



EMPLOYMENT TRIBUNALS

Claimant: Ms S Sulman
Respondent: Get Set Hire Limited

Heard at: London Central (by CVP)

On: 10/6/2025 to 13/6/2025
Before: Employment Judge Mr J S Burns

Representation

Claimant: In person
Respondent: Mr P Warnes (ET Advocate)

JUDGMENT

The claims are dismissed

REASONS

1. These were claims of constructive unfair dismissal, discrimination as set out in the Schedule. During the hearing the Claimant confirmed that, contrary to what was written in a case summary dated 21/10/24, her direct discrimination claim was race only, and not religion or belief, and that she did not wish to pursue part of the direct race claim which had been recorded in paragraph 5.2.4 of that summary. She also clarified that paragraph 6.1.3 of the record of the harassment claim related to race only, whereas 6.1.1 and 6.1.2 related to both race and religion.
2. I have reflected these changes in the Schedule.
3. I heard evidence from the Claimant and her witness Ms L Parpa and from the Respondent's witnesses, Mr J Hussein (ex-transport manager and the Claimant's erstwhile line manager,) Mr J Turner (ex MD), Ms A Vincent (office manager) and Mr P Miller (owner). Mr Turner, Ms Parpa and Mr Hussein have all left their employment with the Respondent since the events material to this claim. The documents were in a bundle of 215 pages and in addition the Claimant submitted 6 additional documents and the Respondent 2 additional documents during the course of the hearing.

Relevant law

Unfair constructive dismissal

4. In order for an employee to establish constructive dismissal he/she must establish a breach of contract by the employer.
5. The breach must be fundamental and repudiatory and going to the heart of the contract – ie sufficiently serious to have justified the employee resigning immediately. The test is whether the employers conduct is such that the employee cannot reasonably be expected to tolerate it a moment longer after he has discovered it and can walk out of his job without prior notice.

6. It is necessary that the employee left his employment with the employer in response to the breach and not for some other unconnected reason. It is sufficient for this purpose if the breach is one of the reasons amongst others for the resignation.
7. The breach of contract can be of an express or an implied term.
8. There is a term implied by law in all employment contracts that an employer shall not without reasonable and proper cause conduct itself in a manner calculated (or) likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
9. The implied term will be breached only where there is no reasonable or proper cause for the employer's conduct.
10. The test as to whether there has been a breach of the implied term is an objective one. The motives of the employer are not determinative or relevant. If conduct, objectively considered, is calculated or likely to cause serious damage to the relationship between employer and employee, a breach of the implied term may arise.
11. The range of reasonable responses test does not apply in establishing whether a breach has taken place.
12. The breach can be by means of a single act or by a series of acts which cumulatively amount to a repudiatory breach, though each individual incident may not do so. In such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract – the question is – “does the cumulative series of acts taken together amount to a breach of the implied term?” This is the last straw situation.

Discrimination

13. Section 4 Equality Act 2010 (EA) provides that race and religion/belief are protected characteristics.

Direct Discrimination

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

Harassment

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

Victimisation

17. This is defined in section 27 of the EA and it occurs where the victimiser subjects another to detriment because the other has done a protected act or the victimiser believes the other has done or may do a protected act. A protected act is defined to include bringing proceedings under the EA or giving evidence in such proceedings or doing anything in relation to the Act or alleging a breach of the Act, (provided the allegation is not both false and made in bad faith) .

Onus of proof

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

Findings of Fact and Conclusions.

19. The Respondent operates within the media industry, and employs about 46 employees. The Claimant was employed by the Respondent from 5/7/21. By the time of her resignation on 16/4/24 she was working as a Transport Supervisor, alongside her witness Ms Parpa, with both line-managed by Mr Hussein.
20. I find that the Claimant in her evidence was on the whole doing her best to provide an accurate account of events as she recalled them. However, there were some exceptions to this, particularly regarding her recording of her conversations with managers in February 2024 and her treatment of her computer password.
21. The Claimant's witness Ms Parpa is a long-standing close friend of hers. Much of her evidence was based simply on what she had been told by the Claimant.
22. The Respondent's witnesses Mr Hussein and Mr Nicholls (the latter has unfortunately been suffering serious ill-health and I thought he was a vulnerable witness) both said they could not remember some things and in relation to some points were inconsistent with their witness statements.
23. Most of the facts relied on as either breaches of contract or acts of discrimination were not in dispute - my main task in relation to these was therefore not to decide whether they occurred but rather the character of the matters complained of and their effect under the relevant legal provisions.
24. The main dispute of fact between the parties were about the character and quality of the Claimant's demeanor and manners at work during the period from July 2023 onwards. The Respondent's witnesses used different terms to describe this such as "*curt, short, sulky, aggressive, intimidating, combative, disengaged and rude, showing rolling eyes, and making muttered comments*". They were all consistent about this, and they were corroborated by the observations of an independent third-party trainer who wrote to the Respondent to comment on the Claimant's unsatisfactory attitude during a training event she attended in February 24. I have no hesitation in accepting the Respondent's case about this.
25. Prior to July 2023, the Claimant had already shown some problems in her communicating

