



EMPLOYMENT TRIBUNAL

Clamant: Mrs Nesrin Habib

Respondent: Leightons Limited

Heard at: London South (in public by video)

On: 3 March 2025 4 March 2025 and 5 March 2025

Before: Employment Judge N Wilson
N Cristofi (non legal member)
C Roger (non legal member)

Appearances

For the claimant: Mrs Habib (in person)
For the respondent: Ms J Laxton (counsel)

JUDGMENT

1. The complaint of unfair dismissal under the section 94 of the Employment Rights Act 1996 is not well-founded and is dismissed.
2. The complaint of direct race discrimination under section 13 of the Equality Act 2010.
3. The complaint of harassment related to race under section 26 of the Equality Act 2010 is not well founded and is dismissed.
4. The claim for breach of contract – failure to pay notice pay was conceded by the respondent in the final hearing before Judgment was handed down. The outstanding notice pay has now been paid to the claimant with a payslip to follow.

WRITTEN REASONS

5. These written reasons are provided following a request from the claimant made on 10 March 2025. This Judgment with reasons was delivered orally at the end of the 3-day hearing.

Background

6. The claimant was employed by the respondent as an Optical and hearing care assistant from 18 June 2018 until her dismissal on 25 October 2022
7. ACAS EC started on 30 September 2022 and ended on 11 November 2022. The claim form was issued on 22 November 2022 (in time).
8. There are no time limit issues to determined.
9. The claimant had returned to work after a period of absence in February 2022.
10. When she returned to work it was at the Addlestone branch where Mr Murdoch was her line manager.
11. The claimant believes her dismissal was planned by the respondent since 2018. She refers to there being a number of attempts to dismiss her. She has made a previous ET claim which has been determined and therefore those complaints are not able to be re litigated.
12. The claimant says Mr Murdoch claims not to have know about the historic issues but that he did have such knowledge. She makes the same assertions regarding Mr Bridges (who dealt with her grievance against Mr Murdoch and her disciplinary hearing). She similarly asserts Ms Fairhead (who dealt with the claimant's appeal against dismissal) was also aware of her historic issues thereby making both Mr Bridges and Ms Fairhead not sufficiently impartial to conduct the grievance/disciplinary and appeal hearings.
13. An incident occurred on 9 September 2022 following which the claimant ended up in hospital. The claimant was suspended on 12 September 2022 on grounds of potential misconduct following the incident on 9 September 2022.
14. The claimant raised a grievance on 13 September 2022. This was investigated by Chrisian Underhill an external independent consultant.
15. The claimant's grievance was heard by Mr Bridges on 25 October 2022.

16. The reason for dismissal asserted by the respondent is that the incident on 9 September 2022 and the nature of the grievance allegations were such as to cause an irreconcilable breakdown in the employment relationship.
17. The claimant appealed and this was heard by Lindsay Fairhead on 18 November 2022. The decision to dismiss was upheld.

The Complaints

18. The claimant is making the following complaints:

- a) Direct race discrimination – section 13 of the Equality Act 2010 ('EqA')
- b) Harassment related to race – section 26 EqA. I pause here to acknowledge that whilst this complaint appeared in the agreed List of Issues it was not a complaint identified or discussed at previous case management hearings. However, we were satisfied it could reasonably be inferred from the claimant's ET1 and response to the request for further information particularly given the respondent has indeed so identified it. Given the same factual matters are asserted for the harassment complaint as were alleged for the race discrimination complaint there was no prejudice to the respondent in permitting the complaint to proceed.
- c) Unfair Dismissal – section 94 Employment Rights Act 1996
- d) Breach of Contract notice pay claim – the breach of contract /notice pay claim was conceded by the respondent during the hearing. They confirm they will be remedying the outstanding sums due to the claimant. It being accepted she was only paid one month's notice pay when due to her length of service her contractual entitlement was 12 weeks notice pay.

