



EMPLOYMENT TRIBUNALS

Claimant

A Petroi

v

Respondent

The Soho Sandwich
Company Limited

Heard at: Reading

On: 31 March, 1, 2, 3, 4 April 2025 and
16 May 2025 in Chambers

Before: Employment Judge W Anderson
B Osborne
D Sagar

Appearances

For the claimant: A Bucur (lay representative)

For the respondent: A Williams (solicitor, Peninsula)

RESERVED JUDGMENT

1. The claimant's claim of constructive unfair dismissal is upheld.
2. The claimant's claims of direct age discrimination, harassment on the grounds of age and victimisation are upheld.
3. The claimant's claim of unauthorised deductions from wages is upheld in part.
4. The claimant's claim of breach of the Working Time Regulations 1998 is upheld in part.
5. The claimant's claim of breach of contract is upheld in part.
6. Remedy will be decided at a hearing on 28 July 2025.

REASONS

Background

1. The claimant was employed by the respondent, a sandwich production company, as a line leader from 21 June 2008. She resigned on 26 May 2022, with effect from 27 May 2022. The claimant claims that she was constructively unfairly dismissed. She claims that she was discriminated against on the grounds of age. She also claims various underpayments. The respondent's position is that the claimant was not dismissed and chose to resign. It denies that it discriminated against her or that there are any unpaid monies.

2. Early conciliation commenced on 4 July 2022 and ended on 14 August 2022. The claim was filed on 22 August 2022.

The Hearing

3. The parties filed a joint bundle of 570 pages including the index. On the morning of the hearing the claimant filed a 42 page skeleton argument. There were five witnesses. The claimant's witnesses, in addition to herself, were Alexandru Bucur and Adriana Bucur. The respondent's witnesses were Shakila Mahmood and Daniel Silverston. All of the witnesses attended the hearing and gave evidence on oath.
4. Clearly the parties had been in dispute throughout the preparation for the hearing. Issues were raised at the outset of the hearing about updated witness statements and delays in the bundle. Time was allowed to ensure that all parties and the tribunal had complete and up to date documents. Ms Bucur, for the claimant, confirmed that the claimant was happy to proceed despite any problems that had arisen in preparation and filing of the bundle.
5. The claimant was assisted throughout the hearing by a Romanian interpreter.
6. Mr Williams, for the respondent, confirmed that no time points were pursued. Mr Williams also conceded, during the hearing, on behalf of the respondent, that the claimant had done a protected act, for the purposes of s27 Equality Act 2010 on 6 May 2022 in a meeting with Mohammed Khalid.
7. Because of time constraints the tribunal reserved judgment and decided that it would not hear any arguments on remedy at this hearing.
8. Both parties were given the opportunity to provide written submissions of up to ten pages and to make oral submissions for a period of up to 30 minutes. Ms Bucur said that she relied on her skeleton argument and made very brief oral submissions. The tribunal specifically requested Mr Williams to make written submissions as it was unsure of the respondent's position on some issues, which he did. He also made oral submissions which took around ten minutes. Mr Williams raised that there was a disparity where the claimant relied on a 45 page skeleton in closing and the respondent was kept to ten pages. The tribunal notes that the respondent was at liberty to file a skeleton argument and also that Mr Williams did not make full use of the time allotted for oral submissions, in which he could have made any further points that he did not think he had space for in written submissions. He did not raise that he had been precluded from making any specific argument by time constraints or page limitations.
9. The claimant's representative raised arguments in her skeleton argument that had not been previously made to the tribunal and the respondent. The tribunal advised Ms Bucur that new arguments raised in a skeleton filed on the morning of the hearing would not be considered by the tribunal.

The issues

10. The issues for the tribunal to decide were set out in a list agreed with the parties by EJ Hawksworth at a preliminary hearing on 11 August 2023:

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 5 April 2022 may not have been brought in time.

1.2 Were the discrimination, harassment and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

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

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

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

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

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

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

1.3 Were the unauthorised deductions complaints made within the time limit in section 23 of the Employment Rights Act 1996? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of payment of the wages from which the deduction was made?

1.3.2 If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.3.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.3.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

1.4 Were the holiday pay and breach of contract complaints made within the relevant time limits?

2. Unfair dismissal

2.1 Was the claimant dismissed?

2.1.1 Did the respondent do the following things (as summarised by EJ Brown in the case management summary of 27 March 2023)?

2.1.1.1 Not increase the claimant's pay when pay was increased for colleagues due to the minimum wage increase in April 2022;

2.1.1.2 Not investigate the claimant's complaint about bullying in April 2022;

2.1.1.3 Treat the claimant as demoted and not support her job role;

2.1.1.4 Demean or belittle the claimant in a meeting on 18 May 2022;

2.1.1.5 Tell the claimant that 'things had changed, let it go';

2.1.1.6 The claimant was asked not to use the word bullying;

2.1.1.7 Record the claimant's job incorrectly in the HR system, at a lower position, whereas her colleagues job roles were recorded correctly;

2.1.1.8 Not pay the claimant in accordance with her contract in respect of bank holidays (i.e. not paying the claimant double pay for working bank holidays when others were so paid), and not offering the claimant a day in lieu of each bank holiday worked;

2.1.1.9 commit the contraventions of the Equality Act 2010 alleged below.

2.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

2.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

2.1.2.2 whether it had reasonable and proper cause for doing so.

2.1.3 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

2.1.4 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

2.2 If the claimant was dismissed, what was the reason or principal reason for dismissal i.e. what was the reason for the breach of contract?

2.3 Was it a potentially fair reason?

2.4 Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

3. Direct age discrimination (Equality Act 2010 section 13)

3.1 The claimant's age group is around 60 years old (ie within a year of being 60) and she compares herself with people in the age group of those younger than 45 years old.

3.2 Did the respondent do the following things:

3.2.1 on 3 May 2022 Mr Khalid said to Alexandru Bucur "Tell Adriana to leave them alone. They are young and we do not need this kind of problem now, we are busy."

3.2.2 the respondent failed to investigate the claimant's allegations that she had been bullied, harassed and discriminated against because of her age after Ms Mahmoud read out at the meeting on 6 May 2022 a statement from Mr Abu Sayed which said that the claimant was "like my grandmother" and a joint statement from two other line leaders (Shahnara and Nurun) which set out that "Adriana is so old she gets angry";

3.2.3 on 8 June 2022 Dan Silverston said the claimant "should not blame Mr Khalid as he wanted to motivate and reward younger people in his opinion the claimant did not need motivation but others did"

3.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else

would have been treated.

The claimant has not named anyone in particular who s/he says was treated better than she was.

3.4 If so, was it because of age?

3.5 Was the treatment a proportionate means of achieving a legitimate aim?

The respondent says that its aims were:

3.5.1 [To be confirmed in the amended grounds of resistance]

3.6 The Tribunal will decide in particular:

3.6.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.6.2 could something less discriminatory have been done instead;

3.6.3 how should the needs of the claimant and the respondent be balanced?

4. Harassment related to age (Equality Act 2010 section 26)

4.1 Did the respondent do the following things:

4.1.1 on 27 April 2022 Mr Abu Sayed said to the claimant "Who are you to tell me what to do? You are old but I am more experience you. I can run your line with better efficiency. You can't tell me what to do, you are not a manager or supervisor." and "Adriana is like my grandmother but she doesn't want to take our respect. If you give me line one, I can make best efficiency";

4.1.2 on 28 April 2022 Mr Abu Sayed sang in a foreign language whilst looking over his shoulder in the claimant's direction. In the song her name was inserted and the word daddy. She later found out that this word means grandma in Bengali.

4.1.3 On 3 May 2022 Mr Khalid said to Alexandru Bucur "Tell Adriana to leave them alone. They are young and we do not need this kind of problem now, we are busy."

4.1.4 On 6 May 2022 in a statement Mr Abu Sayed said that the claimant is "like my grandmother" and in a joint statement Shahnara and Nurun set out that "Adriana is so old she gets angry."

4.1.5 On 6 May 2022 Mr Khalid asked the claimant "what is important to you at this age? What is most important to you in life because they are young, they need to learn things. But for you, right now, what is most important?" He also asked the claimant to relax and focus more on important things her age, like peace, health and family. He advised the claimant not to use the word bullying;

4.1.6 on 8 June 2022 Dan Silverston said the claimant "should not blame Mr Khalid as he wanted to motivate and reward younger people in his opinion the claimant did not need motivation but others did";

4.2 If so, was that unwanted conduct?

4.3 Did it relate to age?

4.4 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?

4.5 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.

5. Victimisation (Equality Act 2010 section 27)

5.1 Did the claimant do a protected act as follows:

5.1.1 on 6 May 2022 in a meeting which was attended by Ms Mahmoud

and Mr Khalid, when the claimant stated that the respondents were discriminating against her because of her age.

5.2 Did the respondent do the following things:

5.2.1 in April 2022 the company announced a wage increase in response to the increased minimum wage. The claimant raised concerns with the Production Manager (Mr Bucur) and Mr Khalid said he would look at it in the second week of May. The alleged act of victimisation is that "Mr Khalid did not look into the claimant's query about a pay increase due to the minimum wage increase in April 2022;

5.2.2 on 6 May 2022 Mr Khalid advised the claimant not to use the term bullying;

5.2.3 on 27 May 2022 Ms Mahmoud or HR assistant inserted the claimant's role as a lower role than her actual role on the HR system;

5.2.4 on 8 June 2022 Dan Silverston told the claimant not to mention discrimination, not to ask for CCTV footage and he stopped the respondent's internal grievance procedures;

5.2.5 in the payslip of June 2022 a deduction of £264.42 was made;

5.2.6 in the payslip of June 2022 the respondent failed to pay her three days in lieu of bank holidays she worked in 2022;

5.2.7 on 22 June 2022 the claimant was presented with a fabricated contract of employment;

5.2.8 the respondent failed to rectify their error in attempting to reduce, in March 2022, the claimant's contractual holiday from 24 days to 20 days. This resulted in a failure to pay the claimant 1.5 days of holiday at the end of her employment;

5.2.9 in July 2022 Dan Silverston said to Alexandru Bucur, "things will get ugly if it goes to court";

5.2.10 in 2023 the claimant's BrightHR account and HR Online were reactivated to add entries relating to annual leave, absence report and alter entries;

5.2.11 in 2023 the respondents provided a modified rota which said that the claimant's last working day was 27 April 2022 when in fact it had been 27 May 2022.

