EMPLOYMENT TRIBUNALS

Claimant: **Ms A Gniwek**

Respondent: **Forza Foods Limited**

Heard at: **Leeds** **On:** **24,25, 28, 29, 30 and 31 July 2025**
Deliberations in chambers: 5 August 2025

Before: **Employment Judge Shepherd**

Appearances

For the claimant: **In Person**

For the respondent: **Mr B Jangra, counsel**

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claims of unfair dismissal, automatically unfair dismissal for making a protected disclosure, wrongful dismissal, detriment on ground of making a protected disclosure, harassment and direct race and sex discrimination are not well-founded and are dismissed.

2. The claim for outstanding holiday pay succeeds and a judgment by consent is made.

REASONS

1. The claimant represented herself and the respondent was represented by Mr. Jangra.

2. I heard evidence from:

Aneta Gniwek, the claimant;

Thomas Ralph Windham, Group Financial Controller;

David Crook, Head of Supply Chain Operations;

Rachel Leach, Director – Goods Not For Resale ;

James Colman, Manager – Employee Relations.

3. I had sight of a bundle of documents which, together with documents added during the course of this hearing, was numbered up to page 536. I considered those documents to which I was referred by the parties.

4. The claims and issues were identified by Employment Judge James during a preliminary hearing in August 2023 as follows:

Claims and issues

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 11 March 2024 may not have been brought in time.

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

1.2.1 Was Acas Early Conciliation commenced within three months of the act to which the complaint relates?

1.2.2 If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

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

1.2.4 In relation to any failure to do something, when did the respondent decide not to do that something; alternatively when did the respondent do an act inconsistent with doing that something; or if there was no inconsistent act, by what date might the respondent reasonably have been expected to do it?

1.2.5 Was Acas Early Conciliation commenced within three months of the end of that period/decision/inconsistent act/date?

1.2.6 If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period/decision/inconsistent act/date?

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

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

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

1.3 Was the detriment complaint made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

1.3.1 Was Acas Early Conciliation commenced within three months of the act complained of?

1.3.2 If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?

1.3.3 If not, was there a series of similar acts or failures and was Acas Early Conciliation commenced or was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

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

1.3.5 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 thereafter?

2. **Unfair dismissal/automatically unfair dismissal**

2.1 Was the reason or principal reason for dismissal that the claimant made a protected disclosure? If so, the claimant will be regarded as unfairly dismissed.

2.2 If whistle-blowing was not the reason, what was the reason or principal reason for dismissal? The respondent says the reason was

conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

2.3 In the circumstances (including the size and administrative resources of the respondent), did the respondent act reasonably or unreasonably in treating that as a sufficient reason to dismiss the claimant? That question is to be decided in accordance with equity and the substantial merits of the case. In a misconduct case, the Tribunal will usually decide, in particular, whether:

2.3.1 there were reasonable grounds for that belief;

2.3.2 at the time the belief was formed the respondent had carried out a reasonable investigation;

2.3.3 the respondent otherwise acted in a procedurally fair manner;

2.3.4 dismissal was within the range of reasonable responses.

3. **Remedy for unfair dismissal**

3.1 Does the claimant wish to be reinstated to the previous employment?

3.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

3.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

3.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

3.5 What should the terms of the re-engagement order be?

3.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

3.6.1 What financial loss has the dismissal caused the claimant?

3.6.2 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

3.6.3 If not, for what period of loss should the claimant be compensated?

3.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

3.6.5 If so, should the claimant's compensation be reduced? By how much?

3.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

3.6.7 Did the respondent or the claimant unreasonably fail to comply with it by [the parties must specify any alleged breach by reference to the relevant paragraph of the Acas Code, if this argument is to be pursued]?

3.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

3.6.9 If the dismissal was unfair, did the claimant cause or contribute to dismissal by blameworthy conduct?

3.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

3.6.11 Does the statutory cap of fifty-two weeks' pay apply?

3.7 What basic award is payable to the claimant, if any?

3.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

4. Wrongful dismissal / Notice pay

4.1 What was the claimant's notice period? It is not in dispute that the claimant was not paid for that notice period.

4.2 Was the claimant guilty of gross misconduct? In other words, did the claimant do something so serious that the respondent was entitled to dismiss without notice?

5. Protected disclosure

5.1 Did the claimant make a qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The claimant relies on the following disclosure:

5.1.1 On 10 or 11 March 2024, in an email to Mr Windham, did the claimant set out information showing that the environmental plastic packaging tax calculations had been calculated by PwC using incorrect figures supplied by the respondent, between the period 2016 and 2022?

5.2 Did the claimant disclose information?

5.3 Did the claimant believe the disclosure of information was made in the public interest because tax avoidance/underpayment of tax is a public interest issue?