Legal Framework

Unfair dismissal

19. Section 95 of the Employment Rights Act 1996 ('ERA') states that an employee who wishes to claim unfair dismissal must first show that he or she has been dismissed within the meaning of S.95 of the Employment Rights Act 1996 (ERA). S.95 states that an employee will be treated as dismissed if his or her contract of employment is terminated by the employer with or without notice — S.95(1)(a). It is not in dispute in this case that the claimant was dismissed.
20. Section 98 of the Employment Rights Act 1996 (ERA) indicates how a Tribunal should approach the question of whether a dismissal is fair. There are normally two stages:
- first, the employer must show the reason for the dismissal and that it is one of the potentially fair reasons set out in S.98(1) and (2), and

if the employer is successful at the first stage, the Tribunal must then determine whether the dismissal was fair or unfair under S.98(4). This requires the Tribunal to consider whether the employer acted reasonably in dismissing the employee for the reason given.

21. The respondent in this case relies on some other substantial reason namely the breakdown of the relationship between the claimant and the respondent. The Tribunal will therefore decide:
 - a. What was the reason or principal reason for dismissal? and
 - b. Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that 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

22. Under s.13(1) of the Equality Act 2010 read with s.9 EqA, direct discrimination takes place where a person (A) treats another (B) less favourably because of a protected characteristic - in this case race- than that person treats or would treat others.
23. Under s.23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case.
24. The burden of proof provisions are contained in section 136 of EqA.
25. There are two analytical stages to this. Guidelines on the application of the burden of proof provisions were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142. Although this concerned sex discrimination under the Sex Discrimination Act, the key principles still apply. A more recent EAT decision has restated the Igen guidance and emphasized its continuing importance the case of Field v Pye & Co [2022] EAT 68.
26. Essentially if there are facts from which a Tribunal *could* decide, in the absence of any other explanation, that a person has contravened the provision concerned, the Tribunal must hold that the contravention occurred, unless that person can show that he or she did not contravene the provision. We have taken these guidelines into account when arriving at our decision.
27. At Stage 1, there must be primary facts from which the Tribunal could decide – in the absence of any other explanation - that discrimination took place.
28. Note the word, “could”. All that is needed at this stage are facts from which an inference of discrimination is possible. As it was put in Madarassy v Nomura International Plc [2007] EWCA Civ 33, primary facts are sufficient to shift the

burden if ‘a reasonable Tribunal could properly conclude’ on the balance of probabilities that there was discrimination.

29. At Stage 1, the burden of proof is on the claimant Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913 Royal Mail Group Ltd v Efofi [2021] UKSC 22

30. At this stage of the test, the employer’s explanation is disregarded.

31. In other words, after making our findings of fact the Tribunal would ask itself ‘if these things had happened and there was no explanation for them, could we find discrimination’?

32. It is not sufficient for the employee merely to prove a difference in protected characteristic and a difference in treatment. Something more is required.

33. We have therefore made our primary findings of fact following which we have considered whether the burden of proof has shifted to the respondent and if the burden shifts to the employer, we move to Stage 2 and consider the employer’s explanation. Has the employer proved on the balance of probabilities that the treatment was not for the proscribed reason?

34. The *Igen* guidance makes two points in particular about Stage 2:

- a) The employer must prove that the less favourable treatment was “in no sense whatsoever” because of the protected characteristic.
- b) Because the evidence in support of the explanation will usually be in the possession of the employer, Tribunals will expect “cogent evidence” for the employer’s burden to be discharged.

35. It is to be noted that, in a direct discrimination case, the employer only has to prove that the reason for the treatment was not the forbidden reason. There is no need for the employer to show that they acted fairly or reasonably.

36. Unfair or unreasonable treatment *on its own* is not enough (Glasgow City Council v Zafar [1998] IRLR 36, HL).

Harassment

Definition:

- 37. The EqA, creates three technical definitions of harassment.
- 38. In this case there has to be unwanted conduct related to the claimant's protected characteristic of race.
- 39. The relevant section of the EqA for the purposes of this claim is:

Section 26 Equality Act 2010 which states that

- (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.
- (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.
- 40. We had an agreed List of Issues, and the claimant had the opportunity to confirm if they were agreed at the outset and both parties confirmed they were agreed.
- 41. We had a 517-page main hearing bundle, the claimant's additional bundle, and witness statements from the claimant, Joseph Murdoch, Andrew Bridges and Lindsay Fairhead.
- 42. We had a skeleton argument from both the claimant and Ms Laxton representing the respondent.
- 43. We heard sworn evidence from the claimant, Mr Murdoch, Mr Bridges and Ms Fairhead.