5.3 By doing so, did it subject the claimant to detriment?

5.4 If so, was it because the claimant did a protected act?

5.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

6. Unauthorised deductions from wages

6.1 Did the respondent make unauthorised deductions from the claimant's wages as follows:

6.1.1 (As identified by EJ Brown) Was the claimant paid double pay and offered a day off in lieu when working bank holidays? The respondent accepts that the claimant was entitled to this under her contract, but says that these entitlements were honoured. The claimant says they were not. (This complaint is brought in the alternative as a complaint of breach of contract.)

6.1.2 Did the respondent make two deductions from the claimant's last payslip in June 2022? -

6.1.2.1 £616.98 for work during the week 20 to 27 May 2022;

6.1.2.2 £264.42 recorded on the payslip as a 'deduction'

6.2 If unauthorised deductions were made, how much is the claimant owed?

7. Holiday Pay (Working Time Regulations 1998)

7.1 The respondent's holiday year is January to December.

7.2 2008 to 2020: The claimant says that she was given 24 days holiday in each of these holiday years, when the statutory minimum annual holiday was 28 days a year.

7.2.1 Was the claimant given less than her statutory minimum annual leave in any of those years?

7.2.2 If so, is the claimant entitled to any compensation or pay in respect of the shortfall?

7.3 2021: There is no claim in respect of holiday in 2021.

7.4 2022: Did the respondent fail to pay the claimant in full for annual leave the claimant had accrued but not taken when her employment ended? If so, how much is owing? The respondent has paid the claimant for 8.6 days holiday accrued but untaken at the end of her employment. The claimant says she had 10 days holiday accrued but not taken, and therefore that there is 1.4 days holiday owing.

8. Breach of Contract

8.1 Did this claim arise or was it outstanding when the claimant's employment ended?

8.2 Did the respondent do the following:

8.2.1 Fail to comply with contractual bullying and grievance procedures;

8.2.2 Fail to provide payment in lieu of worked bank holidays from 2008 until the end of the employment;

8.2.3 Fail to pay accrued holiday on termination of employment.

8.3 Was that a breach of contract?

8.4 If so, how much should the claimant be awarded as damages?

9 and 10 - remedy – omitted here

11. Failure to provide written statement of particulars

11.1 When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

11.2 If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

11.3 Would it be just and equitable to award four weeks' pay?

Credibility

11. In making findings of fact the tribunal took into account the credibility of the witnesses. Even though there was substantial documentary evidence, there were claims from the claimant that some of this was unreliable, and in fact the respondent conceded that the holiday entitlement recorded in the contract dated 2013 did not represent the claimant's actual contractual entitlement, a key issue in this case. For the avoidance of doubt, it is not the tribunal's finding that there was any deliberate falsification of documents by the respondent, rather that what was set out in documents may have been incorrect or verbally amended. Furthermore, there were many meetings crucial to the case where no notes were made. For these reasons witness evidence was crucial. The tribunal found that the evidence of the claimant and her witnesses was, generally, more persuasive than that of the

respondent's witnesses. The tribunal was aware that the claimant's witnesses were her daughter (and lay representative) and son in law. Nevertheless, it did not find that there was any indication that the statements had been written to support each other rather than to address the facts as each witness recalled them. They were all clearly individually drafted, and addressed, to some extent, different points. Moreover, Mr Williams had very few questions for Mr and Ms Bucur and did not challenge the veracity of their statements. Conversely the respondent's witness statements used identical wording in many places, failed to address important incidents complained of or arguments raised by the claimant and contained incorrect dates of meetings, as well as errors about who attended meetings. In cross examination the witnesses appeared to have very poor recall of the chronology of events and to be unprepared for the questions put to them, suggesting that they did not know the case well. Both in written and oral evidence they made claims about whether or not comments had been made or actions taken about matters in which they were not involved. This may be as the respondent chose only to provide statements from two witnesses, where a number of other people were involved in the allegations made. For all of these reasons, where there was a direct conflict in evidence between the parties on any given matter, the tribunal has more often preferred the evidence of the claimant.

Relevant Findings of Fact

12. On 21 June 2008 the claimant commenced employment with the respondent as a production operative on an hourly rate.
13. In 2011 she changed to a salaried role.
14. It is the respondent's case that a contract was issued to the claimant in 2011 and she was provided with a copy of that contract. There was a copy before the tribunal. The claimant denies ever seeing this contract before 22 June 2022 when she was shown it in a meeting by Ms Shakila Mahmood, the respondent's director of human resources. The contract is unsigned and, on the claimant's evidence, shows an incorrect address for her of Grove Road. Evidence in the bundle shows the claimant moving to that address in 2016. However, there is also evidence by way of a document signed by the claimant on 18 September 2013, which shows that she was living at that address in 2013. This was not a matter put to the claimant in cross examination and when Dan Silverston (the respondent's managing director) was asked about the apparent incorrect address on the 2011 contract in cross examination he had no explanation. The claimant says the contract is fabricated. The tribunal finds that this was not a contract given to the claimant in 2011 and therefore does not accept that the terms set out in in the contract are the terms of the contract under which she worked. No further consideration was given to this document in its deliberations on the terms and conditions of the claimant's employment.
15. On 18 September 2013 the claimant signed a 'Statement of Main Terms of Employment' along with other contractual documentation. She said that she did not receive a copy. Mr Alexandru Bucur, the claimant's son in law, who also worked for the respondent as a production manager, gave written

evidence that he signed his own contract with the respondent at the same time as the claimant, in the same meeting. His evidence is that he asked for a copy and was told he would get one later. He did not. This evidence was not challenged by the respondent. The claimant's evidence was that she asked for a copy many times from the then HR manager Leah Latimer and was told by Ms Latimer that she could not find one. Mr Silverston said he could not remember when a copy of the signed contract had been given to the claimant. The tribunal finds that the documents were signed by the claimant, and she was not given a copy. The tribunal notes that the claimant does not have English as a first language. It accepts that she did not read the documents and that, as she said, no translation was provided.

16. The 'Statement of Main Terms of Employment' contains the following relevant clauses:

HOURS OF WORK

Your hours of work are variable each week. Actual days, start/finish times will be variable and in accordance with the rota. You will receive a 30 minute unpaid break each day. You may be required to work additional hours when authorised and as necessitated by the needs of the business.

REMUNERATION

Your salary is currently £ 18000 per annum payable monthly in arrears by credit transfer as detailed on your pay statement. Your salary is set at such a level as to compensate for the need for occasional additional hours.

ANNUAL LEAVE AND PUBLIC/BANK HOLIDAYS

Your holiday year begins on 1st January and ends on 31st December each year, during which you will receive a paid holiday entitlement of 5.6 weeks inclusive of public/ bank holidays. In your first holiday year your entitlement will be proportionate to the amount of time left in the holiday year.

Conditions relating to the taking of holidays are shown in the Employee Handbook to which you should refer.

Due to the nature of our business you may be required to work on any of the public/bank holidays listed below, and it is a condition of employment that you work on these days when required to do so. If you are required to work on any of these days you will be paid at double time and given an alternative day of leave in lieu. The date when a day off in lieu is to be taken is to be mutually agreed with us. The public/bank holidays each year

New Year's Day
Good Friday
Easter Monday
The first Monday in May
The last Monday in May
The last Monday in August
Christmas Day
Boxing Day

Your holiday pay will be based on your average earnings over the previous 12 weeks.

In the event of termination of employment holiday entitlement will be calculated as 1/12th of the annual entitlement for each completed month of service during that holiday year and any holidays accrued but not taken will be paid for. However, in the event of you having taken any holidays in the current holiday year, which have not been accrued pro-rata, then the appropriate payments will be deducted from your final pay.

17. The respondent accepts that the client's contractual entitlement was 32 days including bank holidays, rather than the 28 (or 5.6 weeks) set out in this contract. This is shown on the holiday records from the respondent's online system included in the bundle. The reason for this was that the claimant worked six days a week and the respondent, up until 2022 when it tried to amend the contract terms unilaterally, calculated the statutory entitlement using a six day week rather than a five day week, so that employees were given a further fifth of the 20 days of ordinary statutory holiday entitlement, i.e. a further four days.
18. It was not disputed by the respondent that the claimant was contractually entitled to double time and a day in lieu of bank holidays worked. No argument was made before the tribunal by either party that the remainder of the contract contained any incorrect terms or conditions.
19. On 28 September 2015 the claimant signed a document to confirm that she was aware of changes to the staff handbook. No information about what those changes were was provided to the tribunal.
20. On 18 March 2019 the claimant signed a document to confirm she had received an induction, including on absence policy and holidays. No information about what the induction consisted of was provided to the tribunal.
21. On 24 March 2022 the claimant signed to confirm that she had received a copy of the Employee Handbook. Within that handbook, in the section headed 'Holiday Entitlement and Conditions' it is stated 'Take it or lose it policy will apply'.
22. The claimant was furloughed from 16 March 2020 until June 2021. She returned to work three days a week. She began working full time again from September 2021. It is her position that she was furloughed early and kept in furlough longer than other colleagues when she wanted to return to work, because of her age.
23. In April 2022 the claimant expected a pay rise and did not receive one. She said that the company announced a pay rise for everyone, but she did not receive one. The respondent's evidence was that each April it checks that everyone is receiving the minimum wage. Ms Mahmood and Mr Silverson both said in cross examination that this was a matter specifically about the

minimum wage and there was no annual pay review. The respondent's position was that the claimant was a salaried member of staff who received a salary in excess of the minimum wage. Mr Bucur's unchallenged evidence was that he had raised the matter with Mr Mohammed Khalid (the respondent's general manager) as, because the claimant was working in excess of 57 hours a week, she believed her wage fell below the national minimum wage. It is the claimant's evidence that Mr Khalid said he would come back to her about this in the second week of May (as recorded in the list of issues). The tribunal finds that the claimant would have become aware that she had not received a pay rise at the end of April and finds on the balance of probabilities that Mr Khalid did agree to look into the matter and did not do so. Both of the respondent's witnesses denied that the matter had been raised with Mr Khalid. Mr Khalid did not give evidence. Ms Mahmood's evidence was that she did not hear about it, and she is the HR manager so it would not have happened. The tribunal prefers the claimant's evidence on this matter.

