to accept that your performance was not as we required.”

80. So, her employment ended on 30 October 2023. There was no mention of a right of appeal although there were further exchanges of correspondence between him and Miss Jesse, to which we will refer shortly.

81. Before concluding our findings of fact however we will refer briefly to various WhatsApp messages which Miss Jesse relied on as supporting her claim. There was a WhatsApp group between her and her immediate colleagues called “Work Girlies”. As was agreed by Ms Routley, Miss Jesse was popular with her colleagues and there was a certain amount of support from them in these messages. But she seems only her to have disclosed exchanges which took place after she went off sick. The one on which she placed most reliance [178] was clearly sent after she had been dismissed because it referred to her having been fired. She asked Niamh:

“Niamh do you remember when you said to me you think that Nic could be racially discriminating against me as a reason why she’s treating me differently and lying saying I am not basically doing my job yeah?”

82. Perhaps reluctant to be drawn into that debate any further, Niamh simply replied ‘Yes’. We do not know anything further about what prompted Niamh to have that view but it seems likely to have been based on information given to her by Miss Jesse and therefore adds little weight to our conclusions about whether there was any discrimination at work.

83. There are other supportive messages from Hannah on the day when she was describing her cleaning duties but in those messages Miss Jesse focused on being picked on by Miss Routley and Hannah’s responses were limited to agreeing that it wasn’t right that they should have to clean the showers and it was not fair to be told that she was not enthusiastic or bubbly because, Hannah said, they knew that she was. So again that provides very limited support to the claim.

Applicable Law and Conclusions

Discrimination Burden of Proof

84. For each type of discrimination, the key question is the reason *why* the employer acted as it did. Was it *because of* Miss Jesse's race? Or the protected act? Or was the harassment *related* to it?
85. That does not have to be the only reason, or even the main reason, it just needs to have been a significant influence. That influence can even be the result of subconscious bias. Having heard the evidence from each side and made our findings of fact, we now have to decide whether the proper inference to draw is that there was such bias at work; in other words, whether it was tainted by discrimination.
86. The Equality Act gives us a structure to follow in carrying out that exercise. Section 136 deals with the burden of proof. It provides that:
- (2) If there are facts from which the [tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the [tribunal] must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
87. So we first have to decide from all the evidence whether there might have been discrimination involved. If so, it is then for the respondent to satisfy us that there was not. If that happens, cogent evidence is required to show that the treatment in question was 'in no sense whatsoever' tainted by discrimination.

Direct discrimination

88. That is the general approach to the "reason why" question. Turning to the specific claims, we will start with the claim of direct discrimination. This type of claim tends to be used as a description of acts or decisions made by the employer or its management, as distinct from offensive comments or behaviour from members of staff. The test under section 13(1) Equality Act is as follows:
- "A person (A) discriminates against another (B) if,
- because of a protected characteristic,
- A treats B less favourably than A treats or would treat others.
89. The first question is usually the last section - whether the company treated her *less favourably* than it treated or would have treated someone else in the same circumstances apart from his race. In particular, Miss Jesse compares her circumstances with her colleagues, Hannah and Abigail.
90. The eight complaints of less favourable treatment, removing some elaboration, are as follows:

- (a) On 24 August, Nicola Routley telling Miss Jesse not to open the door to the relaxation lounge room when showing guests around.
- (b) Between 25 August and 5 September, Ms Routley taking over conversations between Miss Jesse and guests.
- (c) From 25 August, Ms Routley telling Miss Jesse to copy how white British colleagues spoke to customers and walked?
- (d) Between 25 August and 5 September, Ms Routley telling Miss Jesse that she lacked happiness, was not bubbly and was not smiley.
- (e) On 4 October, Ms Routley telling Miss Jesse to clean the showers intensively without being given gloves, which was not part of her role, and following her during the shift to ensure she was doing it properly.
- (f) On 6 October, Ms Routley accusing Miss Jesse of lying when she phoned in sick and asking who Miss Jesse's doctor was.
- (g) At a meeting on 5 October about Miss Jesse's grievance, Chris Roberts, the Operations Manager telling the claimant that:
 - there was no one in the company who was racist (before he had investigated the matter); and
 - Miss Jesse should think about her manager's mental health before talking about discrimination.
- (h) Mr Roberts using the meeting on 5 October to discuss "improvements" required of Miss Jesse and threatening her with dismissal if she did not improve within seven days.

91. We have already found that some of these things - (c), (f), (g) - did not happen at all. Ms Routley did not tell her to walk or talk like her white colleagues, or accuse her of lying about her GP appointment. Nor did Mr Roberts tell her that no one in the company was racist and to think about Ms Routley's mental health before bringing a claim.

92. The remaining complaints concern the relaxation room; being interrupted; being told she was not happy and bubbly; the shower cleaning; and Mr Robert's handling of the meeting on 5 October.

93. In each case, it is difficult to see any less favourable treatment than Hannah or Abigail since we heard no evidence to suggest that they were treated differently in the same circumstances; for example that they were given different instructions about the relaxation room or that they were not interrupted in comparable

circumstances. As we have noted, those actions by Ms Routley appear to us entirely appropriate and so there is no basis for us to conclude that Hannah or Abigail or any other white colleague would have been treated any differently.

94. In respect of the shower-cleaning allegation, Miss Jesse accepts that the others had to do so but not as intensively as her and not with the same degree of supervision, but again, for the reasons already given, we do not accept that there was any difference in treatment.
95. The last complaint is about the meeting with Mr Roberts. We have concluded that the words attributed to him were not said but we do accept that after the meeting Miss Jesse was sent a letter about a meeting the following week at which she might be dismissed. That is a more difficult point to resolve. Would Hannah or Abigail have received the same letter if they had been the ones in that meeting, having raised the same issues? As we have already stated, the outcome seems to have been the result of crossed wires, i.e. a genuine mistake or misunderstanding about what was required, and on that basis too we do not find any less favourable treatment.