style. To some extent she had been appeased in response- for example by Mr Nicholls not challenging her when she was dismissive to him. However, Mr Turner, who arrived as a new MD in July 23, is a different character from Mr Nicholls. As Mr Turner showed when giving evidence he is assertive, straight-talking and prone to interrupting. He was not the type to feel intimidated by or to appease the Claimant or tolerate rudeness as Mr Nicholls for example had done. After his arrival there was bound to be conflict sooner or later between him and the Claimant as they are both strong assertive characters. It did not take long to happen. Shortly after Mr Turner's arrival and following his observation of the Claimant interacting with other colleagues, he told her that he thought she was hot-headed, or similar. The Claimant did not like that and retorted that he should be careful about applying such a description to a person of color. This set the tone of their subsequent dealings.

26. Another contributing factor was that Mr Hussein who was the line manager of both the Claimant and her close friend Ms Parpa, was on probation and inexperienced.. In response principally to the Claimant's manner towards him and other managers which reached an low point on 26/2/24, Mr Hussein became nervous and insecure about dealing with the Claimant directly alone and started to avoid this, leading to the Claimant feeling further isolated and alienated.
27. The same had applied earlier to a lesser extent with Ms Vincent, the Office Manager, who said in evidence that she felt intimidated when meeting with the Claimant.
28. The Claimant had often been late for work but when at work was competent, conscientious and hard-working. She is a capable and intelligent person. The Respondent had recognized her good qualities, had awarded her several pay-rises and had sent her on a leadership training course in the hope that she could build a career with the Respondent. Unfortunately, a character clash between her and James Turner and her communication style which others found rude and intimidating, frustrated this and by February 2024 her relationship with the managers had completely broken down and it was obvious to all concerned that the situation could not continue.
29. The Claimant resigned but had she not done so it is clear that she would soon thereafter been dismissed for misconduct during the life of an unexpired final written warning which the Claimant had received in 2023.
30. I now turn to record my findings of fact and conclusions about the particular allegations, (shown in *italics*) and I deal with these in chronological order:

6.1.1 On 1 August 2023 did James Turner provide the claimant with a witness statement from Lucy Cheeseman in which Ms Cheeseman alleged that the claimant "told me she was going with someone from work" and stated that "Jerome and Shadia's relationship is not subtle", and which indicated that she assumed that the claimant and Mr Lewis had attended a spa together? (harassment related to both race and religion)

31. The facts are that on 3/7/23 a driver called Jerome who was employed by the Respondent texted the Respondent to say he was off sick. The same day the Claimant left work early, clocking out with a comment that she had an appointment. In fact she went to a spa resort,

in a Respondent's van driven by another driver (M). The next day the Claimant was collected from the spa also in a Respondent van driven by Jerome.

32. Mr Nicholls started investigating the Claimant's spa trip on the 3rd and 4th July 2023.
33. For this purpose on 17/7/23 Ms Cheeseman signed a witness statement in which she reported the above matters relating to the spa visit with added comments that "*the Claimant had told her that she was going with someone from work*" and that "*Jerome and Shadia's relationship is not subtle*".
34. Mr Nicholls interviewed Jerome, who agreed he had collected the Claimant from the spa on 4/7/23 but denied he had been there on 3/7. The driver M admitted driving the Claimant there on 3/7. Mr Nicholls issued warning letters to both these drivers, instructing them not to make use of company property for private uses again.
35. On 1/8/23 Mr Turner in preparation for a disciplinary hearing with the Claimant on 3/8/23, handed her the evidence against her, which included Ms Cheeseman's witness statement.
36. On 3/8/23 Mr Turner held a disciplinary hearing into allegations that the Claimant had not made it clear to Mr Nicholls what the true reason was for her leaving work early on 3/7/23 and that she had without consent arranged to use company drivers and vehicles for her personal transport to and from the spa. The allegations were upheld and the Claimant was issued with a final disciplinary warning to last one year.
37. The Claimant's complaint in this regard properly understood is not about the final written warning, which in large part she accepted she deserved, nor about the mere handing of the witness statement to her, but rather about the fact that in her witness statement Ms Cheeseman had insinuated that the Claimant and Jerome may have spent the days of 3 and 4 July 23 and the night in between together at the spa, a matter which the Claimant and Jerome denied, and which appears to be contradicted by a booking confirmation for the spa stay, produced by the Claimant, in the name of a female friend of the Claimant, whom the Claimant says accompanied her on the spa visit.
38. The Claimant claims that as an-married Muslim she does not approve of or engage in premarital sex, and that this was known to Ms Cheeseman, and that the suggestion made that she might have been engaged in such activity was harassment in that it was related to her religion and had the purpose or effect of violating her dignity.
39. I do not accept the Respondent's submission that the Claimant does not plead the contents of the statement itself as harassment - the wording in the list of issues could have been clearer but the substance of what the Claimant is unhappy about is and has been obvious.
40. However, I do not find that Ms Cheeseman's witness statement was related to race or religion. As the Claimant readily agreed, not all Muslims abstain from pre-marital sex, and many non-Muslims disapprove of it. There is nothing which links an insinuation about pre-marital sex to Islam any more than it does to other main stream religions or moral persons