Findings of fact:

44. The relevant facts are as follows. Where we have had to resolve any conflict of evidence, I indicate how we have done so at the material point. References to page numbers are to the hearing bundles and/or witness statements. We have considered all the oral evidence heard and the documents referred to in the bundles. I only refer to as much of the evidence as is necessary to explain our decision. I will deal with each allegation in turn.
45. The claimant returned to work after a period of absence in February 2022. Whilst the claimant did not accept there were issues with her performance when she returned, we find there were issues with her performance which is corroborated by the respondent's response to her application for the role of customer experience host. In this regard we refer to the letter at page 136 which sets out the respondent's reasons for the claimant being unsuccessful with this application. The performance issues are further supported by the 1-1 documents in the bundle.
46. The claimant's evidence on the one hand is that she was scared of Mr Murdoch; she used the words *'he caused me to fright'* which we take to mean he frightened her. However, we found this inconsistent with her repeated assertion that she did not accept that before the 9 September 2022 incident there was a breakdown in the relationship between them. It is notable she repeatedly questioned Mr Murdoch and Mr Bridges in cross examination about not understanding on what basis they could say the relationship had broken down despite the allegations she herself raises against Mr Murdoch. This is inconsistent with her assertions of how she says Mr Murdoch treated her.
47. We accept the evidence of Mr Murdoch that he was trying to support and assist Mrs Habib with any performance issues upon her return. Whilst Mrs Habib asserted he never gave her any support she clearly had the benefit of training available via the Kallidus system and we can see evidence of 1-1s being carried.
48. We also find that performance and capability was not the reason for dismissal.

Direct race discrimination

49. Did Joseph Murdoch on 20 August 2022 say that:

a) Black people can't swim

50. Mrs Habib did not give any cogent evidence as to the context of this conversation. Her evidence about the events of 20 August 2022 was unclear and confusing. We acknowledge that English is not her first language, but we found she had sufficient understanding of the questions being asked and was able to follow the documents and points being raised. Indeed, we take note she has been able to prepare a 13-page skeleton argument with reference to relevant case law. We are satisfied that the lack of cogency in her evidence does not arise because of any language barrier. We also assisted in reframing questions where appropriate.
51. The claimant's case is that she and Mr Murdoch were in a 1-1 meeting and then he 'dragged' her to the shop floor where there was a group talk about racism. She said others in the group said that Mr Murdoch was racist to which he nodded and then he said 'black people cannot swim' about a former employee.
52. Mr Murdoch cannot recall ever having said such a comment. We cannot be satisfied the claimant's evidence was sufficiently clear or cogent to make a finding on balance that this comment was made by Mr Murdoch. Mrs Habib was unable to give any clear context to how the conversation started. We take note that in response to the claimant's grievance the respondent commenced an independent external investigation which was conducted by Mr Underhill. That investigation involved the interview of 9 branch employees (including the claimant). We find it highly unlikely that if this was said as asserted by the claimant none of them would have recalled or referred to it in the investigation. We do not find this comment was made by Mr Murdoch.

b) A former agent was happy to employ a white person

53. Again, the claimant's evidence about this comment was vague and unclear. We found Mr Murdoch's evidence on the other hand to be clear and compelling as to the context of this conversation. We find this reference was made in the context of a conversation Mr Murdoch was having about an ex-employer where the community had bigoted views about their opticians being non white and south Asian. His comment was made in the context of the director of the ex-employer being happy to have appointed a white optician, but Mr Murdoch was making the point that they should not have placated the white community in this way. We do not find the claimant has discharged her burden in establishing this was less favourable treatment. Even if she had - applying the two-stage process to this allegation if we accepted there were facts from which in the absence of an explanation *could* decide discriminatory conduct, we accept Mr Murdoch's explanation for the comment and are satisfied the respondent has proven any less favourable treatment was in no sense whatsoever because of race. However, we do not find in the context of how this was said there are facts from which discrimination could be inferred to shift the burden of proof.