24. On 27 April 2022 there was an altercation between the claimant and Abu Sayed. Both worked as line leaders on a sandwich production line. It is the claimant's position that she also held the role of line manager, a position senior to that of line leader. Mr Bucur raised this incident with Mr Khalid and Ms Mahmood. Ms Mahmood met with the claimant the same day and a note was taken, later referred to by the respondent as a statement. In the note it is recorded that the claimant made the following complaint:

*Abu saying in front of everybody that I do not do my Job properly. I work in kitchen since 21 June 2008.
I didn't had enough people to start.*

He behaves very badly. He talks with other people in different language. I said why don't you start your line. People are waiting .He said Do your job, make your job properly,

25. The claimant also set out her complaint in an email to Ms Mahmood later that day as follows:

I work for Soho since 2008 and never encountered such an attitude as Abu has. I have trained a lot of staff and worked under and with a lot of people, so I can say I have quite an experience dealing with different types of characters.

I do not react for every little thing but today Abu was extremely rude. Moreover, he was shouting and very aggressive. And unfortunately this is not the first time.

There were 4 people standing around doing nothing and I asked to give me one staff for line 1. We were busy and I wanted someone to take the bread from the window. I had the Mexican bean avocado and that required more people. He refused and I understood. I told him that rather waiting he can open packaging for sandwiches. From here everything

escalated and got very rude shouting: "who are you? We have the same position, you are not a manager. I am a line leader and you are line leader. You can not tell me to do something". He shouted these in front of Alex.

He had a very angry face, he shouted all this time and got very aggressive. I am certain that this situation would escalate even more in other conditions, so I believe something has to be done. I can not tolerate this kind of behaviour, I feel emotionally drained and under a lot of stress.

26. Ms Mahmood in cross examination said that after speaking with the claimant she asked Mr Khalid to investigate the matter. Mr Khalid took a statement from Mr Sayed the same day. He said that the claimant had interfered with his work, and this was a regular occurrence. He said that he told her she was not a manager or a supervisor who could tell him what to do. He also said *'She is like my grandmother. I respect her, in fact all colleagues respect her, but she doesn't want to take respect'*. He suggests to Mr Khalid that he looks at the CCTV.
27. On 28 April the claimant raised a further complaint about Mr Sayed being rude and singing at her in his own language. Her evidence is that she asked a colleague later what the singing was about and was told she had been referred to as grandmother.
28. It is the respondent's position that both of these incidents were investigated. Interview notes are provided in the bundle and there is no indication that Mr Sayed or the witnesses were questioned about the allegation raised on 28 April. The only matter discussed is the incident on 27 April 2022. Mr Sayed was only interviewed on 27 April. The respondent's position was that the incident on 28 April was investigated and there was no evidence that it had taken place, so no further action was taken. There is no documentary evidence that this matter was investigated. The tribunal does not accept that there would have been no written records either in the form of interviews with witnesses or an interview with Mr Sayed, if it had been, and it does not accept the otherwise unsubstantiated evidence of the respondent's witnesses that it was. Both of the respondent's witnesses had trouble remembering dates, meetings and other facts. Their statements contained numerous errors. The tribunal finds that the incident on 28 April 2022 was not investigated. In the absence of any evidence other than the claimant's evidence it finds that the incident took place as described by the claimant.
29. Between and including 29 April and 19 May 2022 the respondent interviewed a number of people about the incident on 27 April 2022. Mr Sayed suggested that Priyesh Patel, Bayzid Ahmed, Shahnara Begum and Nurun Nahar be asked about the incident. All of these individuals were interviewed. In addition, Daniela Ciolacu, and Justyna Kielar (on 19 May 2022) were interviewed. It is the claimant's case that in a meeting with Ms Mahmood on 6 May 2022 she asked for Justyna Kielar, Ani and Doris to be interviewed, and that the respondent interviewed those whom Mr Sayed suggested but

not those she suggested. The tribunal finds that neither Ani nor Doris were interviewed.

30. On 3 May 2022 Mr Bucur raised a further concern, by email, to Ms Mahmood and Mr Khalid about the behaviour of Mr Sayed towards the claimant. Mr Bucur's evidence is that on the same day, in response to his email, Mr Khalid told him *'Tell Adriana to leave them alone. They are young, mate. And we don't need this problem now we are busy.'* The claimant's evidence is that Mr Bucur relayed this message to her. The respondent's witnesses denied that this was said, however, neither of them was present and there is documentary evidence that Mr Bucur raised a further incident with Mr Khalid that day. The tribunal finds that that Mr Khalid did instruct the claimant to leave Mr Sayed alone.
31. On 3 or 4 May 2022 a meeting was called by Ms Mahmood between the line leaders, Mr Bucur and the general manager, Mr Khalid, who attended by telephone. It is the claimant's evidence, corroborated by Mr Bucur, that during that meeting the claimant asked Mr Khalid to clarify her role, i.e. she asked him to confirm that she was senior in position to Mr Sayed. Mr Khalid did not do so and said *'things have changed'*. Mr Bucur confirmed in cross examination that his understanding of this comment was that the claimant's role as line manager had changed. The claimant said that she understood this to mean she had been demoted. The claimant referred in her claim form to this meeting and dated it 18 May 2022. She accepted in cross examination that this date was incorrect. She said that she may have written the date incorrectly but had a clear recollection of the how events had unfolded. The tribunal accept that the claimant made an error in the claim form and that she is referring to this meeting when she refers to 18 May in the claim form. The chronology is clarified in her witness statement.
32. The claimant is recorded as having the job title of production team leader in the contract signed on 18 September 2013. In a document produced in 2019, by Mr Bucur, and displayed on the staff noticeboard, the claimant is described as a line manager. Mr Silverston was asked about this in cross examination. He queried the date. He said that the document was reflective but did not show the true titles of the people named. Although it is undated the tribunal accepts that it is an attachment to an email dated 30 September 2019. Ms Mahmood said in cross examination that the claimant was a line leader, equal in status to Mr Sayed, though a salaried employee where he was paid hourly. Mr Silverston also said that she was a line leader. The claimant's oral evidence was that she was initially a production operative but that in 2013 she was promoted to team manager which is equivalent to supervisor. She explained this as being both a line leader and a line manager. In her written evidence the claimant said she was lines manager from 2019 and describes a range of duties that she carried out that were in addition to the duties of a line leader. The tribunal finds that the claimant believed, on 27 April 2022 and at the time of her resignation, that she was senior in status to the other line leaders, and this was a state of affairs recognised at least informally by the respondent, as evidenced by Mr Khalid's comment that *'things have changed'*. Had it simply been the case that she was an ordinary line leader,

in the face of her mounting distress, this could have been addressed with her. The tribunal finds that the failure or reluctance to do so by Mr Khalid or Ms Mahmood, indicates that the situation was not clear cut.

33. On 6 May 2022 the claimant attended a meeting with Mr Silverston and Ms Mahmood. The claimant asked that Mr Bucur join them, which he did. The claimant was told that Mr Sayed was willing to apologise for his behaviour on 27 April 2022. It is the respondent's case that the claimant refused that apology and did not say what solution she required. The two respondent's witness statements are identical on this matter. They contain little detail of the meeting and do not record correctly who was present. Mr Silverston said in cross examination that he could not remember if he was there. Ms Mahmood said she recalled that the claimant refused an apology however, she was not sure at which meeting this was and seemed quite confused, believing it had been at a much later meeting. On balance the tribunal accepts the claimant's evidence that she did not refuse an apology but asked specifically for an apology in front of the other staff who witnessed the incident on 27 April and for this to be accompanied by a public clarification of her seniority to Mr Sayed by Mr Khalid. It was evident to the tribunal on considering the claimant's written and oral evidence that this was a matter of paramount concern to her, i.e. that all of her colleagues who had witnessed an incident in which she felt humiliated and undermined by Mr Sayed, should hear Mr Sayed's apology and that her position be publicly clarified. It was a matter she sought to return to continuously under cross examination.
34. At that meeting Ms Mahmood read out the statements that had at that point been taken as part of the investigation into the incident on 27 April 2022. The claimant heard that Mr Sayed referred to her as '*like a grandmother*' in his statement and that in a joint statement from Shahnara Begum and Nurun Nahar one of them admitted saying to Mr Sayed '*She is old, so she gets angry*'. The claimant was provided with a copy of the statements.
35. The claimant also had a meeting that day with Mr Khalid. He asked to see her, so she went to his office. The claimant's evidence is that he said to her in that meeting '*What is important for you at this age? What is most important for you in life? Because they are young, they need to learn, but for you, right now, what is most important?*' The claimant says she told Mr Khalid that she was bullied, and he told her not to use the word as she did not know what it meant.
36. The claimant's written and oral evidence was that at this meeting she said to Mr Khalid that she was being discriminated against on the grounds of age. EJ Hutchinson recorded in their order of 9 June 2023 that in a meeting with Mr Khalid and Ms Mahmood the claimant said she was discriminated against because of her age. Mr Williams conceded, whilst cross examining the claimant, on behalf of the respondent that age discrimination was raised at that meeting as claimed by the Claimant.
37. On 7 May 2022, the claimant, having had time to read the statements which were provided to her by Ms Mahmood on 6 May 2022, emailed Ms Mahmood,

copying in Mr Khalid and Mr Silverston, setting out that she believed she was being bullied and humiliated and was unwell because of the stress. She asked for a few days off. Ms Mahmood replied on 9 May 2022 that the claimant should take whatever time she needs to get better.