who have no religion. There is also nothing which links such an insinuation to any particular race.

41. Furthermore, Ms Cheeseman must have been asked to provide a statement for disciplinary proceedings, and if she believed, right or wrongly, that the Claimant and Jerome had gone together to the spa, that was relevant information for the Respondent's investigation into the use of company vehicles by drivers for private purposes.
42. An investigation properly conducted requires witnesses to be asked for their evidence. Witnesses when asked must give a full account of what they know or believe about the situation, even if it might turn out to be wrong. When doing so the purpose is to assist the investigation and not to violate the suspect's dignity or create an intimidating hostile degrading humiliating or offensive environment.
43. Ms Cheeseman was suspicious of the Claimant and her motivations, and she had looked into such matters as vehicle and driver movements on 3rd and 4th July. She gave a full account of this in her witness statement when she was asked about the matter, as she was entitled to do, even if she turned out to be wrong.
44. The Claimant was obviously somewhat embarrassed by the situation and by the speculation about her and Jerome. However, she is poorly placed to complain about this because by her serious misconduct and lack of transparency she had created the situation which required investigating. The Claimant raised no complaint about it at the time, and did not refer to it in her resignation letter.
45. Taking the Claimant's perception, the other circumstances of the case and whether it is reasonable for conduct to have that effect I conclude that it did not have the effect of violating the Claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment for her.

5.2.5 On 8 September 2023 did Ms Vincent hold the claimant solely responsible for failing to respond to a customer inquiry made on 4 September 2024? (a claim of direct race discrimination).

46. The facts are that Ms Vincent who was an office manager had specifically asked the Claimant at about 5pm on 4/9/23 to check the inbox that evening (the Claimant was working until 6pm or later) to make sure no incoming order or customer request was missed. A prospective customer was then sent an email to the inbox at about 5.40pm which was missed, so the work was lost. On 8/9/23 when this came to light, Ms Vincent reminded the Claimant about the importance of checking the inbox before leaving. All this was in accordance with the Ms Vincent's normal practice, whatever the race of the person in charge of the inbox.
47. The Claimant says that Loukia Parpa and Finley Talbot, both white, and who were also responsible for the inbox, were not spoken to about this.
48. I accept Ms Vincent's explanation that the reason why she had specifically asked the Claimant and not Loukia Parpa and Finley Talbot to check the inbox, was because the Claimant was responsible for this, while Ms Parpa was working on the Transport desk and

Mr Talbot was in his probation. When Ms Vincent found later that the email had been missed she naturally spoke to the Claimant about it because it had been she whom she had specifically asked to keep a check on the inbox during the evening of 4/9.

49. In any event I do not regard Ms Vincent's discussion with the Claimant to have amounted to blaming or unfavourable treatment - despite the fact that the Claimant subsequently blew the matter up and made it a reason for curtness and coolness in her demeanour towards Ms Vincent subsequently.
50. Time point. Both the above allegations 6.1.1 and 5.2.5 above are significantly out of time, being isolated events different in type to and having occurred 6 and 5 months respectively before the in-time allegations. I have dealt with them on their merits but no evidence has been put before me to make it just and equitable to extend time for them so I would dismiss them anyway as outside the jurisdiction of the ET.