5.4 Was that belief reasonable?

5.5 Did the claimant believe it tended to show that:

5.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation, namely to the obligation on a company to pay the correct amount of tax

5.6 Was that belief reasonable?

5.7 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

6. Detriment (Employment Rights Act 1996 section 48)

6.1 Did the respondent do the following things:

6.1.1 Remove the claimant's access to IT systems etc on 12 March 2024?

6.1.2 Conduct and then continue with a disciplinary investigation on 15 March 2024; including that, at that meeting, the claimant was not told it was an investigation meeting, was not informed of the allegations, and after initial questioning, was told she could not leave the room for a period of about two hours?

6.1.3 Suspend the claimant on 15 March 2024?

6.1.4 Decide to proceed with a disciplinary hearing against the claimant (resulting in dismissal on 24 April 20234 – see 2.1 above)?

6.1.5 Reject her appeal against dismissal on 30 May 2024?

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

6.3 If so, was it done on the ground that the claimant made a protected disclosure?

7. Remedy for Protected Disclosure Detriment

7.1 What financial losses has the detrimental treatment caused the claimant?

7.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

7.3 If not, for what period of loss should the claimant be compensated?

7.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

7.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

7.6 Is it just and equitable to award the claimant other compensation?

7.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

7.8 Did the respondent or the claimant unreasonably fail to comply with it?

7.9 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25% ??

7.10 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?

7.11 Was the protected disclosure made in good faith?

7.12 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

8. **Harassment related to race (Equality Act 2010 section 26)**

8.1 Did the respondent do the following things:

8.1.1 Did Mr Windham say at the end of February/beginning of March 2024 words to the effect of 'all Polish are dodgy'?

8.1.2 In addition, in January, February and or March 2024 did Mr Windham say words to the effect of: 'Poland and everything Poland related is a "pain in the arse'; and repeatedly state: 'I didn't sign up for that'; and 'I don't want to have nothing to do with Poland or anything Poland related'.

8.1.3 During a Zoom video call on 06.03.2024 around 9am, did Mr Windham inaccurately accuse the Claimant of forging a signature because in his view 'Polish people cannot be trusted'?

8.2 If so, was that unwanted conduct?

8.3 Did it relate to race?

8.4 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?

8.5 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.

9. **Direct race or sex discrimination (Equality Act 2010 section 13)**

9.1 The claimant is a woman and of Polish national origin.

9.2 Did the respondent do the following things:

9.2.1 On 4 March 2024 did Mr Windham, during a conversation with the claimant when she was asking for promotion due to her taking on her line manager's responsibilities, laugh in her face and tell her that whilst a pay rise could be discussed, promotion was 'impossible'?

9.2.2 See 6.1.1 to 6.1.5 above, including in relation to 6.1.4, the dismissal itself?

9.3 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.

In relation to 9.2.1 above, the claimant says she was treated worse than Matt Cook who was promoted to a Level 4 role towards the end of 2023. In addition, the claimant relies on hypothetical comparators.

9.4 If so, was it because of race (or in relation to 9.2.1, sex or race)?

9.5 Did the respondent's treatment of the claimant amount to a detriment?

10. **Remedy for discrimination**

10.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

10.2 What financial loss has the discrimination caused the claimant?

10.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

10.4 If not, for what period of loss should the claimant be compensated?

10.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

10.6 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

10.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

10.8 Did the respondent or the claimant unreasonably fail to comply with it by ?

10.9 If so is it just and equitable to increase or decrease any award payable to the claimant?

10.10 By what proportion, up to 25%?

10.11 Should interest be awarded? How much?

5. It was agreed at the commencement of this hearing that the identified issues were those to be determined at this hearing.

6. No claim for outstanding annual leave had been identified. However, it had been included in the claimant's Grounds of complaint and the respondent had provided a response to that claim in the Amended Grounds of Resistance.

7. The parties reached agreement with regard to outstanding annual leave and a separate consent judgment is made.

8. When cross-examining the respondent's witnesses, the claimant asked questions in respect of issues that went beyond those that had been identified. She wished to raise questions with regard to her grading for the post and discussions and assurances she had received from previous managers of the respondent and a considerable number of years. The claimant then indicated that she agreed that the issues as set out by Employment Judge James were those to be determined at this hearing and any other questions she raised were with regard to background to those issues.

Background/Findings of fact

9. Having considered all the evidence, both oral and documentary, I make the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings made from which I drew my conclusions.

10. Where I heard evidence on matters for which I make no finding, or do not make a finding to the same level of detail as the evidence presented that reflects the extent to which I consider that the particular matter assists in determining the issues. Some of findings of fact are also set out in the conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact.

11. The claimant was employed by the respondent from 25 June 2018. Her job title changed in April 2023 to that of Specialist Financial Accountant. At that time the claimant was provided with a new contract of employment.