38. The claimant was on sick leave from 8 to 15 May 2022, returning to work on 16 May 2022.
39. On or around 18 May 2022 Mr Khalid told Mr Bucur that the claimant would not be paid for her sickness absence, other than statutory sick pay (SSP) for four of the eight days. She and Mr Bucur went to see Ms Mahmood and Mr Khalid about this, and she was again told she would only be paid SSP.
40. On 23 May 2022 the respondent's HR sent an email to Mr Bucur, copied to Ms Mahmood, asking him to let the claimant know that she would have one week salary deducted for sickness absence and would be paid 4 days SSP.
41. It is the claimant's case that sometime in the week before she resigned, she checked the HR online system to look at holiday entitlement. This was because there had been an ongoing discussion about the respondent having reduced its employees' holiday entitlement without notification. Mr Bucur's evidence was that this had also happened to him. It was acknowledged in cross examination by Ms Mahmood that this holiday reduction had taken place and, despite her role as HR director, she was unable to say whether the staff had been notified of the change in writing. There was nothing to indicate that they had been notified in the bundle, or that the claimant specifically had been notified. She said her holiday entitlement had been reduced on the system from 24 days to 20. It was conceded by the respondent, as confirmed by Mr Williams, that the claimant was entitled to 24 days holiday per year plus bank holidays, before the reduction in 2022.
42. Whilst checking her holiday entitlement the claimant noticed that her job title was incorrectly recorded as production operative and her start date of employment was incorrect. It is the claimant's case that Ms Mahmood altered the records to show incorrect details of the claimant's employment on 26 June 2022. Ms Mahmood denies this, and the tribunal find that she did not alter the records on 26 May 2022. There is no evidence to support this allegation. There is no evidence that the records were different on 25 May 2022.
43. On 26 May 2022 Mr Bucur was provided with a copy of his employment contract, and the claimant's, by Ms Mahmood, at his request. It is the claimant's position that the documents she received on 26 May 2022 were the first contract documents she had ever been given. These were the document's signed on 18 September 2013, and which show the terms set out above at paragraph 16. It is the claimant's case that until this date she was unaware that she was entitled to a day in lieu in addition to double pay for each bank holiday worked. Mr Bucur's evidence is that he too was unaware of this entitlement until 26 May 2022. The tribunal accepts that, despite having signed the contract in 2013, the claimant was unaware of the terms, having

not been given a copy and having signed it in a meeting with Mr Silverston where there was no translation.

44. The same day, at 18:09 the claimant sent an email to Ms Mahmood, copying in Mr Khalid and Mr Silverston, querying the delay in concluding the investigation, noting that she was being docked pay for her sickness absence, which she describes as '*the last drop that filled my cup*', stating to Mr Khalid specifically that he had always told her she was a line manager, next one in seniority to Mr Bucur, and asking if she had been demoted. She said she felt discriminated against as others received benefits and rewards that she did not. She goes on to say that he told her she could not work in the pandemic because of her age.
45. At 18:53 on 26 May 2022 the claimant sent a resignation email to the same people, as follows:

I am writing this email in order to inform you that I, Adriana Petroi, I am resigning from my position as a Line Leader at Soho Sandwich Company.

Please accept this email as a resignation letter with immediate effect starting tomorrow, Friday 27th May 2022. I am afraid that is impossible for me to work in this company as I am a victim of unfair treatment, discrimination and did not get support from my manager, Muhammad, in the recent conflict where I was bullied. The conflict had place on 27th April and I did not get any solution from this investigation till this date.

I was asked to do tasks as a line manager but that didn't reflect on my contract or anywhere else. Even that I achieved the best efficiency possible I was not rewarded like my colleagues, was constantly left out whenever it was the case for a pay rise or company incentives.

I have an access key fob in my possession and this will be handed over to Alex. If anything needed please contact me by email.

Thank you for everything!

46. The next day, 27 May 2022, Ms Mahmood told the claimant by email that the investigation had completed the day before and Mr Khalid had taken appropriate action according to findings. She offered a meeting to discuss the claimant's email. She does not address the claimant's resignation in this email. The claimant replied on the same day saying that if Ms Mahmood thought a meeting was necessary, she would attend. Mr Khalid also said by email on 27 May 2022 that he would like to meet with the claimant.
47. On or around 31 May 2022 the claimant received her payslip for the month of May. The pay slip showed the usual payment for one full month worked, and one additional day.

48. On 6 June 2022 Ms Mahmood confirmed to the claimant that her resignation had been accepted and actioned on 26 May 2022 as the claimant had stated that she was resigning with immediate effect.
49. The claimant attended a meeting on 8 June 2022 with her daughter. She met with Ms Mahmood, Mr Silverston and Mr Khalid. Notes of the conversation, taken contemporaneously by the claimant's daughter, were included in the bundle. Ms Mahmood refers to them in her witness statement as alleged notes and seemed to be somewhat confused as to whether she was at the meeting. She was at the meeting and the tribunal accepts the note is genuine and records some of the comments made at that meeting. Clearly it is not, and was not meant to be, a verbatim note. Ms Bucur describes in her witness statement a fractious and unpleasant meeting. As she had a clear recollection of the meeting and the respondent's witnesses did not, giving vague oral testimony which contradicted their written evidence, the tribunal accepts that the meeting was as Ms Bucur described. She recorded in her note that Mr Silverston said '*I did not think you need motivation, I always thought younger people need to be motivated, rewarded.*' She records that Ms Mahmood interjected at this stage to say Mr Silverston meant inexperienced rather than younger. The tribunal finds that that exchange did take place.
50. It is Mr Silverston's evidence that at one point during this meeting he was alone with the claimant, and he raised the idea of settlement. She said to him that she was going to claim in full against the respondent and was doing it for her whole family. The claimant denied that she said this. On balance, because of the inconsistencies in Mr Silverston's evidence and his inability to remember many of the events about which he was questioned, compared to the claimant's clear recollection of events (though, as noted above, confusing some dates in the claim form) the tribunal prefers the claimant's evidence and finds that this comment was not made.
51. Ms Bucur questioned Ms Mahmood repeatedly in cross examination about this meeting being a grievance meeting. Ms Mahmood was clear that it was not a grievance meeting, i.e. a meeting that formed part of a formal grievance process. The tribunal accepts that it was not a grievance meeting.
52. It is the claimant's case, corroborated by Ms Bucur in unchallenged evidence, that in that meeting Mr Silverston told the claimant '*Don't even start about discrimination, we are going to change the tone. Or CCTV as we don't give it.*' Mr Silverston does not deny this in his witness statement and the tribunal accepts that it was said.
53. The claimant asked again for a copy of her contract at that meeting and received the same contractual documents given to Mr Bucur on the 26 May, by email on 9 June 2022.
54. Thereafter there were protracted email discussions between the claimant and Ms Mahmood with the claimant seeking information about her past pay and holiday history. The claimant tells Ms Mahmood on 16 June 2022 that she believes she was entitled to 33.6 days holiday per year as she worked 6 days per week. Ms Mahmood replies on 17 June 2022 that she is contractually

entitled to 5.6 weeks holiday inclusive of bank holidays and this does not increase because the claimant worked a six day week. The claimant's response the same day is that *'My [y]early holiday entitlement was 4 weeks pay. The difference of 1.6 weeks would be the bank holidays (worked) for which I was paid double but never given alternative days of leave in lieu.'* Ms Mahmood goes on to say the claimant should have taken days in lieu at mutually agreed times as provided for her in her contract. The claimant responds that she was not offered time off in lieu or paid bank holidays.

55. The tribunal finds that it was not possible for the claimant to take days in lieu of bank holidays worked, as she was not aware that she had this entitlement, having not been given a copy of the contract she signed in 2013. There was no other documentation or witness evidence provided by the respondent to show that she was notified of this right in some other way. Furthermore, Mr Bucur makes the same claim for himself. The tribunal has accepted that the claimant did not read the contract she signed in 2013 and notes that the claimant has English as a second language.
56. Ms Mahmood met with the claimant and Ms Bucur on 22 June 2022. The meeting was also to have been attended by Mr Silverston, but he did not attend. It is the claimant's evidence, and Ms Bucur's, that Ms Mahmood told her he had called to say he was not coming as he was taking leave, and she apologised because she would not be able to make any decisions that day. The tribunal understood this to mean that he had called Ms Mahmood at the last minute after she had arranged the meeting with his attendance in mind. As neither Ms Mahmood nor Mr Silverston reference this meeting at all in their witness statements, despite one of the detriments under victimisation being specifically related to this meeting, the tribunal accepts the claimant's evidence. The claimant says that at the meeting Ms Mahmood showed her a copy of an employment contract she had obtained from Mr Silverston, on her phone. This was the 2011 contract. The claimant had not seen that document before she was shown it by Ms Mahmood that day. Ms Mahmood makes reference to the contract in her handwritten notes of the meeting which were before the tribunal. Those notes also record the claimant claiming that she did not get paid double time. Though it does not say so this can only relate to bank holidays. This contradicts the claimant's position set out in the email of 17 June 2022. The claimant said at this meeting that she was going to commence early conciliation.
57. On 24 June 2022 the claimant received a payslip in which it was recorded that she was owed £396.63 for holiday days and a deduction of £264.42 had been made. It is uncontested that the amount of £264.42 amounts to three days pay. She contacted Ms Mahmood about this stating that the way that pay worked meant that she had worked a week in advance that month so was still owed a week's pay, and that she had accrued 10 days holiday not 8, as her annual leave (not including bank holidays) was 24 days per year. Ms Mahmood responded as follows:

I have checked with payroll and he has confirmed that you accrue 8.5 days annual leave up until you resigned. You took 4 days and was paid the remaining 4.5 days.

The annual leave for a full time colleague is 28 days including Bank holidays even if you work 6 days a week. Please see Gov. guidelines below I have highlighted in Red six day working.

The company have been paying additional leave for colleagues working six days in error which needs to be reviewed. [tribunal's emphasis]

I have asked payroll the question regarding the salary payment given in arrears, As soon as I hear back I will let you know.

58. Ms Mahmood sets out in her statement at paragraph 75 that the claimant was entitled to 24 days holiday plus bank holidays. At paragraph 76 she states that the claimant had accrued 8.5 days up until her resignation on 27 May 2022. The tribunal finds that as the claimant was contractually entitled to 32 days leave per year as admitted by the respondent, she accrued 13.3 days in the five months that she worked for the respondent in 2022, as she had worked the bank holidays that had taken place.
59. There were further emails between the claimant, Dan Silverston and Ms Mahmood about pay and constructive dismissal. In an email dated 1 July the claimant claims £21770.58 in unpaid bank holidays and unoffered days in lieu as well as querying the deduction in her payslip and claiming an unpaid week of work.
60. The respondent's position is that bank holidays were paid at double time, ie the payment of twice the daily rate. A number of the claimant's payslips show payments of 'additional days' and one shows a payment for 'bank holiday'. Mr Silverston said, in cross examination, that extra payment for bank holidays may show on payslips as 'additional days'. The claimant set out in her statement, and this is also referred to in Ms Bucur's skeleton argument, that double time means:

'that for every bank holiday I had to pay my daily pay x 2 on top of my salary and another day of leave in lieu.
61. It does not. The tribunal finds that the contractual entitlement to double time for bank holidays meant that the claimant would receive twice the daily rate, inclusive of her normal day rate. This is the ordinary meaning of double time.
62. The claimant's representative did not take the tribunal to any specific payslip or month where she said double pay had not been received, despite the tribunal stating during the hearing that it was necessary for her to do that.
63. The claimant brings a specific claim that she was underpaid for bank holiday working in the first five months of 2022. The tribunal has examined the specific documents relating to that period, to which it was taken. It finds that there were bank holidays on 15, 18 April and 2 May 2022, and the claimant was paid double pay for only two of these three (one in April and one in May, indicating an underpayment of one day for April 2022). In respect of the years

2008 to 2020 the tribunal finds that the claimant received double payment for bank holidays, not having been taken to any proof to the contrary.