6.1.2 Did Greg Nicholls make a joke directed at the Claimant and Jerome Lewis on 7 February 2024 during a company meeting where Mr Nicholls said "perhaps another spa day" referring to the allegations in Lucy Cheeseman's statement? (alleged as both race and religion harassment)

51. Mr Nicholls did not recall asking the question alleged but accepts he may have done.
52. The context was a meeting to discuss ways of finding incentives for staff. The spa visit by the Claimant on 3rd and 4th July 2023 had been to receive the benefit of one such previous incentive provided by the Respondent. The Claimant does not claim that Mr Nicholls referred to her or Jerome directly when asking his question, nor was there any salacious or other content which would indicate that it was a sexual innuendo or aimed at them or at the Claimant in particular.
53. It is quite possible that the question was a genuine one asked in all innocence rather than as a joke. Having seen Mr Nicholl's give evidence I think this is the most likely explanation.
54. In any event even if the question had been aimed at the Claimant in particular it would probably have been an allusion to her previous misuse of company vehicles which was the matter which Mr Nicholls had investigated in 2023, rather than to any other aspects of the matter. For purposes of the harassment claim the whole spa issue lacks the necessary relation to race or religion in any event.

5.2.1 On 26 February 2024 did Jayed Hussein ask the claimant to complete a return-to-work form? (direct race discrimination claim)

55. It was not in dispute that Mr Hussein as line manager asked the Claimant to fill out a form following her return after one day's sickness absence. The Claimant contended that this was direct race discrimination because Ms Parpa, who was also under Mr Hussein's line management, but who is white, was not asked to fill out such a form after her one day's sickness absence on 7/2/24.

56. The evidence from Mr Hussein in his witness statement about this was *"She was absent from work on 23 February 2024, and returned on 26 February 2024 (a Monday). She had been absent one day, and sought to argue with me that I should not complete a return to work interview as this had never been done for one day's absence before. I did not know whether this was right or not, as I had not worked alongside my predecessor. I tried to explain that the purpose of the interview was to ensure the Claimant's welfare, and that I certainly would be carrying them out for all employees, for all absences, but she continued to argue that I was treating her unfairly"*.

57. In his oral evidence when asked whether he had done the same for Ms Parpa his answer was *"as far as I remember I made them all (have) a return to work interview..but I cant produce the documentary evidence about this because I have left the company."* In her witness statement Ms Parpa did not refer to the matter at all.

58. I do not find that the Claimant has proved on a balance of probabilities that she was treated any differently from Ms Parpa in this regard. It is possible that Mr Hussein's practice differed from that of earlier line managers whom he had replaced. In any event Mr Hussein describes himself as a person of colour and I accept his evidence that the reason why he carried out a RTW interview with the Claimant was not her race but rather because he wished to ensure her welfare.

5.2.2 Following a conversation on 26 February 2024 did Greg Nicholls and Jayed Hussein label the claimant as "aggressive"? (direct race discrimination claim)

5.2.7 On 26 February 2024 did Greg Nicholls, during an informal meeting, accuse the claimant of being rude and dismissive towards Lucy Cheesman on 22 February 2024? (direct race discrimination claim)

6.1.3 On 26 February 2024 during an informal meeting did Mr Nicholls remark that the Claimant was "emotionally immature and sulks"? (race harassment claim)

5.2.6 On 26 February 2024 did Greg Nicholls fail to have HR present during the claimant's meeting on that date? (direct race discrimination claim)

59. I have grouped these allegations together because they all relate to the same meeting. The meeting was between the Claimant, Mr Nicholls and Mr Hussein.

60. The background was that after a meeting on 20/2/24, at which Mr Turner had refused the Claimant's request for a performance-related pay rise, her behaviour had deteriorated. She had been curt and "closed off" in her dealings with Mr Nicholls the next day.