12. On 1 February 2024 the Polish Tax Office issued a summons (450) to the respondent. This included a request for contracts to be provided including a contract between the respondent and Bodama This was a Polish supplier of goods and services to the respondent. The request was for the contract and other documents including pricing information relating to the Bodama contract.

13. The respondent needed to provide the Bodama contract and invoices to the Polish Tax Office. This was a contract that had been entered into in June 2018.

14. The signed Bodama contract could not be located by the claimant. The claimant contacted Marcel Wilk, Chief Executive Officer of Bodama. She requested him to send her a copy of the signed contract and other documents (227). The claimant indicated that it was an urgent matter because the deadline for submitting the document to the Polish Tax Office had been set as 6 March 2024. Mr Wilk could not locate a copy.

15. The response to the summons was to be dealt with by the respondent's Polish advisers, PwC who required the supporting information for the Tax Office.

16. The claimant sent emails to Mr Wilk on 5 March 2024 (242 and 245) in which she sent him the contract and the rate cards and asked him to sign and return them.

17. On 5 March 2024 Mr Wilk sent the claimant a copy of the Bodama contract that he had signed in March 2024 which had been back dated to 2018 (245) and the rate card which was dated 1 June 2023. (242).

18. At 21:22 on 5 March 2024 (254) the claimant sent an email to Dee Hayes, Process Planning Manager, and Ralph Windham in which she stated:

> "I'm not sure if Marcel sent this already, but please see signed contract and current rates attached – Name the time and place because I am ready to celebrate! Ha!
>
> Ralph, as instructed this wasn't submitted to PwC, please could you review and confirm that it's ok to send?

> Dee will be able to confirm that the documents and the signatures are legitimate."

19. I had sight of a transcript of a Zoom video conversation between the claimant and Ralph Windham (345) which took place on 6 March 2024. In that conversation it was stated by Ralph Windham:

> "Hi Aneta – did we find the contract then?"

The claimant responded:

> "hello, contract was there just unsigned – he signed everything now, I'm waiting for your nod send it to PwC"…

Ralph Windham:

> "Please don't send – I'm just late for a meeting."

20. Ralph Windham spoke to the claimant later that morning and told her not to send the backdated documents to PwC and to speak to him. He said that he also raised his concerns with Joy Wilkinson, Legal and Compliance Director, whose advice was that they should be sending the unsigned Bodama with an explanation about the relevant pricing.

21. In a further telephone conversation with the claimant Ralph Windham explained his view that the backdated documents must not be used in response to the summons. The claimant said words to the effect of, "I wish I hadn't let you know about this, as now I can't send the files." After some discussion Ralph Windham agreed that, as a compromise he allowed the claimant to ask PwC whether they could use the backdated documents.

22. On 8 March 2024 the claimant and Ralph Windham had a Zoom video meeting with two representatives from PwC. During that meeting PwC confirmed their understanding that the contract had been signed retrospectively and described this as a "forgery" and would give the false impression that they existed at the time they were dated which was both unethical and illegal.

23. Following the meeting the claimant sent a message to Ralph Windham stating that she had been wrong and Ralph Windham had been right and:

> "Just for the record, I was wrong and you were right! So if I ever try to argue again.. Just cite: Bodama!"

24. On 11 March 2024 Ralph Windham sent a “fact pattern” relating to the events that concerned him to Phil Barnfather, Director of HR and Paul Grover, Financial Director.

25. On 11 March 2024 the claimant sent an email to Ralph Windham headed “FW: Copy of PwC Summary Env Tax Calcs 2003 AG .xlsx” (257) in which the claimant provided a copy calculations which had been sent to her by AM, Interim Finance Manager, in which the claimant stated:

> “ AM sent her comments (implying that everything is based on estimates?)
>
> I spent a lot of time going through Nov + Dec23 shipments and read about PL Env. Tax reporting. I am confident about what needs to be reported.
>
> The issue was that AMs 2016 2022 figures aren’t clear (based on what calculations?), thus not consistent with the 2023 actuals.
>
> If I sent actuals I will open another ‘Pandora’s box’ but to remain consistent with 2016 – 2022 figures will involve ‘cooking? – I suspect she is not able to justify her figures.
>
> She refused to share her 2016 – 2022 files. This will surface sooner or later and I am responsible for this tax. I need to know what she reported in prior years,
>
> Only summary is being sent to PwC though speaking to then will not help.
>
> Please, if you could ask her for any 2016–2022 calculations so I could reverse-engineer ?”

26. David Crook, Head of Supply Chain Operations, was asked by Phil Barnfather and Judith Garfitt, HR Business Partner to conduct an investigation into the claimant’s conduct.