c) Leightons is a racist company

54. Mrs Habib gave no cogent evidence about the context to this alleged remark. We are persuaded by Mr Murdoch's clear evidence that he did not make this comment and would not work for a racist company. We do not find she has discharged her burden of proof about this comment being made.

d) Did he nod when AP and KK said he is racist

55. Again, Mrs Habib's evidence about the context of this conversation was very confused. We cannot be satisfied she has discharged her burden here and do not find this happened. We find it highly unlikely that had Amanda Palmer and Kashish Kumar both accused Mr Murdoch of being racist and Mr Murdoch had essentially agreed to this allegation by nodding, that neither of them would have raised this formally. Yet no one even when they had the opportunity to do so as part of the Underhill investigation does this. This goes a considerable way to corroborate Mr Murdoch's evidence.

e) Did Mr Murdoch Say 'oh you are black'

56. Mrs Habib's evidence about this was contradictory and again confusing. At page 20 of the bundle, she refers to Amanda Palmer referring to someone at head office saying, '*oh you are black*' and no one taking action. In her evidence she appears to attribute this comment to Mr Murdoch. Again, there is no plausible context to the conversation given. We find Mrs Habib has become confused as to who said this (if it was said at all and importantly in what context). We cannot find on balance that she has discharged her burden of establishing that Mr. Murdoch said this as alleged.

57. Was that less favourable treatment?

The only comment which we have found was said is allegation 6.1.1 b in the List of Issues. We do not find this was less favourable treatment given the finding made about the context of the conversation and our findings in relation to that comment. The claimant has not established that comment was less favourable treatment because of her protected characteristic.

58. The complaint of direct race discrimination is not well founded and accordingly dismissed.

Harassment related to race (Equality Act 2010 section 26)

59. The claimant relies upon the same factual assertions in the complaint of direct race discrimination as she does for the harassment complaint. These are set out at paragraph 6.1.1 of the agreed List of Issues.
60. We therefore refer to our findings of fact in relation to the alleged comments made by Mr Murdoch on 20 August 2022 in relation to the harassment complaint also.
61. Out of those alleged comments the only one that we found had been stated by Mr Murdoch was allegation 6.1 .1. b - namely that he had said a former agent was happier to employ a white person. However, we have found that this was in the context of a wider conversation where he was expressing his dissatisfaction with the conduct of an ex-employer who had employed a white optician to appease a bigoted community.
62. In the circumstances we do not find that this was unwanted conduct related to the claimant's race. As such the claimant has failed to discharge her burden of proof and the complaint of harassment is not well founded and is dismissed.
63. There is certainly no conduct which objectively had the purpose or effect of violating her dignity or creating an intimidating degrading humiliating or offensive environment for her. Given the context of the conduct (had she established it was related to her race which she has not) even if the claimant had perceived it to have this effect, objectively it was not reasonable for the conduct to have had that effect given the context of the comment made.

Unfair dismissal

64. The claimant's dismissal was on 25 October 2022.
65. The dismissal followed a grievance being raised by the claimant against Mr Murdoch.
66. The grievance was raised by the claimant on 13 September 2022.
67. The grievance alleges verbal abuse by her line manager Mr Murdoch. In the grievance the claimant alleges Mr Murdoch tried to initiate a fight with her on 8 September 2022 intimating a physical threat. In addition, a number of allegations are made about 9 September 2022 where she states she was bullied harassed and that he breached confidentiality. She asserts she felt threatened for her safety and welfare which caused her to be unwell. On 9 September 2022 she asserts he refused to call for medical assistance followed

by racially offensive remarks. It is to be noted she has not given any clear evidence about those alleged racially offensive remarks. She was given repeated opportunity by me during her cross examination of Mr Murdoch to ensure she asked questions about the allegations she makes against him including the alleged discriminatory remarks/treatment. I was careful to explain this was her opportunity to put those issues to him given she was not legally represented. She notably avoided asking any direct questions about those allegations including any alleged racially offensive remarks. She certainly did not appear afraid to question Mr Murdoch, to the contrary she was able to repeatedly ask him questions about other less relevant matters.