61. On 22/2/24 there was an interaction between the Claimant and Ms Cheesemen which the latter complained about, saying that the Claimant had been rude. In fairness to the Claimant I record that this particular complaint was not upheld when the Claimant raised a grievance about it.
62. In the same week the Claimant attended a training workshop provided by the Respondent but run by an external trainer. After the workshop the trainer had contacted Mr Turner to complain about the behaviour of certain attendees, but in particular the Claimant. In a subsequent email on the same subject the trainer wrote as follows: *"In the second group, however there were a couple of individuals who were very disinterested and came across rude and dismissive and did not participate even when I tried to engage with them. This created a hostile feeling which made it difficult to create an upbeat and engaging learning experience for everyone...I have flagged it as a concern as I know good rapport between team members and their interest in the business is paramount to your success. After our brief conversation I was able to identify the person as I feel a 121 could be needed to understand why she showed a lack of interest in the workshop"*. This was a reference to the Claimant.
63. In the informal meeting on 26/2/24 Mr Nicholls tried to have an informal discussion with the Claimant - citing to her various instances and trying to find a solution and encourage her to adopt a better attitude and demeanour. The Claimant's response was to go on the attack. When Mr Nicholls suggested that it might be the refusal of the pay rise which had caused the recent deterioration, the Claimant's retort was *"I don't care - Paul (a reference to Mr Miller) can keep his money"*. She started firing questions at Mr Hussein, stated that she wanted micro-managing to stop, and told Mr Nicholls *"not to push her buttons"* and said that she was being attacked and wanted HR present.
64. Mr Nicholls made a note of the meeting concluding that *"the focus of the meeting was to get the relationship back on track however Shadia was not open to the idea. The meeting did not go well. Shadia was defensive - she stared and listened but was quite controlling and appeared to have no focus on working to get the relationship back on track. I found her unresponsive to working as a partnership"*.
65. After the meeting Mr Hussein sent an email which reads as follows: *"On February 26th, 2024, I conducted a return-to-work meeting with Shadia following her absence due to illness on February 23rd. I grabbed Greg to have an informal discussion with Shadia concerning Shadia's work ethic and demeanour. Greg instructed me to remain in the meeting room to take notes. The purpose of the informal session was to address Shadia's conduct, behaviour, and communication, which were impacting the office staff and drivers. Despite lasting 30 minutes, the meeting yielded no positive outcomes. Throughout, Greg conveyed various instances illustrating Shadia's lack of teamwork and communication with colleagues, leading Shadia to become defensive and accuse Greg of dishonesty. I found*

Shadia's demeanor toward Greg aggressive and upsetting. Following the meeting, I observed Shadia covertly recording the conversation on her phone without our consent. Shadia then left, prompting me to call James to discuss the meeting's outcome. James revealed that Shadia had accused him of lying during a conversation outside the office and had recorded it without his consent. I approached Shadia around 12:40 pm regarding her accusations toward James, she denied accusing James of lying, claiming to have a recording of the conversation."

66. As referred to by Mr Hussein, shortly after the Claimant's meeting with Mr Nicholls and Mr Hussein, she had an exchange with Mr Turner which the latter subsequently described as follows: *"On Monday 26th February at around 12pm Shadia had an informal meeting with Greg and Jayed. Immediately following this she came to my desk and asked to have a word outside. I could see that she was agitated and spoke aggressively. I was instantly apprehensive as I have had previous negative encounters with her in the past. As we left the office and were stood on the mezzanine she took her phone out and played with it for a moment. I thought she was replying to a message but I now know she was setting up a recording of the conversation. She asked me why I felt comfortable putting words into peoples mouths and lying. I asked her to elaborate as I didn't understand. She then said it was referring to what Lucy had said (see her statement for details) and that was she not allowed a break. I said it wasn't the break that interested me it was the words she had spoken to Lucy. I then reminded Shadia that what she had in fact done was pull the MD away from his desk and call him a liar. She then revealed to me that she had been recording the conversation. I chose to end the conversation there. As I walked away she laughed and shouted 'Thanks James!' As with every conversation with Shadia I felt upset, frustrated and unsettled not to mention violated at being recorded without my express consent. I would now never feel comfortable having a conversation with Shadia alone again."*

67. I accept these accounts from Messrs Nicholls, Turner and Hussein including their evidence to the effect that the Claimant appeared to be recording them and told Mr Turner and Mr Hussein that she had been.

68. Dealing with the specific allegations: during the course of the meeting on 26/2/24, the Claimant's claimed emotional immaturity and Ms Cheeseman's complaint were raised, Mr Hussain did note in his email that the Claimant's behaviour was aggressive and Mr Nicholls accepts he might have used the same adjective. The topics were raised not because of the Claimant's race but because complaints had been made, and the bad relations needed to be addressed. The Claimant was described as having displayed emotional immaturity and aggression because Mr Nicholls believed that these were accurate descriptions of the problem that it was the purpose of the meeting to discuss.

69. For purposes of the race harassment claim, the comments about the Claimant's claimed emotional immaturity and sulking did not relate to race.