27. On 15 March 2024 David Crook met with the claimant. The meeting was initially introduced by Ralph Windham. The claimant was asked about the Bodama contract.

28. On 4 April 2024 David Crook wrote to the claimant providing notice of a disciplinary hearing (314). That letter stated:

> “I write to confirm that following the conclusion of the recent investigation into the allegation of the submission of a document to PWC which was

fraudulently obtained signed in March 2024 but dated 1" June 2018. On receipt of this document, it was submitted to our external agent PWC. You are now required to attend a disciplinary hearing.

The purpose of the disciplinary hearing is to consider the following allegations against you:

Breach of Site Rules - falsifying a document, specifically that a document was submitted to PWC which was fraudulently obtained signed in March 2024 but dated 1st June 2018. On receipt of this document, it was submitted to our external agent PWC.

The hearing will be held in accordance with the Company's Disciplinary Procedure, a copy of which is enclosed. The allegations are potential acts of gross misconduct if proven and therefore if you are found guilty of gross misconduct, consideration will be given to the full range of sanctions but you may be dismissed without notice or pay in lieu of notice.

I have enclosed a number of documents which were gathered as part of the investigation, which will be referred to during the disciplinary hearing:

1. Investigation Report

2. Minutes of Investigation Meeting carried out with Aneta Gniwek on 15th March 2024.

3. Minutes of Investigation Meeting carried out with Ralph Windham on 20th March 2024.

4. Minutes of Investigation Meeting carried out with Joy Wilkinson on 25th March 2024.

5. Minutes of Investigation Meeting carried out with Dee Hayes on 18th March 2024.

6. Documents referenced as part of Ralph Windham meeting.

7. Contract -ref A

8. Contract - ref B

9. Counselling and Disciplinary Record

10. Signed Forza Briefing - site rules

11. Contract of Employment signed 25th May 2023.

The disciplinary hearing will be held on Friday 12th April 2024 at 13:00 in the Boardroom, IPL Normanton with Rachel Leach, Senior Manager - Group GNFR Procurement IPL and Vikki Stansfield, Senior Manager - HR). You are entitled to bring a fellow employee or a trade union representative to the meeting in accordance with our Disciplinary Procedure. If you wish to bring a companion, please let me know their name as soon as possible.

29. The meeting with Rachel Leach was adjourned on two occasions as Rachel Leach wished to carry out further investigations.

30. On 1 May 2024 Rachel Leach wrote to the claimant confirming the

decision to terminate her employment on the grounds of gross misconduct.

31. It was stated in the letter:

> "I confirmed to you that it was my decision to terminate your employment on the grounds of gross misconduct for breaching site rules, specifically falsifying a document which was fraudulently obtained signed in March 2024 but dated 1 June 2018. I have enclosed a full set of the notes taken during the disciplinary hearing but aim to summarise the reason for my decision. There were two parts to the contract dated 1 June 2018, document reference A could not be found; however, it was believed to have existed. Document Reference B did not exist until March 2024. A similar document with different rates on had been sent to you but the rates were different, so you accepted the document back from the supplier with the new pricing on but dated June 2023. I considered a lesser sanction but due to the severity and your position within the controllership team I did not feel that this would the right decision and therefore was left with no alternative but to terminate your employment."

32. The claimant appealed against her dismissal on 2 May 2024 (398). In her letter of appeal the claimant stated that the manner in which the disciplinary

proceedings were handled did not abide by the employer's disciplinary policy and/or the ACAS Code of Practice. She stated:

> "I was dismissed, effective from 24 April 2024, on grounds of gross misconduct. The manner in which the disciplinary proceedings were handled did not abide with the employer's disciplinary policy and/or the ACAS Code of Practice.
>
> My reasons for appeal are as follows:
>
> The disciplinary proceedings did not follow requirements for conducting formal meetings, specifically:
>
> - failed to give me the option to exercise my legal right to be accompanied.
> - Failed to provide advance notice prior to the meeting.
> - Failed to state the reason, including any specific allegations – resulting in serious miscommunications, because there were no direct questions addressing any specific documents. One hour of philosophising about hypothetical scenarios. Held in captivity for another two hours because – quoting David Crook –'there was a lot of editing and retyping to do').
> - Failed to give me the option to Appeal against the decision in the outcome letter.
>
> Furthermore, the disciplinary proceedings
>
> - failed to conduct a fair investigation and transparent manner and to avoid predetermined verdict.
> - Failed to honour the request for one document is my only supporting evidence without a reply or explanation and my question addressing this met with silence and omitted from notes…"
>
> Additionally, my long and unblemished disciplinary record and my high-performance standards were not given any consideration. My attempts to explain were used against me, merely to change and/or reframe the allegations, which is acting in breach of the ACAS Code of Practice, specifically:
>
> - 15.03.2024 Suspension: 'Requested a supplier to provide falsified documents, namely you made contact with a supplier to request a signature on an historical document with the intention of submitting as part of an audit. Presented this document to an external agent which could bring the company into disrepute'.