64. It is the claimant's case that in July 2022 Mr Silverston said to Mr Bucur that things will get ugly if it goes to court. In cross examination Mr Silverston said that he may have said something like that but it was not a threat, just pointing out that if the matter went to court it would be bad. The tribunal does not find that this comment was a threat and accepts Mr Silverston's explanation.
65. The claimant commenced early conciliation on 4 July 2022, and it ended on 14 August 2022. This claim was filed on 22 August 2022.
66. It is the claimant's case that after her account was closed down on the HR system, it was reactivated in 2023 and amendments were made, including to her holiday entitlement. In the bundle were various print outs from the HR system which showed alerts for amendments. The alerts are undated. Ms Mahmood accepted in cross examination that the account had been reactivated and that this might have been in order to provide documentation in connection with these proceedings. It is undisputed that the account was closed and reactivated. As the alerts the tribunal was taken to were undated and had the name of Ms Mahmood's predecessor underneath them, the tribunal does not find that, as it understands the claimant to be suggesting, the respondent altered its records in 2023 in order to defeat her claim.
67. The claimant says that a rota for April 2022 was altered by the respondent in 2023 to show an incorrect date on which the claimant resigned. The document is undated as is the amendment. The date of resignation is handwritten and is incorrect. As far as the claimant suggests there was some malice in the recording of this incorrect date, the tribunal finds that there is none. The respondent has not at any time denied that the claimant resigned with effect from 27 May 2022.

Findings on pay

68. There was discussion between the parties in June and July 2022 about the deduction of pay as set out in the claimant's payslip for June 2022. Ms Mahmood said at that time that it was due to the claimant's sickness absence in May 2022 in that she was absent for eight days (seven working days) and the first three of those days were unpaid. Under her contract the claimant was not entitled to pay for the first three days of absence and was entitled to statutory sick pay for the days thereafter. There is nothing in either the May or June payslip to show that the claimant was paid SSP for the other four days of sickness absence. In her witness statement and in cross examination Ms Mahmood said this was a deduction for the days paid in May that the claimant did not work. She said the claimant was paid up until the end of May but did not work from 27 May 2022. This does not amount to three days. The tribunal finds that the respondent has failed to provide any compelling, logical or evidenced reason for the deduction of £264.42.
69. It is the claimant's position that employees were paid on the last Friday of the month for a period which bridged two calendar months. Her evidence was a

WhatsApp screen shot of a document entitled 'payment dates for the year 2022' provided by the respondent's HR assistant. The relevant pay period for May is 24 April 2022 to 21 May 2022 to be paid on 27 May 2022. Ms Mahmood said in cross examination, for the first time, that the document showed pay dates for hourly paid staff and that salaried staff were paid differently. She said that salaried staff were paid on the last Friday of the month for that calendar month, so any days unworked after the cut off date for payroll (which she did not specify) would need to be reclaimed from that employee the following month. It is set out in the contract dated 18 September 2013 that salary is payable monthly in arrears. It is set out in the employee handbook that *'For all staff the pay month is the calendar month. Salaries and wages are paid by the last Friday of the current month.'* There was no suggestion from the respondent that the handbook was for salaried staff only.

70. The tribunal found that the evidence on this matter was contradictory and confusing from both sides. Ms Bucur was unclear as to at what point the claimant was saying the entitlement to a further week's pay had arisen. The respondent's evidence was unsatisfactory where a distinction was made between hourly paid and salaried staff which only came to light in the hearing and was not reflected in the documentation before the tribunal. On balance, as Ms Mahmood did not dispute the veracity of the pay date schedule for 2022 referred to by the claimant, and because the respondent had failed to provide any documentary evidence to the contrary, the tribunal finds that the payment made to the claimant at the end of May 2022 was for the period 24 April 2022 to 21 May 2022, and she was not paid for the period 22 to 26 May 2022, all of which days she worked.

Submissions

71. Ms Bucur, for the claimant, relied on the submissions set out in her skeleton argument. In addition, she said that all of the claimant's claims were maintained, and the respondent's evidence was undermined by its contradictions. Ms Bucur said that the differential treatment the claimant received was due to age and could not be explained by any legitimate business need put forward by the respondent. The respondent could have provided training or mentoring without excluding or disadvantaging the claimant. She said that when the client thanked Mr Silverston in her email of 26 May 2022, this was before she knew he had acted to her detriment.
72. Mr Williams provided written submissions and made the following points orally. The claimant feels aggrieved by the trigger incident on 27 April 2022 and wants redress for that. It was fair to say that there were imperfections in the investigation and the notes taken of meetings, but this must be balanced with proportionality in the circumstances. It was a brief incident which in the respondent's view was fairly resolved and no remarks obviously amounted to discrimination, harassment or victimisation. The claimant was not satisfied with the outcome but her reaction, and her resignation, and the subsequent litigation have taken the respondent by surprise. As commented on by a tribunal member, ten years of blame free work pivoted in one day to litigation. Both sides have lost out, the claimant turning to litigation and the respondent losing a valuable employee. The claim brought has been set at such a high level that it was taken out of the realms of settlement.

Law, Decision and Reasons

Unfair Dismissal

73. The claimant claims constructive unfair dismissal under s95 (1) c) Employment Rights Act 1996 (ERA). The tribunal is concerned to decide whether there has been a dismissal in accordance with that section which states

95 Circumstances in which an employee is dismissed

1. For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2)....only if ...
(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of his employer's conduct.

This is what has become known as “constructive dismissal”. The case of Western Excavating (ECC) Ltd v Sharp 1978 ICR 221 makes it clear that the employer's conduct has to amount to a repudiatory breach. The employee must show a fundamental breach of contract that caused them to resign and that they did so without delay.

74. The claimant relies on several alleged breaches of the implied term of trust and confidence. Any breach of the implied term of trust and confidence would be a repudiatory breach of contract, giving rise to the right to terminate a contract. The tribunal's findings on each of the breaches claimed are as follows:

Allegation 1: The respondent did not increase the claimant's pay when pay was increased for colleagues due to the minimum wage increase in April 2022;

75. The respondent agreed that it did not raise the claimant's wages in April 2022 as the annual wage rise review was for those on the minimum wage , which did not include the claimant. The tribunal accepts that the claimant's wage was not increased but finds that this was not a breach of contract on the part of the respondent.

Allegation 2: The respondent did not investigate the claimant's complaint about bullying in April 2022.

76. It is clear from the documentary evidence that the respondent did carry out some investigation into the claimant's complaints of bullying relating to the incident on 27 April 2022, however, the tribunal finds that the investigation was not sufficient and that there was a complete failure to investigate the second complaint relating to an incident on 28 April 2022. In relation to the incident on 27 April, the respondent failed to interview two people that the claimant asked it to speak to. The respondent refused to look at CCTV footage, a request made by both the claimant and by the alleged perpetrator of the bullying. The claimant was told by Mr Silverston not to talk about discrimination and by Mr Khalid not to talk about bullying. The respondent said that Mr Sayed had received a warning. Other than Ms Mahmood's assertion that that is what happened, there is no documentary evidence that he was given a warning, no documentary evidence about the conclusions of the investigation, and no letter to the claimant setting out the outcome of her grievance. Neither was there a meeting in which the outcome was discussed.

The tribunal finds that the respondent failed to properly investigate the claimant's complaint about bullying and that this was a breach by the respondent of the implied term of trust and confidence.

Allegation 3: The respondent treated the claimant as demoted and did not support her job role.

77. The tribunal has found that the claimant believed in April 2022 that she was senior to the other line leaders and that whether this was informal or formal, the respondent held that view too, as evidenced by Mr Khalid's comment when she asked him to confirm her seniority on 3 May 2022 that *'things have changed'*. The fact that Mr Khalid refused to confirm her seniority in that meeting and the respondent failed to address her request within the grievance that this be clarified to the other staff, led the claimant to conclude she had been demoted. The tribunal accepts that the respondent did treat the claimant as having been demoted. It failed to address her concerns about the matter, or, if it believed she was mistaken, to seek to clarify the situation with her. The tribunal finds that this was a breach by the respondent of the implied term of trust and confidence.

Allegations 4 and 5: The respondent demeaned or belittled the claimant in a meeting on 18 May 2022 and Mohammed Khalid told the claimant 'things had changed, let it go'.

78. There was some discussion about dates in the hearing and the tribunal concluded that the meeting being referred to here was the meeting of 3 May 2022, which is described above at paragraph 31. This was clear from the claimant's description of the meeting in her ET1. The tribunal finds that Mr Khalid's comment that *'things have changed'* in response to the claimant's request that he clarify her position, in a meeting attended by a number of her colleagues, where the evidence is that the respondent previously accepted her seniority even if on an informal basis, was both demeaning and belittling. It finds that this was a breach by the respondent of the implied term of trust and confidence.

Allegation 6: The claimant was asked not to use the word bullying

79. The claimant's case is that Mr Khalid said to her in a meeting on 6 May 2022 that she should not use the word bullying as she did not know what it meant. While the tribunal accepts the claimant's evidence that this comment was made, it does not find that it was of a sufficiently serious nature that, on its own, it would amount to a breach of the implied term of trust and confidence.

Allegation 7: The respondent recorded the claimant's job incorrectly in the HR system, at a lower position, whereas her colleagues job roles were recorded correctly.

80. The tribunal accepts that the claimant's role was recorded incorrectly on the HR system, however, there was no evidence to show that this was a recent error, or that this was part of an attempt to undermine her. Furthermore, it did not affect her pay or conditions. The tribunal finds that this was not a breach of the implied duty of trust and confidence.