70. The Claimant refers to Ryan Goddard who is white, as a comparator, claiming that he was very aggressive to Mr Turner on 22/2/24, but was issued a letter of concern for insubordination, rather than being labelled “aggressive” as she was.
71. I did not receive the details of Mr Goddard’s conduct on 22/2 and there is no objective evidence to suggest that “aggressive” would have been a more accurate term for it than ‘insubordinate’. Furthermore, it appears that a formal disciplinary sanction was applied to Mr Goddard, whereas no such sanction was applied to the Claimant on 26/2, so it is not shown that the Claimant received less favourable treatment than him. In any event I find that the reason why the Claimant was called aggressive was not her race but because that was how Mr Hussein and Mr Nicholls experienced her.
72. The reason for HR not attending the meeting on 26/2 was not because of the Claimant’s race but because Mr Nicholls wished to keep the meeting informal. Once it deteriorated and the Claimant started saying she wanted a HR manager to be present, Mr Nicholls tried to bring the meeting to an end.
73. The Claimant claimed that Loukia Parpa and Ryan Goddard were also spoken to about their attitudes, but that HR was present at those meetings. However, the Claimant said that Mr Goddard received a letter of concern for his behaviour, and Ms Parpa said that she also received a letter of concern for her behaviour. That suggests that their meetings were formal disciplinary meetings whereas Mr Nicholl’s meeting with the Claimant on 26/2 was not as Mr Nicholls had been hoping to correct the situation without need for formal sanctions. Hence the situations are not comparable.

5.2.3 On 15 April 2024 did James Turner fail to offer the claimant first aid training despite her having previously requested training in her appraisals for 2023 and 2024? (the Claimant complained that Ms Parpa had been offered such training in May 24). (an allegation of direct race discrimination)

74. Mr Turner’s evidence about this in his witness statement was as follows: *“I don’t recall it ever being raised with me (on 15/4/24). If I did turn her down for such training, it would have been for the same reason as Greg, however; we had our full complement of first aiders, and we don’t spend training funds on unnecessary training.”*
75. The minute of the meeting between Mr Turner and the Claimant on 20/2/24 includes the following : *“JT – We are not reviewing the 5% pay rise at this point but you mentioned that you would like to do some training. We are doing a First Aid course next year in March and Fire Marshall training and I can put you on the me(n)tal health first aider course. SS- OK”.*
76. This demonstrates that Mr Turner was willing to offer the Claimant training at the proper time. In oral evidence Mr Turner mentioned that in April 24 several of the Respondent’s first-aiders were black. Ms Parpa did not offer any evidence on the point.

77. The Claimant has not shown any disparate treatment but in any event I find that the reason for the Claimant not being offered first-aid training in 2024 by the Respondent was not her race. The reason would have been because the Respondent did not need any more trainers then, and more latterly because the managers/directors foresaw that the Claimant's employment would terminate one way or another because of the breakdown in the employment relationship.

78. Turning to the victimisation claim, it is accepted that the Claimant raised a grievance on 27/2/24 and that this was a protected act. The grievance was about the meeting with Mr Nicholls on 26/2/24, Ms L Cheeseman having allegedly lied about the Claimant, Mr Nicholls allegedly treating her differently and subjecting her to "micro-aggressions" and Mr Turner having called her a hothead and talking to her about her lateness.

7.2.1 After submission of the grievance, did Mr Hussein only engage in work-related discussions with Loukia Parpa, and refused to engage in work-related discussions with the claimant unless Ms Parpa was unavailable? (an allegation of victimisation detriment)

79. Mr Hussein accepted that he was reluctant to deal with the Claimant directly. He was nervous about doing so after the meetings and interactions he had with the Claimant on 26/2/24 during which the Claimant argued with him, accused him of being unfair, refused to accept his authority, fired bullet points at him, appeared to be recording what was said and told him and Mr Turner afterwards that she had been recording them. The reluctance/disengagement was not because of the grievance which had not been about Mr Hussein anyway.

7.2.2 While the claimant was on annual leave on 12 April 2024, did Mr Hussein access the claimant's personal user account? (an allegation of victimisation detriment)

7.2.3 On 12 April 2024 did Mr Hussein make errors on a driver's timesheet using the claimant's account? (an allegation of victimisation detriment)

80. The facts were that each employee who was allowed access to the Respondent's IT system was given his or her own access arrangements controlled by an individual log-in name and password. On set-up the password would be a default one, with instructions issued to the employee that he or she should change the initial password to a new one, which should be kept secret. The first rule in the Respondent's IT usage policy reads "*You must keep your passwords confidential and must not disclose them to any other party*".

81. On 12/4/2024, a Friday, Mr Hussein wanted to insert some information about a driver's hours onto the Respondent's IT system. He thought it was urgent because payroll would process the hours at the end of the week. He had technical problems using his own log-in details. The Claimant was absent and Ms Parpa was busy so he decided to make the

entries using the Claimant's computer, and applying her password, which he obtained either from Ms Cheeseman or from Ms Parpa.