- 12.04.2024 First Dismissal: 'Breach of Site Rules - falsifying a document, specifically that a document was submitted to PWC which was fraudulently obtained signed in March 2024 butdated 1" June 2018. On receipt of this document, it was submitted to our external agent PWC'.

- 24.04.2024 - Final Dismissal: 'Breach Site Rules -falsifying a document, a document was produced dated 01.06.2023 that was linked to the contract document A, dated 2018, that did not exist on that date, you were aware it did not exist and then accepted that document knowing that the rates had been amended to match the rates that you had sent across in an invoice'

- 01.05.2024 Dismissal Letter: 'Breach of Site Rules - falsifying a document, specifically that a document was submitted to PWC which was fraudulently obtained signed in March 2024 but dated 1" June 2018. On receipt of this document, it was submitted to our external agent PWC'.

  Most importantly, no action was taken to verify the authenticity of the documents i.e., to contact the supplier for a clarification. Moreover, the relationship and cooperation with the supplier continues to this day despite the 'reasonable belief' that the supplier did falsify the documents.

  Lastly, I have received the confirmation letter via email on: 02.05.2024, the issue is not just that the letter is dated 01.05.2024 and I was given five days from 01.05.2024 to appeal. What's more, the letter does not provide the contact details for the person by whom my appeal should be received by 05.05.2024. And, ironically, the letter in fact did not exist on 01.05.2024, which means that my 'prosecutors' are committing precisely the same 'crime' used to dismiss me in relation with.…"

33. An appeal hearing took place on 16 May 2024 before Alan Pater, Director – Commercial Finance. The claimant was offered the opportunity to be accompanied but she attended alone. The notetaker was James Coleman, Manager – Employee Relations.

34. On 29 May 2024 Alan Pater wrote to the claimant (420). The outcome of the appeal hearing was summarised as follows:

> "After looking through all the evidence in relation to your case and listening to the representations you had made at your appeal hearing, I am now able to provide my outcome as follows.

> I had also obtained the emails that you had stated in your email to James, however once again after a review these would not change the decision made. It is clear to me in "document ref 1" which is a screenshot of the Zoom message with Ralph you state the following:
>
> "Good news, I have been on the phone (ongoing) with Marcel Wilk – ex Board member but still with Bodama Marcel's mother Danuta Wilk – is the CEO
>
> Have the contract – I just have to get it signed + working on rate cards (in PL and EN) referencing current prices that plan is that Marcel will get everything signed for us today so I can send off"
>
> This message to me tells me that you were aware the contract was unsigned and the rate cards didn't exist, and that Marcel had retrospectively signed the contracts as of the dates on the contract and rate cards with your knowledge.
>
> I do not find any evidence the process of the investigation or disciplinary hearing was not conducted in line with either our own policy or the ACAS code of practice as I have already explained. The investigation was particularly complex and a full and fair process was conducted.
>
> Following my review of the evidence I am comfortable with the decision that was made at the disciplinary hearing by Rachel, therefore as an outcome to your appeal hearing my decision on your appeal hearing is to uphold the original decision made at your disciplinary hearing…"

35. Following a period of early conciliation between 10 June and16 July 2024, the claimant presented a claim to the Employment Tribunal on 27 August 2024. The claimant brought complaints of unfair dismissal, race and sex discrimination and harassment, whistle-blowing detriment, and holiday pay.

The law

Time limits

36. Section 123 of the Equality Act 2010 states:

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

(3) For the purposes of this section—
(a) conduct extending over a period is to be treated as done at the end of the period;
(b) a failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

37. *The Court of Appeal made it clear in* ***Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686,*** that *i*n cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for a claimant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he has to prove, in order to establish 'an act extending over a period', is that (*a*) the incidents are linked to each other, and *(b)* that they are evidence of a 'continuing discriminatory state of affairs'. The focus of the enquiry should be on whether there was an “ongoing situation or continuing state of affairs” as opposed to “a succession of unconnected or isolated specific acts”. It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.

38. The Tribunal has discretion to extend time if it is just and equitable to do so, the onus is on the claimant to convince the Tribunal that it should do so, and 'the exercise of discretion is the exception rather than the rule' (***Robertson v Bexley Community Centre [2003] EWCA Civ 576*** per Auld LJ *at para 25)*.