Allegation 8: The respondent did not pay the claimant in accordance with her contract in respect of bank holidays (i.e. not paying the claimant double pay for working bank holidays when others were so paid), and not offering the claimant a day in lieu of each bank holiday worked.

81. The tribunal has found that the claimant was not offered a day in lieu for bank holidays worked and has found that she could not have known of this entitlement in order to make a request for the days as she did not have a copy of her contract and there is no evidence that in any year of employment the fact that she was not using her full holiday entitlement was brought to her attention. The tribunal finds that the failure of the respondent to either supply a contract or bring to the claimant's attention that she had days in lieu unclaimed for a period of fourteen years was a breach of the implied duty of trust and confidence. The tribunal has found that there is no clear evidence to support the claimant's claim that she did not receive double pay for bank holidays.

Allegation 9: the respondent committed the contraventions of the Equality Act 2010 alleged below.

82. This allegation relates to the claimant's claims of direct age discrimination, harassment on the grounds of age and victimisation. The tribunal has upheld the majority of the claimant's allegations of age discrimination and finds that where the breaches relating to discrimination that took place before resignation are considered cumulatively, this would amount to a breach of the implied duty of trust and confidence.

83. As the tribunal has found that there have been numerous individual repudiatory breaches by the respondent, each of which gave rise to the right to terminate under s95(1) Employment Rights Act 1996, it was not necessary to consider the cumulative effect of the alleged breaches or a last straw act.

84. Where the tribunal has found that a repudiatory breach has taken place it must then go on to consider whether the claimant resigned in response to those breaches and whether she did so without delay. All of the breaches took place over the period 27 April 2022 to 26 May 2022, or came to the claimant's attention during that period. She resigned on 26 May 2022 with effect from 27 May 2022 and it is clear from both her resignation email and her grievance email, both dated 26 May 2022 that she was resigning in response to the breaches set out above.

85. The respondent has set out in its amended grounds of response that if the tribunal finds that the claimant was entitled to terminate her contract it will argue that the dismissal was fair and for some other substantial reason. No such argument was made to the tribunal either orally or in the respondent's written closing submissions.

86. The claimant's claim of constructive unfair dismissal is upheld.

Discrimination

Direct age discrimination

87. Equality Act s13:

(1) 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.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

...

88. In direct discrimination cases it is for the claimant to establish, on the balance of probabilities, the factual basis of their claim including facts from which a tribunal could conclude, in the absence of any other explanation, that the employer has acted in breach of the Equality Act 2010. It is only once this is established that the burden of proof switches to the respondent, i.e., the respondent then has the responsibility of providing a reason for its act or omission which is not discriminatory.

89. The claimant brings three allegations of age discrimination.

Allegation 1: On 3 May 2022 Mr Khalid said to Alexandru Bucur "Tell Adriana to leave them alone. They are young and we do not need this kind of problem now, we are busy."

Allegation 3: On 8 June 2022 Dan Silverston said the claimant "should not blame Mr Khalid as he wanted to motivate and reward younger people as in his opinion the claimant did not need motivation, but others did"

90. The tribunal has found that Mr Khalid and Mr Silverston made the comments attributed to them in allegations one and three. It finds that both of the comments are about age and about differentiating between people on the grounds of age and are therefore potentially discriminatory. It finds that in both cases the claimant was being treated less favourably because of her age. As regards allegation one she was effectively being asked to accept what she perceived to be unacceptable behaviour by younger employees, because of their age in comparison with hers, and as regards allegation two being denied access to rewards on account of her age. The tribunal has considered whether an employee in the same situation raising the same complaints but younger than the claimant would have been treated differently and concludes that they would have been. The comments are specifically a response to the claimant's age, or the difference in age between the claimant and those she has complained about or the complaint about different treatment meted out to older and younger employees. The tribunal finds that the claimant has shown that she has a prima facie case so that the burden is on the respondent to explain why the acts were not discriminatory. The respondent has denied that the comments were made and has provided no explanation in the alternative as to why they were not discriminatory. The respondent relies on the defence that the comments were a proportionate means of achieving a legitimate aim, namely, ensuring the operational capacity and proper functioning of the respondent, creating a balanced workforce and promoting the progression of younger workers. The tribunal rejects this defence. Treating older and younger

employees differently by ignoring complaints about the behaviour of younger people and providing more opportunity for reward to younger people cannot be justified by the aim of creating a balanced workforce. It is an action likely to achieve just the opposite.

91. The tribunal finds these allegations proven and finds that the claimant suffered direct discrimination on the grounds of age.

Allegation 2: The respondent failed to investigate the claimant's allegations that she had been bullied, harassed and discriminated against because of her age after Ms Mahmood read out at the meeting on 6 May 2022 a statement from Mr Abu Sayed which said that the claimant was "like my grandmother" and a joint statement from two other line leaders (Shahnara and Nurun) which set out that "Adriana is so old she gets angry";

92. The tribunal has found above that the investigation of the claimant's complaint about Mr Sayed's behaviour on 27 April was deficient and that there was no investigation into the complaint about the incident on 28 April 2022. This allegation of direct discrimination relates more specifically to a complaint about the comments made by Mr Sayed, and others in statements taken as part of the limited investigation into the 27 April 2022 incident. Ms Mahmood's evidence was that she has spoken to those who made these two comments and formed the view that the comments were not meant disrespectfully. The tribunal may not agree with that conclusion, but it finds that there is evidence to show that the comments were investigated as being potentially discriminatory, and therefore this allegation is not upheld.

Harassment related to the protected characteristic of age

93. S26 Equality Act 2010

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

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A ...

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

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

- age;

....

94. The claimant brings six allegations of harassment

Allegation 1: On 27 April 2022 Mr Abu Sayed said to the claimant “Who are you to tell me what to do? You are old but I am more experienced than you. I can run your line with better efficiency. You can’t tell me what to do, you are not a manager or supervisor.” and “Adriana is like my grandmother but she doesn’t want to take our respect. If you give me line one, I can make best efficiency”;

95. The allegation that Mr Sayed said, ‘You are old but I am more experienced than you’ first appears in the claimant’s further particulars in January 2023. The tribunal accepts that after the incident on 28 April 2022 and then being told what had been said about her by Mr Sayed and others on 6 May 2022, the claimant became aware that there was an age factor to her treatment, but the contemporaneous evidence does not support that she was aware of this on 27 April 2022 or that Mr Sayed made the comment alleged rather than the comments alleged in her statement of 27 April or email later that day. This aspect of this allegation of harassment is not upheld.

96. The tribunal accepts that Mr Sayed’s reference to the claimant as being ‘like my grandmother’ was unwanted conduct relating to her age. It notes that the comment was not made directly to the claimant, but it was relayed to her and there was a second incident (as described in the next allegation) in which Mr Sayed referred to the claimant as a grandmother (using the Bengali term Dadi) in her hearing. The tribunal accepts that this was unwanted conduct related to the claimant’s age which had the effect of humiliating her, and it was reasonable for her to feel that way.

Allegation 2: on 28 April 2022 Mr Abu Sayed sang in a foreign language whilst looking over his shoulder in the claimant’s direction. In the song her name was inserted and the word Dadi. She later found out that this word means grandma in Bengali.

97. The tribunal has found that this incident took place as described by the claimant. The tribunal accepts that this was unwanted conduct related to the claimant’s age which had the effect of humiliating her, and it was reasonable for her to feel that way.

Allegation 3: On 3 May 2022 Mr Khalid said to Alexandru Bucur “Tell Adriana to leave them alone. They are young and we do not need this kind of problem now, we are busy.”

98. The tribunal has found that this incident took place as described by the claimant. The tribunal accepts that this was unwanted conduct related to the claimant’s age which had the effect of humiliating her, and it was reasonable for her to feel that way.

Allegation 4: On 6 May 2022 in a statement Mr Abu Sayed said that the claimant is “like my grandmother” and in a joint statement Shahnara and Nurun set out that “Adriana is so old she gets angry.”

99. The tribunal accepts that Mr Sayed's reference to the claimant as being 'like my grandmother' was unwanted conduct relating to her age, as were the comments made by Shahnara and Nurun. It notes that the comments were not made directly to the claimant but were relayed to her by Ms Mahmood. The tribunal accepts that this was unwanted conduct related to the claimant's age which had the effect of humiliating her, and it was reasonable for her to feel that way.

Allegation 5: On 6 May 2022 Mr Khalid asked the claimant "what is important to you at this age? What is most important to you in life because they are young, they need to learn things. But for you, right now, what is most important?" He also asked the claimant to relax and focus more on important things her age, like peace, health and family. He advised the claimant not to use the word bullying.

100. The tribunal has found that Mr Khalid made these comments to the claimant. The comments are about the claimant's age, and how she should behave or the priorities she should have because of her age. The comments were made by a person in a senior position to the claimant after she had raised a complaint. The tribunal finds that Mr Khalid's conduct may have had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant and did have that effect. The tribunal finds that even if Mr Khalid did not intend the comments to be humiliating or offensive, objectively they were, and it was reasonable for the claimant to feel that way.

Allegation 6: On 8 June 2022 Dan Silverston said the claimant "should not blame Mr Khalid as he wanted to motivate and reward younger people in his opinion the claimant did not need motivation, but others did".

101. The comment is about age, and specifically that the claimant is older. The point being made is about rewards for younger people which are not required for an older person. The tribunal finds that Mr Silverston's conduct may have had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant and did have that effect. The tribunal finds that even if Mr Silverston did not intend the comments to be humiliating or offensive, in the claimant's perception, where a number of comments have, to her certain knowledge, been made about her age, where she has complained about age discrimination and the respondent's failure to address that was one of the reasons why she has resigned, it was reasonable for the claimant to feel that way.

Victimisation

102. S27 Equality Act 2010

- (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—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.

- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

103. The claimant brings eleven allegations of victimisation. She relies on the protected act of raising age discrimination in a meeting with Mr Khalid, a manager, on 6 May 2022. The respondent has conceded that age discrimination was raised by the claimant at that meeting and the tribunal finds that this was a protected act for the purposes of s27(2) Equality Act 2022.

Allegation 1: In April 2022 the company announced a wage increase in response to the increased minimum wage. The claimant raised concerns with the Production Manager (Mr Bucur) and Mr Khalid said he would look at it in the second week of May. The alleged act of victimisation is that "Mr Khalid did not look into the claimant's query about a pay increase due to the minimum wage increase in April 2022.