68. In relation to her privacy and confidentiality allegation she relies on Mr Murdoch insisting that the door be left open when she was suffering her panic attack which at the time she thought was a heart attack.
69. On 9 September 2022 an issue arose because eye bags had not been ordered. We find this would have been the claimant's responsibility. We find that she was unable to order the eye bags because she did not know which supplier to order them from.
70. We do not find that she was accused of theft albeit she appears to have interpreted being asked about the order in front of a customer as an accusation or an implication of theft. She gave some evidence which was confusing about being accused of lack of trust and this being a threat. Ultimately her evidence was lacking in clarity for us to be satisfied that there was any interaction surrounding the failure to order the eye bags which could be considered to be intimidating or bullying. Her evidence that the customer was shouting at her also appears implausible. We cannot understand why a customer would be shouting at the claimant because she was asked in front of a customer about the ordering of eye bags.
71. The claimant accepted in evidence that she was stressed panicky and flustered in relation to this eye bag order issue being raised.
72. We again take note of the independent investigation conducted by Mr Underhill and the witnesses he interviewed in relation to the events of 9 September 2022. We are not satisfied with Mrs Habib's account of the events of that day not least because her evidence was confusing and unclear but also because the accounts given by the witnesses as part of the independent investigation corroborate the respondent's position that Mr. Murdoch did not act in any way other than professionally.
73. Whilst she couches her claim in terms that Mr. Murdoch refused to get her medical assistance the evidence plainly shows this is incorrect. The claimant herself accepted an ambulance was called. It is clear there were some 10 minutes which passed between her beginning to suffer what appears to have been a panic attack and an ambulance being called.

74. On 10 September 2022 two men including the claimant's son attended the branch and made threats towards Mr Murdoch. The claimant does not deny this in evidence merely confirming that she did not wish to speak about it as it was about somebody else. We take note of the account given by the witness to the events as part of the Underhill investigation. We find the claimant's son did attend the respondent premises on 10 September 2022 with someone else and in a raised voice stated that Mr. Murdoch owed his mum an apology. We accept the unchallenged evidence of Mr Murdoch that he felt threatened following this interaction.
75. It is notable Mrs Habib refers to feeling threatened suppressed and frightened of Mr Murdoch, yet her evidence throughout has been she did not wish to raise a formal grievance about him, and that she wanted to sort this out between her and Mr Murdoch in a 'friendly way' and intended to do so at their next 1-1 due on 13 September 2022. We find it highly unlikely that someone who felt threatened suppressed and frightened would feel comfortable enough to have spoken to the alleged perpetrator of such conduct privately. We find this troubling and inconsistent with the allegations she makes not only in the grievance but also as part of this claim more generally about the way in which she was treated by Mr Murdoch.
76. Mr Murdoch raised a grievance about Mrs Habib because of the serious allegations she makes about him. Mrs Habib also raises a grievance about Mr Murdoch.
77. Given the allegations raised by Mrs Habib in her grievance against Mr Murdoch the respondent took the step of instructing an independent external investigator, Mr Underhill, who interviewed 8 witnesses who were employees at the branch where the claimant worked.
78. We find the investigation was thorough and addressed the matters raised by Mrs Habib, in particular the way in which Mr Murdoch treated her and importantly his behaviour in general. It is clear the investigation dealt with his conduct as a manager and whether any of the employees interviewed had any concern around this. Whilst Mrs Habib in evidence continually stated all those witnesses accounts were 'hearsay' we find they are accounts given about their own experience of working at the branch where Mr Murdoch was the manager. Their accounts go a considerable way to corroborate the lack of merit in Mrs Habib's allegations about his behaviour and conduct.
79. We find it more likely than not had Mr Murdoch behaved in the way Mrs Habib alleges such that his conduct could be considered to be bullying intimidating offensive and suppressive this would have become evident as part of this investigation. The identities of the witnesses are redacted and anonymized and therefore we find they would have been able to freely express their beliefs about and experiences of Mr Murdoch.