39. Discretion to grant an extension of time under the just and equitable formula has been held to be as wide as that given to the Civil Courts by Section 33 of the Limitation Act 1980 **British Coal Corporation v Keeble** [1997] IRLR 336. Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension having regard to all of the circumstances, in particular:-

(a) The length of and the reason for the delay;

(b) The extent to which the cogency of the evidence is likely to be affected by the delay;

(c) The extent to which the parties sued had cooperated with any request for information;

(d) The promptness with which the claimant acted once he or she knew of the facts giving rise to the course of action; and

(e) The steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

40. Time limits are short for a good purpose- to get claims before the Tribunal when the best resolution is possible. If people come to the Tribunal promptly when they have reached a point where the employer has said it will not take a step which the claimant believes should be taken, then, if it agrees with the claimant, the Tribunal can make a constructive recommendation. Left unresolved, omissions by employers often have devastating consequences which it is too late to remedy in that way.

Protected Disclosure Claim

41. Section 43B(1) of the Employment Rights Act 1996 states:

> "(1) In this part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed;
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
> (d) that the health or safety of an individual has been, is being or is likely to be endangered;
> (e) that the environment has been, is being or is likely to be damaged; or
> (f) that information tending to show any matter falling within any one the preceding paragraphs has been or is likely to be deliberately concealed".

42. Section 47B(1)

> "A worker has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

43. Section 103A

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

44. The definition of a qualifying disclosure breaks down into several elements which the Tribunal must consider in turn.

<u>Disclosure</u>

45. In **Cavendish Munro Professional Risks Management Limited v Geduld 2010 IRLR 37** Slade J stated:

> "That the Employment Rights Act 1996 recognises a distinction between "information" and an "allegation" is illustrated by the reference to both of these terms in S43F……It is instructive that those two terms are treated differently and can therefore be regarded as having been intended to have different meanings…….the ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around." Contrasted with that would be a statement that "you are not complying with Health and Safety requirements". In our view this would be an allegation not information. In the employment context, an employee may be dissatisfied, as here, with the way he is being treated. He or his solicitor may complain to the employer that if they are not going to be treated better, they will resign and claim constructive dismissal. Assume that the employer, having received that outline of the employee's position from him or from his solicitor, then dismisses the employee. In our judgment, that dismissal does not follow from any disclosure of information. It follows a statement of the employee's position. In our judgment, that situation would not fall within the scope of the Employment Rights Act section 43 … The natural meaning of the word "disclose" is to reveal something to someone who does not know it already. However, s43L (3) provides that" disclosure" for the purpose of s 43 has the effect so that "bringing information to a person's attention" albeit that he is aware of it already is a disclosure of that information. There would be no need for the extended definition of "disclosure" if it were intended by the legislature that "disclosure" should mean no more than "communication".

46. Simply voicing a concern, raising an issue or setting out an objection is not the same as disclosing information. The Tribunal notes that a communication which conveys facts and makes an allegation can amount to a qualifying disclosure.

47. In **Kilraine –v- London Borough of Wandsworth UKEAT/0260/15** Langstaff J stated:

> "I would caution some care in the application of the principle arising out of **Cavendish Munro**. The particular purported disclosure that the Appeal Tribunal had to consider in that case is set out at paragraph 6. It was in a letter from the Claimant's solicitors to her employer. On any fair reading there is nothing in it that could be taken as providing information. The dichotomy between "information" and "allegation" is not one that is made by the statute itself. It would be a pity if Tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation are intertwined. The decision is not decided by whether a given phrase or paragraph is one or rather the other, but is to be determined in the light of the statute itself. The question is simply whether it is a disclosure of information. If it is also an allegation, that is nothing to the point".

Public interest

48. In **Chesterton Global Ltd -v- Nurmohamed [2015] IRLR** Supperstone J stated:

> "I accept Ms Mayhew's submission that applying the **Babula** approach to section 43B (1) as amended, the public interest test can be satisfied where the basis of the public interest disclosure is wrong and/or there was no public interest in the disclosure being made provided that the worker's belief that the disclosure was made in the public interest was objectively reasonable. In my view the Tribunal properly asked itself the question whether the Respondent made the disclosures in the reasonable belief that they were in the public interest…… The objective of the protected disclosure provisions is to protect employees from unfair treatment for reasonably raising in a responsible way genuine concerns about wrongdoing in the workplace (see **ALM Medical Services Ltd v Bladon** at paragraph 16 above). It is clear from the parliamentary materials to which referen**ce can be made pursuant to Pepper (Inspector of Taxes) v Hart [1993] AC 593** that the sole purpose of the amendment to section 43B(1) of the 1996 Ac**t** by section 17 of the 2013 Act was to reverse the effect of **Parkins v Sodexho Ltd.** The words "in the public interest" were introduced to do no more than prevent a worker from relying upon a breach of his own contract of employment where the breach is of a personal nature and there are no wider public interest implications. As the Minister observed: "the clause in no way takes away rights from those who seek to blow the whistle on matters of genuine public interest" (see paragraph 19 above) …… I reject Mr Palmer's submission that the fact that a group of affected workers, in this case the 100 senior managers, may have a common characteristic of mutuality of obligations is relevant when considering the public interest test under section 43B (1). The words of the section provide no support for this contention……. In the present case the protected disclosures made by the Respondent concerned manipulation of the accounts by the First Appellant's management which potentially adversely affected the bonuses of 100 senior managers. Whilst recognising that the person the Respondent was most concerned about was himself, the tribunal was satisfied that he did have the other office managers in mind. He referred to the central London area and suggested to Ms Farley that she should be looking at other central London office accounts (paragraph 151). He believed that the First Appellant, a well-known firm of estate agents, was deliberately miss-stating £2-3million of actual costs and liabilities throughout the entire office and department network. All this led the Tribunal to conclude that a section of the public would be affected and the public interest test was satisfied*".*