104. The tribunal has found that the matter of pay was raised with Mr Khalid and that he said that he would come back to the claimant in the second week of May. He did not. Just before the second week of May the claimant raised with Mr Khalid that she believed she was being discriminated again on the grounds of age. In the absence of any evidence as to why there was a failure to address the query about pay, the tribunal finds that the failure was because of the protected act and therefore an act of victimisation.

Allegation 2: On 6 May 2022 Mr Khalid advised the claimant not to use the term bullying.

105. As set out in the claimant's witness statement, it is alleged that Mr Khalid said 'No, no, don't say it like that. You don't know what it means.' The tribunal does not accept that this comment was made because the claimant had raised age discrimination earlier in the meeting, as it is clearly a response to the claimant using the word bullying as the conversation continued. Nor does the tribunal accept that the comment in itself is a detriment. It does not indicate that Mr Khalid is trying to prevent the claimant making a complaint, but rather that she should be clear in the language she is using. While he may have been incorrect in assuming she did not understand the implications of using the word, the tribunal finds that this is part of a conversation and not on its own a detriment.

Allegation 3: On 27 May 2022 Ms Mahmoud or the HR assistant inserted the claimant's role as a lower role than her actual role on the HR system

106. The tribunal has found that this incident, as alleged, did not take place.

Allegation 4: On 8 June 2022 Dan Silverston told the claimant not to mention discrimination, not to ask for CCTV footage and he stopped the respondent's internal grievance procedures.

107. On 8 June 2022 the claimant attended a meeting with the respondent, believing that the meeting was to address her grievance. Her grievance was not addressed, and the tribunal has found that Mr Silverston did make the comments attributed to him. The comments were detrimental as they were

about ending her complaint, and the tribunal finds that they were made because the claimant had raised age discrimination and therefore amount to victimisation.

108. The tribunal finds that there is no evidence that Mr Silverston stopped the internal grievance procedure on that date, or that he did so because of the protected act. The claimant had already resigned by this point and the respondent was under no obligation to continue with a grievance procedure.

Allegation 5: in the payslip of June 2022 a deduction of £264.42 was made.

109. The tribunal has found above that the respondent has failed to provide a satisfactory answer as to why this deduction was made. In the absence of any satisfactory explanation, and where the deduction, which is clearly a detriment, was made after the protected act, the tribunal upholds the claimant's claim that the deduction was an act of victimisation.

Allegation 6: In the payslip of June 2022, the respondent failed to pay the claimant three days in lieu of bank holidays she worked in 2022.

110. As noted above, the tribunal has found that the claimant was underpaid by one day for bank holidays worked in 2022 and not three. The failure to pay for that one day occurred at the end of April. This failure pre-dates the protected act and this allegation is not upheld.

Allegation 7: On 22 June 2022 the claimant was presented with a fabricated contract of employment.

111. The tribunal does not accept that the presentation to the claimant of this contract was a detriment she was subjected to because she did a protected act. The holiday entitlement and pay terms in this contract are different (less advantageous) to those set out in the contract signed in 2013. The claimant was in a dispute with the respondent about bank holiday pay. This was separate to her complaint of age discrimination.

Allegation 8: The respondent failed to rectify their error in attempting to reduce, in March 2022, the claimant's contractual holiday from 24 days to 20 days. This resulted in a failure to pay the claimant 1.5 days of holiday at the end of her employment.

112. The tribunal does not uphold the claimant's claim that this was an act of victimisation. The respondent's evidence is that it tried to reduce holiday for all staff who were receiving 24 days holiday entitlement (plus bank holidays) rather than the statutory minimum of 20, and Mr Bucur's evidence was that he was subjected to the same detriment.

Allegation 9: In July 2022 Dan Silverston said to Alexandru Bucur, "things will get ugly if it goes to court".

113. This comment was not made to the claimant, and the tribunal has accepted Mr Silverston's explanation that the comment was not intended as a threat but as a statement of fact. This claim of victimisation is not upheld.

Allegation 10: In 2023 the claimant's BrightHR account and HR Online were reactivated to add entries relating to annual leave, absence report and alter entries.

114. Ms Mahmood explained that these accounts would have been re-opened in order to carry out disclosure for this hearing. She also noted that the name below the amendments to which the tribunal's attention was drawn by the claimant was that of her predecessor, indicating that the amendments had been made before the claimant resigned. The tribunal does not uphold this allegation of victimisation as it does not accept that the amendments were detriments or that they took place after the protected act.

Allegation 11: In 2023 the respondents provided a modified rota which said that the claimant's last working day was 27 April 2022 when in fact it had been 27 May 2022.

115. The tribunal does not accept that the incorrect recording of her leaving date on this document constitutes a detriment where it is accepted by the respondent, and always has been, that her resignation took place with effect from 27 May 2022. This allegation of victimisation is not upheld.

116. The tribunal finds that the claimant suffered victimisation due to having raised age discrimination in a meeting with Mr Khalid on 6 May 2022 in that she suffered the detriments described in allegations one, four and five because of doing that protected act.

Unauthorised deductions from wages

117. S13 Employment Rights Act 1996

(1)An employer shall not make a deduction from wages of a worker employed by him unless—

(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2)In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a)in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b)in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3)Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

...

Allegation 1: Was the claimant paid double pay and offered a day off in lieu when working bank holidays, a contractual entitlement, as conceded by the respondent?

118. The respondent's position is that all bank holidays were paid at double time. The claimant says they were not. The tribunal was not taken to any clear evidence that bank holidays were not paid on any particular occasion (other than it was asked to consider the payslips from 2022 in relation to the leave accrued and unpaid in that holiday year on termination), despite the tribunal

raising with claimant's representative that it was necessary to do so, and not the task of the tribunal to try and discern which bank holidays had or had not been paid over a 14 year period. Nor were the respondent's witnesses taken in cross examination to any particular documents and asked to comment on a specific alleged underpayment. Mr Silverston said, in cross examination, that extra payment for bank holidays may show on payslips as 'additional days'. There are many payslips in the bundle showing payment of 'additional days' to the claimant. The matter is not addressed in the section on unauthorised deductions in the claimant's detailed 42 page skeleton. 64 days of unpaid bank holiday are claimed in the schedule of loss but no further detail is provided.

119. The tribunal is not satisfied that the claimant has shown that she did not receive double payment for 64 bank holidays over a 14 year period. It notes in any event that under s23(4A) Employment Rights Act 1996 the tribunal cannot consider complaints dating back more than two years from the presentation of the complaint.
120. The tribunal makes no award in respect of unpaid bank holidays as it finds there was no unauthorised deduction in this respect.
121. The claimant's claim that days in lieu of bank holidays worked were not provided, is not a claim that can be brought under s13A Employment Rights Act 1996, as days in lieu are not wages as defined in s27 Employment Rights Act 1996.

Allegation 2: Did the respondent make two deductions from the claimant's last payslip in June 2022? -

A: £616.98 for work during the week 20 to 27 May 2022.

B: £264.42 recorded on the payslip as a 'deduction'.

122. Allegation 2A: the figure of £616.98 represents a claim for seven days' pay at a rate of £88.14 per day. It is the claimant's position, for the reasons set out in paragraph 69 above, that she should have been paid this amount in respect of the dates 20-27 May 2022 as part of her pay in June. The tribunal has found above that the claimant was not paid for five days that she worked from and including 21 to 26 May 2022. There is no statutory or contractual reason for this deduction, and it was unauthorised. The claimant's claim is upheld in part. The claimant's daily rate is £88.14 and therefore there was an unauthorised deduction of £440.70.
123. Allegation 2B: the tribunal has found that although the respondent has provided reasons for the deduction, which is evidenced on the claimant's pay slip, these are not supported by the documentary evidence or the respondent's confusing witness evidence. The tribunal finds that the deduction of £264.42 made in June 2022 was unauthorised.

Holiday Pay (Working Time Regulations 1998 (WTR))

124. S13A Working Time Regulations 1998

13A This regulation applies to—

(a) a worker in respect of any leave years beginning before 1st April 2024, ...

(1) Subject to regulation 26A and paragraphs (3) and (5), a worker is entitled in each leave year to a period of additional leave determined in accordance with paragraph (2).

(2) The period of additional leave to which a worker is entitled under paragraph (1) is—

...

(d) in any leave year beginning after 1st April 2008 but before 1st April 2009, 0.8 weeks and a proportion of another 0.8 weeks equivalent to the proportion of the year beginning on 1st April 2009 which would have elapsed at the end of that leave year;

(e) in any leave year beginning on or after 1st April 2009, 1.6 weeks.

(3) The aggregate entitlement provided for in paragraph (2) and regulation 13(1) is subject to a maximum of 28 days.

(4) A worker's leave year begins for the purposes of this regulation on the same date as the worker's leave year begins for the purposes of regulation 13.

(5) Where the date on which a worker's employment begins is later than the date on which his first leave year begins, the additional leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (2) equal to the proportion of that leave year remaining on the date on which his employment begins.

(6) Leave to which a worker is entitled under this regulation may be taken in instalments, but it may not be replaced by a payment in lieu except where—

(a) the worker's employment is terminated; or

(b) the leave is an entitlement that arises under paragraph (2)(a), (b) or (c); or

(c) the leave is an entitlement to 0.8 weeks that arises under paragraph (2)(d) in respect of that part of the leave year which would have elapsed before 1st April 2009.

(7) A relevant agreement may provide for any leave to which a worker is entitled under this regulation to be carried forward into the leave year immediately following the leave year in respect of which it is due.

(7A) Where, as a result of taking a period of statutory leave in any leave year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such untaken leave into the following leave year.】

...

125. S14 Working Time Regulations 1998

14.—*(1) Paragraphs (1) to (4) of this regulation apply where—*

(a) a worker's employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulations 13(1) and 13A(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

126. S30 Working Time Regulations 1998

30.—*(1) A worker may present a complaint to an employment tribunal that his employer—*

(a) has refused to permit him to exercise any right he has under—

(i) regulation 10(1) or (2), 11(1), (2) or (3), 12(1) or (4), 13, 13A, 15B or 15D

...

(b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2), 15E, 16(1) or 16A.

(2) Subject to regulation 30B, an employment tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months.