82. Mr Hussein muddled this up when asked about it initially at work, first saying it was Ms Cheeseman and then saying it was Ms Parpa who had given him the Claimant's password. Perhaps this muddle was caused by the fact that their first names have some similarity, Ms Cheeseman's first name being Lucy and Ms Parpa's Loukia.
83. Despite Ms Parpa's denial of this in her evidence, I find it is likely that Mr Hussein obtained the Claimant's password from Ms Parpa, because she was identified by Mr Hussein on oath as his source, and she was also the close friend and co-worker of the Claimant, and thus a person with whom the Claimant would be more likely to share her password, whereas Ms Cheeseman was none of these things.
84. Having gained access to the Claimant's computer, Mr Hussein made an entry which was wrong. He did so unintentionally as he had tried to get it right.
85. There is no evidence that Mr Hussein looked at anything else or did anything else on the Claimant's computer.
86. Mr Miller's evidence about this was as follows: *"I take issue with the characterization by the Claimant of our machinery as "hers". It is not hers. It is ours. We own it, and have every right to utilize it. We also own the accounts that we set up for individual employees, and have every right to access those accounts for any number of reasons, ranging from auditing the work and adherence to our policies of employees, to, as in this case, utilising our software installed under those accounts. Ideally, I would not want employees logging in under each other's accounts, as this could make auditing and ownership of paper trails difficult. However, the Transport Coordinators' work stations often act as 'hot desks' when they are away because of their proximity to the planning board. In this case, Mr Hussain, was a relatively new manager in our company, and had identified an issue with a time log for a driver the previous day which needed rectifying. As he was not at his own desk, and he could not remember his own password, he used the Claimants account to access the system to make the necessary changes. He made a judgment call that was based on expediency. In hindsight, I have concluded that he should have asked Loukia to do this for him, or raised a ticket with IT to get access via his own account. I have sought to firm up our employee's understanding of cyber security since this incident. I was satisfied, however, that Mr Hussain did not have access to any of the Claimant's personal data which he would not have had a right to access anyway, as a manager in the department. Certainly nothing private or sensitive should have been stored on our work computers, and I do not believe any such data was. It is quite clear that Mr Hussain had made the wrong adjustment to the system and I am not surprised it was spotted by the Claimant on her return. A driver had not clocked out the previous day so the system automatically clocked him out after 23 hours. Mr Hussein corrected this to the usual 8 hours which is often the case. However, the driver had good cause to not clock out that day and the Claimant did put in the correct hours when she returned."*
87. It was not best practice by Mr Hussein but it was done openly and transparently for an innocuous business purpose and the Claimant herself must have enabled this by either

not following the instruction to set her own password or by breaching the policy against sharing her password, both of which things however she denied having done in her evidence.

88. In evidence the Claimant agreed that Mr Hussain's use of her computer was done with "*no ill intent*". Clearly, he did not do these things because the Claimant had raised a grievance; but because he thought it the most expedient way to correct an issue which he believed was urgent. Hence it was not detriment caused by the protected act.
89. The Claimant has not adduced facts which pass the onus of proof to the Respondent as contemplated by section 136 Equality Act 2010. If I am wrong about this, I am in any event satisfied by the Respondent's explanations. The matters complained of were not because of or related to the Claimant's race or religion, nor were they because of her grievance, and hence the direct discrimination, harassment and victimisation claims fail.
90. In support of her claim for constructive unfair dismissal, the Claimant relies on all her allegations as breaches of contract, with Mr Hussein's use of her computer on 12/4/24 as the last straw.
91. I do not find that any of the matters complained of singly or in combination amounted to a fundamental breach of contract or a valid last straw.
92. The Claimant found out on 15/4/24 about the fact that Mr Hussein had used her computer but she did not complain about it that day.
93. The next day 16/4/24 in the morning she was sent or handed a letter summoning her to a disciplinary hearing on 19/4/2024 to consider allegations against her of (i) insubordination to managers (ii) rudeness to outside vendors (iii) lateness (iv) unauthorised recording of colleagues (v) frequent unexplained absences from desk (time theft) and aggressive behaviour.
94. During the afternoon of 16/4/24 the Claimant sent in her resignation email which referred to Mr Hussein's use of her computer as the only cause.
95. Although the Claimant mentioned Mr Hussein's use of her computer in her resignation email she made no mention of it in her ET1 (referring to other matters under the heading "Constructive Dismissal Grounds") and she had to insert it as a further alleged breach of contract/last straw by way of an amendment for which she was granted permission on 21/10/24.
96. On a balance of probabilities, the Claimant resigned because of her receipt of the invitation to a disciplinary hearing and not because of Mr Hussein's use of her computer, which she had not seen fit to complain about before she received that invitation. The Claimant who still had a live final written warning, knew that she faced summary dismissal for gross misconduct on 19/4/24 and she decided to seize on Mr Hussein's use of her computer on 12/4 as a pretext for her resignation.
97. Hence the claim of unfair constructive dismissal also fails.