Reasonable Belief

49. In the case of **Darnton v University of Surrey** and **Babula v Waltham Forest College 2007 ICR 1026** it was confirmed that the worker making the disclosure does not have to be correct in the assertion he makes. His belief must be reasonable. In **Babula** Wall LJ said:

> "… I agree with the EAT in **Darnton** that a belief may be reasonably held and yet be wrong… if a whistle blower reasonably believes that a criminal offence has been committed, is being committed or is likely to be committed. Provided that his belief (which is inevitably subjective) is held by the Tribunal to be objectively reasonable neither (i) the fact that the belief turns out to be wrong – nor (ii) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence – is in my judgment sufficient of itself to render the belief unreasonable and thus deprive the whistle blower of the protection afforded by the statute… An employment Tribunal hearing a claim for automatic unfair dismissal has to make three key findings. The first is whether or not the employee believes that the information he is disclosing meets the criteria set out in one or more of the subsections in the 1996 Act section 43B(1)(a) to (f). The second is to decide objectively whether or not that belief is reasonable. The third is to decide whether or not the disclosure is made in good faith".

Legal Obligation

50. A disclosure which in the reasonable belief of the employee making it tends to show that a breach of legal obligation has occurred (or is occurring or is likely to occur) amounts to a qualifying disclosure. It is necessary for the employee to identify the particular legal obligation which is alleged to have been breached. In **Fincham v HM Prison Service EAT0925/01 and 0991/01** Elias J observed: "There must in our view be some disclosure which actually identifies, albeit not in strict legal language, the breach of legal obligation on which the worker is relying." In this regard the EAT was clearly referring to the provisions of section 43B (1) b of the 1996 Act.

51. In the case of **Eiger Securities LLP v Korshunova UKEAT/0149/16/DM** Slade J stated:

> "The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation. However, in my judgement the ET failed to decide whether and if so what legal obligation the claimant believed to have been breached."

Claim for Automatic Unfair Dismissal Section 103A 1996 Act

52. Section 103A

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

53. The burden of proof lies with the respondent to establish the reason for dismissal. If the reason is established it will normally be for the employee who argues that the real reason for dismissal was an automatically unfair reason to establish some evidence to

require that matter to be investigated. Once that has been done the burden reverts to the employer who must prove on the balance of probabilities which one of the competing reasons was the principal reason for dismissal.

54. In the case of **Eiger Securities LLP v Korshunova** Slade J referred to the distinction between automatically unfair dismissal by reason of making a protected disclosure and detriment on the ground of making a protected disclosure as follows

> "The Claimant's claim for "ordinary" unfair dismissal under ERA section 98 had been struck out as she did not have the necessary qualifying period of employment to bring such a claim. A claim for unfair dismissal for making a protected disclosure requires no qualifying period of employment and is brought under ERA section 103A. Section 103A provides:
>
> "An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure claim."

55. In the Court of Appeal decision **in Royal Mail v Jhuti [2018] IRLR 251** Underhill LJ stated:

> "… For the purpose of determining 'the reason for the dismissal' under s98(1) the Tribunal is obliged to consider only the mental processes of the person or persons who was or were authorised to, and did, take the decision to dismiss (that may be subject to possible qualifications discussed below; but they are marginal and not relevant to the present case). Section 103A falls under Pat X of the 1996 Act and it must be interpreted consistently with the other provisions governing liability for unfair dismissals."

Unfair Dismissal – Section 98 Employment Rights Act 1996 (the 1996 Act)

56. "98(1) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair it is for the employer to show –

> (a) the reason (or if more than one the principal reason) for the dismissal, and
>
> (b) that it is either a reason falling in subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) The reason falls within this subsection if it –

> (a) relates to the capability or qualifications of the employee for performing work of a kind which he was employed to do;
>
> (b) relates to the conduct of the employee …

(4) In any other case where the employer has fulfilled the requirements of

subsection (1) the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

(b) shall be determined in accordance with equity and the substantial merits of the case".