80. A number of the team identified the claimant was struggling in the performance of her role. The conclusions from the investigator were that the claimant becomes confrontational when she is asked a reasonable line management question.
81. There were also a number of inconsistencies noted with her assertions. For example, she alleges that she was locked in the office however later confirmed in oral evidence she was not locked in the office and there are no locks on the doors.
82. Notably Mr Underhill's investigation conclusion was that there were multiple grounds for the claimant's grievance being considered to be an act of gross misconduct given the serious offences alleged, none of which were substantiated. The investigator concluded the grievance submitted by the claimant appears to be vexatious and as a direct result of Mr Murdoch talking to the claimant about the tasks she was required to perform. As a result of the investigation the matter was progressed to a formal disciplinary hearing. Mrs Habib does not assert the investigation was flawed or that there were people who should have been interviewed but were not, nor a line of enquiry which ought reasonably to have been carried out. She simply asks us to disregard the accounts given by all other employees of the branch as being 'hearsay'.
83. A meeting took place on 18 October 2022 which dealt with both the claimant's grievance and the disciplinary against her. The meeting was chaired by Mr Bridges who is director of the business.
84. We find the the decision maker was Andrew Bridges who conducted the grievance meeting and a disciplinary meeting on the same date. Whilst the claimant repeatedly raised questions relating to her performance in her cross examination, we do not find that performance issues formed part of the reason for dismissal.
85. The grievance meeting commenced at 9.30 am and concluded at 11.56. The claimant accepted in evidence she had the opportunity to have someone accompany her but chose not to.
86. The disciplinary hearing took place after a short break. Between the end of the grievance meeting and the start of the disciplinary hearing there was some 20 minutes.
87. Mr Bridges relied solely on his meeting and the investigation pack and information provided from the Underhill investigation.

88. The reasons given for the disciplinary were the claimant having committed gross misconduct by reason of her behaviour and/or that the working relationship had broken down irretrievably by reason of her conduct which amounted to a substantial reason justifying dismissal.
89. The gross misconduct assertion arose following the allegations raised by Mrs Habib against Mr Murdoch which the respondent found were not supported by the independent investigation conducted by Mr Underhill. The concern being that none of the independent witnesses interviewed supported what she stated and that given the serious nature of the allegations the respondent was concerned about Mrs Habib's motivations in raising the grievance assertions and allegations against Mr Murdoch.
90. In response Mrs Habib refers to being bullied and accused of capability issues. Notably she states the crucial thing that made her raise the grievance was that on the 9 September there was a refusal to call her an ambulance. We find based on her evidence there was no such refusal to call an ambulance.
91. We were not persuaded that Mr Bridges did not have sufficient impartiality to conduct the meetings nor to be involved in the process nor to render the process unfair. We take note in this regard of his evidence surrounding the respondent's policy and the number of directors available at the respondent including that some of them may indeed have had actual prior knowledge of the claimant's historical issues which made them unsuitable.
92. Mr Bridges concluded there was no evidence to support the grievance made by the claimant based on the Underhill investigation there being no corroboration by witnesses of any of the allegations.
93. The claimant was dismissed following the meeting by way of letter date 25 October 2022. The letter confirms Mr Bridges concluded the claimant's grievance against Mr Murdoch was vexatious and made in bad faith as a result of Mr Murdoch asking her a reasonable line management question about routine tasks. The dismissal letter also confirms that Mr Bridges formed the view that there had been a serious breakdown of the working relationship between the claimant and management and that her continuing employment was untenable and that the breakdown in the working relationship was a substantial reason for dismissal.
94. We find the principal reason for the dismissal was the serious and irreconcilable breakdown in the employment relationship between the claimant and the respondent. This conclusion was contributed to by the finding that the claimants' grievance was vexatious.