98. Finally I record that had the Claimant not resigned I find that she would have been fairly summarily dismissed for misconduct only a few days later, in any event.

Employment Judge J S Burns
13/06/2025
For Secretary of the Tribunals

Date sent to parties
19 June 2025

SCHEDULE OF CLAIMS/ISSUES

The Complaints

52. The claimant describes her race as “black African” and her religion as “Muslim”. The claimant is making the following complaints:

52.0 Constructive unfair dismissal, relying in particular on a sequence of incidents from 6 February 2024 onwards

52.1 Direct race discrimination

52.3 Harassment related to race and/or religion

52.4 Victimisation

The Issues

Time limits

- 1) In final submissions the Respondent submitted that only two complaints brought out of time are those detailed at 5.2.5 and 6.1.1 of the list of issues (numbering preserved below). The Respondent accepts all other complaints were brought within the time limits for doing so.

Unfair dismissal

Was the claimant dismissed?

2.1.1 Did the respondent do the following things:

2.1.1.1 The acts of discrimination (including harassment) and victimisation particularised below

2.1.1.2 The “last straw” being that Mr Hussein:

2.1.1.2.1 Accessed the claimant’s computer on 12 April 2024 while she was on annual leave and without her authorisation; and

2.1.1.2.2 Made errors on a driver’s timesheet using the claimant’s account on that same date.

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.

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?

Was it a potentially fair reason?

Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent’s size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?

The Tribunal’s determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

Direct race discrimination (Equality

Act 2010 section 13)

5.1 The claimant describes herself as black African and Muslim.

5.2 Did the respondent do the following things:

5.2.1 On 26 February 2024 did Jayed Hussein ask the claimant to complete a return-to-work form?

5.2.2 Following a conversation on 26 February 2024 did Greg Nicholls and Jayed Hussein label the claimant as “aggressive”?

5.2.3 On 15 April 2024 did James Turner fail to offer the claimant first aid training despite her having previously requested training in her appraisals for 2023 and 2024?

5.2.4 On 4 September 2024 did Amelia Vincent, the office manager, ask the claimant to remain an additional 30 minutes at work to make up for lateness? NOT PURSUED

5.2.5 On 8 September 2023 did Ms Vincent hold the claimant solely responsible for failing to respond to a customer inquiry made on 4 September 2024?

5.2.6 On 26 February 2024 did Greg Nicholls fail to have HR present during the claimant's meeting on that date?

5.2.7 On 26 February 2024 did Greg Nicholls, during an informal meeting, accuse the claimant of being rude and dismissive towards Lucy Cheesman on 22 February 2024?

5.3 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 they were treated worse than someone else would have been treated.

The claimant says they were treated worse than Loukia Parpa; than Ryan Goddard; than Finley Talbot; and than a hypothetical comparator.

5.4 If so, was it because of race?

5.5 Did the respondent's treatment amount to a detriment?

Harassment related to race and/or religion (Equality Act 2010
section 26)

6.1 Did the respondent do the following things:

6.1.1 On 1 August 2023 did James Turner provide the claimant with a witness statement from Lucy Cheesman in which Ms Cheesman alleged that the claimant "told me she was going with someone from work" and stated that "Jerome and Shadia's relationship is not subtle", and which indicated that she assumed that the claimant and Mr Lewis had attended a spa together? (race and/or religion)

6.1.2 Did Greg Nicholls make a joke directed at the Claimant and Jerome Lewis on 7 February 2024 during a company meeting where Mr Nicholls said "perhaps another spa day" referring to the allegations in Lucy Cheesman's statement? (race and/or religion)

6.1.3 On 26 February 2024 during an informal meeting did Mr Nicholls remark that the Claimant was "emotionally immature and sulks"? (race only)

6.2 If so, was that unwanted conduct?

6.3 Did 6.1.1 and or 6.1.2 relate to race and/or religion and did 6.1.3 relate to race?

6.4 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?

6.5 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.

7. Victimisation (Equality Act 2010 section 27)

Did the claimant do a protected act as follows:

7.1.1 On 27 February 2024 raising a grievance. The respondent accepts that the grievance was a protected act.

Did the respondent do the following things:

7.2.1 After submission of the grievance, did Mr Hussein only engage in work-related discussions with Loukia Parpa, and refused to engage in work-related discussions with the claimant unless Ms Parpa was unavailable?

7.2.2 While the claimant was on annual leave on 12 April 2024, did Mr Hussein access the claimant's personal user account?

7.2.3 On 12 April 2024 did Mr Hussein make errors on a driver's timesheet using the claimant's account?

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

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

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

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