Harassment

96. In simple terms, harassment (section 26) is offensive treatment of one sort of another. It has to be related to the relevant protected characteristic, in this case race. The legal test is set out at section 26 Equality Act and is as follows:

(1) A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

97. Taking matters more briefly, there are two allegations of harassment: in relation to her treatment over shower cleaning and the accusation of lying about the GP appointment.
98. Once again, we have found against Miss Jesse on the second aspect, and we can see no real or specific issue over the cleaning episode. It is clear that she found it very unpleasant but equally it was part of the job and the others had, in our view, to do the same. There is nothing intrinsically offensive about cleaning work as part of the requirements of a job, and we can see no basis on which this obligation

could be said to have violated Miss Jesse's dignity or created an intimidating etcetera working environment for her. Consequently, as in the case of direct discrimination, the claim fails even before reaching the "reason why" question.

Victimisation

99. Victimisation is a term often used to mean being picked on or unfairly treated but it has a narrower meaning in the Equality Act 2010. It applies where someone has made a *complaint* about discrimination and is singled out as a result. The test under section 27 Equality Act is as follows:

100. The test under section 27 Equality Act is as follows:

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
 -
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.

101. An allegation of discrimination is an allegation that someone has contravened the Equality Act. In this case the 'protected acts' relied on are:

- (a) The email sent to Ms Routley, Ms Coleman and Mr Perry on 5 September;
- (b) The email on 4 October to Mr Perry asking for an urgent grievance meeting regarding allegations of discrimination;
- (c) Her email to Mr Perry on 6 October alleging race discrimination.
- (d) Her email on 8 October to Mr Roberts in which she also said she had experienced discrimination.
- (e) Her email on 26 October to Mr Perry asking for a grievance meeting before her return to work.

102. The first of these makes no allegation of a breach of the Equality Act 2010, even by implication, and so is not a protected act. The same applies to the second email, although it did lead to a meeting at which discrimination was discussed. However, it is accepted that her email on 6 October was a protected act. We agree with that and also in respect of the next email on 8 October to Mr Roberts.

The final email was simply an email in the context of the grievance process and not itself a protected act.

103. The next question is whether Miss Jesse suffered a detriment as a result of either of these two emails. The alleged detriments are:

(a) that Mr Perry extended her probation period on 26 October; and

(b) that on 27 October he dismissed her.

104. There is no question that the dismissal was a detriment, so the first alleged detriment may be hypothetical, but we take the view that this was intended to be helpful, to give her the chance to demonstrate that she met the required standards, and so not a detriment. Indeed, it is the contrast between the helpful approach adopted on 26 October and the dismissal the next day that seems to us to call for an explanation.

105. It was certainly out of the ordinary. One has to consider what should have happened in a case of this sort. There should have been a grievance meeting to discuss things. That is an essential part of the ACAS Code on handling grievances. Grievance issues should also have been dealt with separately to the probation period. So, there should have been a separate meeting to consider the outcome of the probationary period, and that should have taken place at the end of the probationary period.

106. The fact that those steps were not taken, that they were short circuited, calls for an explanation. On that simple basis, the burden shifts to the respondent to show that the decision was not tainted in any way by considerations of victimization, i.e. by the fact that Miss Jessie was alleging to be that she was the victim of race discrimination. The questions it gives rise to are why was the decision to dismiss taken when it was taken, and why was it done in the way it was taken?

107. The explanation was given in part by the opening paragraph of the letter from Mr Perry, which we have already quoted. Again, he felt that the situation was clear cut and there was no need for further information. He also expanded on those points in the subsequent correspondence, particularly in his letter on page 160, sent on 7 November that year:

“Your continued false and unfair allegations towards your manager confirmed to me the right decision was made. Racial discrimination occurs when someone is treated differently based on their race. The standards expected of you, the work you were requested to carry out, and the thorough induction and training and feedback you received was the same as for every other employee. Your manager has a long and unblemished career with our company, a company that successfully welcomes a range of employees represented by those from a wide range of races, cultures, sexual orientation,

and religions. Indeed, you were trained and received training by and alongside some of those employees who have made successful careers with us over many years at Rowell.

108. There is more than a trace of irritation in those words. He was, we conclude, offended that an allegation of race discrimination had been made, and so the usual process was curtailed at that point. In those circumstances we cannot be satisfied that the decision to dismiss was not tainted by victimisation – indeed we conclude that it was.
109. At the same time we have already concluded that there was any race discrimination towards Miss Jesse. Had there been a grievance meeting, that conclusion could have been explained to her in more neutral terms. Then, in keeping with the letter of 26 October extending her probation period, she ought to have been allowed to return to work. Had she done so, there would then have been a probationary review meeting in due course. Having extended her probation period to four months, that would have occurred on or around 13 December.
110. In practice, we cannot see any prospect of her making a return to work in those circumstances, given her strength of feeling and her belief that she had been the victim of discrimination and unfair treatment.
111. If we are wrong about that, and she had done so, the possibility of her passing that probation period and commencing a sustained period of employment at the company is, in our view, effectively nil given her sensitivity to criticism and unwillingness to move on from such minor issues as the relaxation room. So we can see no scenario in which loss of earnings can be claimed here, unless it is for sick pay during the balance of her probation period.
112. To that limited extent therefore, the claim of victimisation is upheld and the other complaints are dismissed.

Employment Judge Fowell

Date 7 May 2025

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