95. The claimant herself in her evidence stated she could not continue to work there yet questioned how the respondent could conclude there was a serious breakdown in the relationship.
96. The claimant appealed the decision, and the appeal was heard by Ms Fairhead another director of the business. We find no new evidence or line of enquiry was presented or asked for by the claimant for the appeal. We are satisfied Ms Fairhead was not involved in another case involving the claimant and was suitably impartial to be able to deal with the appeal.
97. We find the claimant during the appeal informed Ms Fairhead she did not want to work for the respondent and Ms Fairhead reasonably concluded the claimant no longer had any trust in the respondent. This along with the serious allegations raised by the claimant having been concluded as being vexatious and not substantiated together with no additional evidence or information being brought to Ms Fairhead's attention led her to dismiss the appeal and uphold the decision to dismiss.
98. Was the dismissal fair?
99. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that she was dismissed by the respondent under section 95, but in this case the respondent admits that it dismissed the claimant (within section 95(1)(a) of the 1996 Act)
100. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.
101. SOSR (some other substantial reason) is a potentially fair reason for dismissal under section 98(1) (b). The respondent has satisfied the requirements of section 98(1) (b).
102. We find the reason given is a substantial one resulting from the investigation concluding the claimant's grievance was vexatious and that the relationship between not only the claimant and Mr Murdoch had broken down but clearly the relationship between the claimant and the respondent had also broken down.
103. We find that the respondent's management namely Mr Bridges and Ms Fairhead held a genuine belief that the relationship between the claimant and the respondent had substantially broken down at the material time.

104. We are satisfied with their evidence as to why redeployment was not considered appropriate largely due to the findings that the grievances were vexatious, and they could not be confident the same would not happen again.
105. We are satisfied the investigation conducted by Mr Underhill was independent and extensive having interviewed nine of the employees who worked in the branch including the claimant. There is no evidence to support any further investigation was required or that any reasonable line of inquiry was omitted.
106. We find it reasonable that Mr Bridges and Ms Fairhead relied upon this independent investigation as well as the meetings with the claimant when making their decisions.
107. We are concerned that the disciplinary hearing immediately followed a lengthy grievance meeting. We do however take note the claimant confirmed she wanted to proceed without anyone accompanying her and further that she just wanted to finish. On balance we do not find this rendered the process unfair. If we had found it did, we find the appeal process remedied this. We take note no new evidence or information was provided for the appeal in any event.
108. We find Mr Bridges and Ms Fairhead considered all the material evidence and the claimant's explanation /allegations were not corroborated or supported. Given the serious nature of the allegations made and in the absence of any coherent explanation from the claimant together with her clear lack of trust in the respondent they did have reasonable grounds for their belief that the grievance was vexatious, and that the relationship had irretrievably broken down. The range of reasonable responses test applies to all aspects of what the respondent did. We are satisfied the issue of redeployment was reasonably considered to not be a viable one in the circumstances of this case. We heard no evidence that the respondent could have reorganised the business in a way that avoided the claimant being managed by Mr Murdoch. But more importantly it is clear the relationship had broken down between Mrs Habib and the respondent not just Mr Murdoch.
109. We do not find that no reasonable employer would have imposed the same sanction and as such we find the respondent's decision to dismiss the claimant was within the range of reasonable responses.
110. We have considered the size of the respondent's undertaking. This is a relatively small business with a HR Manager and well-drafted written policies. A formal disciplinary process was followed.
111. We found the process was overall fair.

112. We find the claimant was fairly dismissed and the claim for unfair dismissal is not well founded and dismissed.

Notice Pay

113. The Notice pay claim was conceded by the respondent and they have now paid the claimant the correct amount due which is accepted by the claimant. It was clarified to the claimant that the payslip is also being sent to her for that payment.

Public access to employment tribunal decisions

All judgments and written reasons for the judgments (if provided) are published in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties in a case.

Employment Judge N Wilson
Dated: 2nd April 2025

Sent to the parties on:
Date: 1st May 2025

For the Tribunal Office