(2A) Where the period within which a complaint must be presented in accordance with paragraph (2) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (2).

(3) Where an employment tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the employer to the worker.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

(a) the employer's default in refusing to permit the worker to exercise his right, and

(b) any loss sustained by the worker which is attributable to the matters complained of.

(5) Where on a complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a worker in accordance with regulation 14(2) or (5), 15E, 16(1) or 16A, it shall order the employer to pay to the worker the amount which it finds to be due to him.

Allegation 1: Was the claimant given less than her statutory minimum annual leave in any years 2008 to 2020.

127. As the respondent has conceded, the claimant was contractually entitled to 24 days of annual leave plus bank holidays. Under the WTR ss13 and 13A a full time employee is entitled 28 days annual leave per year, which can be inclusive of bank holidays. S13 confers the right to ordinary annual leave of 20 days. This right is derived from the Working Time Directive. S13A confers the right to a further eight days and this is an entirely domestic provision.

128. The tribunal has found that the claimant was unaware that she was entitled to a day off in lieu of bank holidays worked and so could not have requested those days. The tribunal finds that this amounts to a refusal to provide leave by the employer for the purposes of s30(1)(a)(i) WTR. The tribunal finds that where the claimant, who speaks English as a second language, was not provided with a copy of her employment contract, either in English or translated into Romanian, and where she took less than her statutory and contractual holiday entitlement each year for 12 years, and this was not brought to her attention by the respondent, the respondent has refused to allow her to take that leave. The claimant had 24 days holiday per year from 2008 to 2020 rather than the statutory minimum of 28 and this was a breach by the employer of s13A WTR.

129. However, s13A, unlike s13 does not provide for leave to be carried forward where it is untaken due to the employer failing to afford the employee an opportunity to take it. The WTR were amended in 2023 and the carry over provisions set out at ss13 (16) and (17) were included to give effect to the Court of Appeal's judgment in *Smith v Pimlico Plumbers [2022] EWCA Civ 70*. S13A was also amended but only in so far as it gives a limited carry over right where

additional leave is untaken because a worker has a period of statutory leave for example maternity leave, so is unable to take their full annual leave entitlement.

130. There is one further exception in terms of carry over. Under s13A(7) WTR a relevant agreement may provide for any leave to which a worker is entitled under this regulation to be carried forward into the next leave year, but not beyond that. The tribunal finds that there was no such agreement in this case. The claimant's representative raises an argument in the skeleton argument that there was such an agreement, which she founds on the line 'The date when a day off in lieu is to be taken is to be mutually agreed with us' in the 2013 contract. The point was made by the tribunal to Ms Bucur during the hearing that new arguments, raised for the first time in a skeleton argument, would not be considered by the tribunal, however, for the avoidance of doubt, the tribunal finds that a contract term allowing for mutual agreement of when a day of in lieu should be taken, does not amount to a carryover agreement for the purposes of s13A (7).
131. Under s30(2) WTR a claim must be presented before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted, or if not, within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within that time. Mr Williams, for the respondent, said that it did not take any points on time in relation to the claimant's claim. The tribunal finds that the complaints were not presented within time for the purposes of s30(2)(a). The tribunal finds that the claimant was unaware of her rights in respect of statutory holiday entitlement until 26 May 2022 when she received a copy of her contract. It has considered whether it was reasonable that she should remain ignorant of this right up until that date. It has taken into account that the claimant is a Romanian woman who has English as a second language and used the services of an interpreter at the tribunal, as well as the fact that she signed a contract in 2013, in English which she did not read. She was not provided with a transcript or a copy of the contract in English until 26 May 2022. Additionally, the claimant was aware that the respondent allowed her 24 days holiday. It was not a case in which she was offered no holiday, which may have then alerted her or led her to research her rights. When she received a copy of her contract, at the same time as her son in law, Mr Bucur, received a copy of his, as a result of a further request following the respondent's unilateral reduction of their contractual holiday pay, she was alerted by her family to the possibility that she had not received her statutory holiday entitlement. Thereafter she acted promptly in entering into conciliation and filing this claim, while also raising the issue directly with her employer.
132. It is the tribunal's conclusion that it was not reasonably practicable for the claimant to file a complaint about the refusal of statutory holiday under s13A, within three months of the date on which the right should have been permitted, and that when the claimant became aware of her rights, she issued the claim swiftly. Time for filing the claim is extended to 22 August 2022.
133. The tribunal upholds the claimant's claim that the respondent was in breach of s13A WTR in that it effectively refused her the right to take four of the eight

days of additional leave she was entitled to, in each year from 2008 to 2020. However, as s13A precludes a carry forward of the right to the untaken leave from year to year even where the reason is the refusal of the employer to allow the leave to be taken, the tribunal can only award the claimant the four days untaken in the year ending 2020, the last year in which the breach occurred.

Allegation 2: Did the respondent fail to pay the claimant in full for annual leave the claimant had accrued but not taken when her employment ended?

134. The claimant's contractual holiday entitlement was 24 days plus bank holidays, i.e. 32 days. The respondent agrees this. The respondent tried unilaterally to amend the contract so that holiday would be 20 days plus bank holidays in 2022. The amendment was not notified to or agreed to by the claimant and was invalid. In any event, the claimant's minimum statutory entitlement was 28 days per annum as provided for in ss13 and 13A WTR. The respondent worked for five months in the holiday year for 2022 commencing on 1 January. She had therefore accumulated five twelfths of 28 days (11.7 days) and not 8.6 as calculated by the respondent (i.e. five twelfths of 20 days). Under s14 WTR an employee is entitled to be paid for leave accrued and untaken where employment ends during a holiday year. The claimant had taken 4.5 days leave and the respondent paid for a further 4.1 days on termination. The tribunal finds that as the claimant had accrued 11.7 days, the respondent has failed to pay 3.1 days accrued but untaken leave and makes an award of the relevant amount to the claimant. The parties are in agreement that the day rate is £88.14 and the amount payable is therefore £273.23.

Breach of contract

135. The claimant brings three breach of contract claims in addition to the breaches alleged under the head of constructive unfair dismissal. Under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, the tribunal has jurisdiction to hear certain contract claims where the claim relates to an employment contract. There are specific exemptions which do not apply to this case. A claim of breach of contract can only be brought where the claimant's employment has terminated. A claim must be brought within three months (plus any extension of time for early conciliation) of the date of dismissal. The claimant's claim was brought in time. Under the order, damages are limited to £25,000.

Allegation 1: The respondent failed to comply with contractual bullying and grievance procedures.

136. The tribunal finds that while the contract dated 2013 sets out that the capability and disciplinary rules are contractual it does not state that the grievance procedure is. The tribunal was not taken by either party to any documents relating to this matter. There is no bullying procedure referred to in the contract. As the claimant was not subject to the disciplinary or capability policies she cannot claim that the respondent breached it in regard to her contract. Even if the grievance procedure was contractual, and the tribunal finds it was not, the claimant has not set out what her losses are in this regard, and the tribunal has already dealt with the matter of a failure to investigate the complaint of bullying as a breach of the implied term of duty and confidence under the unfair dismissal claim. Any appropriate compensation for loss will be

awarded under that head and there can be no double recovery. The tribunal does not uphold this allegation.

Allegation 2: The respondent failed to provide payment in lieu of worked bank holidays from 2008 until the end of the employment;

137. There is no term of the contract that payment would be made in lieu of worked bank holidays. The contract terms set out in the contract dated 2013 were that there would be double pay for bank holidays taken and a day of holiday in lieu. The tribunal notes that the contract did not wholly reflect the terms agreed (for example in that it showed a lower holiday entitlement than the respondent agreed the claimant was entitled to) but the claimant did not put it to the witnesses that she had a verbal term that there should be an option to receive pay for a bank holiday worked instead of a day off in lieu. Such a term in respect of the first 28 days of leave to which the claimant was entitled would in any event have been in breach of section 13 and 13A of the WTR.

138. However, it is clear from the claimant's pleadings throughout this case and her oral evidence at the hearing that what she is seeking is compensation for the respondent's failure to provide her with 32 days of annual leave (including bank holidays) to which it has agreed before this tribunal, she was contractually entitled. This is separate to her claim that the failure to provide the full annual leave entitlement was a breach of the implied term of duty and confidence giving rise to a right to terminate her contract, which the tribunal has upheld above. The tribunal has considered whether the respondent refused the claimant the contractual holiday and if so whether that was a breach of contract. The claimant made clear in her email dated 16 May 2023 that she pursued the claim for bank holidays untaken as a breach of contract claim and the respondent acknowledged this, denying the allegation, at paragraph 60 of its amended response.

139. As noted above at paragraph 128, the tribunal has found that the respondent refused the claimant's additional leave, i.e. she was refused 4 days of holiday in excess of the 24 that she knew she was entitled to and used. It is the tribunal's conclusion that for the same reasons, the respondent has breached the claimant's employment contract by refusing eight days per annum holiday (eight out of the thirty two she was contractually entitled to as confirmed by the respondent), during each year from 2009 to 2020, and for part of the year 2008. Any award of damages will be determined at the remedy hearing and there will be no double recovery where an award has been made under another head of claim.

Allegation 3: The respondent failed to pay accrued holiday on termination of employment.

140. The tribunal has found at paragraph 134 that there was a failure to pay some of the claimant's accrued holiday on termination, and it accepts that this was also a breach of contract. The claimant's claim in contract will be for five twelfths of 32 days rather than five twelfths of 28 days, which is the maximum that she can claim under WTR. The claimant's full contractual entitlement is 13.3 days for the five months worked. She has been paid for 8.6. A further 3.1 was awarded under the WTR breach, and she is therefore entitled to recover the remaining 1.6 days as damages for breach of contract.

Failure to provide written statement of particulars

141. S38 Employment Act 2002

(1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.

...

(3) If in the case of proceedings to which this section applies—

(a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 ...

the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.

142. S1(1) Employment Rights Act 1996 sets out that it is the duty of an employer to provide a written statement of particulars of employment. The respondent provided a written statement on 26 May 2022. These proceedings commenced on 22 August 2022. As the statement was provided before the proceedings began, no award to the claimant can be made, in accordance with s38 (3)(b) Employment Act 2002.

Approved by:

Employment Judge W Anderson

Date: 22 May 2025

Sent to the parties on
4 June 2025

For the Tribunal Office