57. In accordance with the case of **British Home Stores Limited v Burchell [1978] IRLR379** it is for the respondent to establish that it had a genuine belief in the misconduct of the claimant at the time of the dismissal and that that belief was based upon reasonable grounds and the dismissal followed a reasonable investigation and a reasonable procedure. This formulation is commonly termed the "Burchell test". If the Burchell test is answered in the affirmative, the Tribunal must still determine whether the decision of the employer to dismiss the employee rather than impose a different disciplinary sanction (or no sanction at all) was a reasonable one. When Burchell was decided the burden lay with the respondent to show some elements of fairness. That burden was removed by primary legislation in 1980 and there is now no burden on either party in relation to section 98(4) of the 1996 Act. The burden lies neutrally between them. It is of key importance to avoid substituting the Tribunal's view for that of the respondent. The Tribunal must judge the questions posed by section 98(4) from the standpoint of the hypothetical reasonable employer and note that the band of reasonable responses can in appropriate cases encompass both dismissal and a lesser disciplinary punishment. The size and resources of the respondent are relevant to the matters to be determined under section 98(4) of the 1996 Act. There was no suggestion in this case that resource issues affected the scope of the investigation.

58. In **Sainsbury's Supermarkets Limited v Hitt [2003] IRLR23** where the Court of Appeal confirmed that the range of reasonable responses test applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to any other procedural and substantive aspects of the decision to dismiss the person from his employment for misconduct reason.

59. In **Ulsterbus Limited v Henderson [1989] IRLR251** the Northern Ireland Court of Appeal said it was not incumbent on a reasonable employer to carry out a quasi judicial investigation into an allegation of misconduct with a confrontation of witnesses and cross-examination of witnesses. Whilst some employers might consider that necessary or desirable an employer who fails to do so cannot be said to have acted unreasonably. The Tribunal the considered the decision of **A v B [2003] IRLR405** in which the Employment Appeal Tribunal reminded tribunals that in determining whether an employer has carried out such investigation as was reasonable in all the circumstances, the relevant circumstances include the gravity of the charges and the potential effect upon the employee. This decision was reaffirmed by the Court of Appeal in **Salford Royal NHS Foundation Trust v Roldan [2010] EWCA CIB522**.

60. In **Taylor v OCS Group Limited [2006] IRLR613**. Smith L.J. stated, at paragraph 47:

> "The error is avoided if ETs realise that their task is to apply the statutory test. In doing that they should consider the fairness of the whole of the disciplinary process. If they found that an early stage of the process was defective and unfair in some way they will want to examine any subsequent proceedings with particular care. Their purpose in so doing will not be to determine whether it amounted to a re-hearing or a review but to determine whether due to the fairness or unfairness of the procedures adopted the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision maker the overall process was fair, notwithstanding any deficiencies at the early stage".

61. In the case of **Orr –v- Milton Keynes 2011 ICR 704** Aitkens LJ provided guidance

> "…..the ET must consider, by the objective standards of the hypothetical reasonable employer, rather than by reference to its own subjective views, whether the employer has acted within a "band or range of reasonable responses" to the particular misconduct found of the particular employee. If it has, then the employer's decision to dismiss will be reasonable. But that is not the same thing as saying that a decision of an employer to dismiss will only be regarded as unreasonable if it is shown to be perverse. (7) The ET must not simply consider whether they think that the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that of the employer. The ET must determine whether the decision of the employer to dismiss the employee fell within the band of reasonable responses which "a reasonable employer might have adopted". (8) A particular application of (6) and (7) is that an ET may not substitute its own evaluation of a witness for that of the employer at the time of its investigation and dismissal, save in exceptional circumstances. (9) An ET must focus its attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any appeal process (10) and not on whether in fact the employee has suffered an injustice.]

62. Section 207A of the 1992 Act provides that any Code of Practice issued by ACAS shall be admissible in evidence and that a Tribunal shall take account of any provision of such code as appears relevant. The ACAS Code of Practice on Disciplinary and Grievance Procedures 2020 contained the following provision:

> "If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct ….and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. …".

Wrongful Dismissal Claim

63. The test of the band of reasonable responses has no application to this claim. The issue here is for the Tribunal to determine whether the respondent has shown on the balance of probabilities on the evidence before it that the claimant was guilty of gross misconduct. It is for me to make my own decision on that and not to evaluate the reasonableness of the respondent's decision.

Detriment

64. Section 103A, automatic unfair dismissal by reason of making a protected disclosure, and section 47B (1), a right not to be subjected to a detriment on the ground of making a protected disclosure, are in different Parts of the ERA, Part IX and IV respectively and use different language. The consequences of these differences for the tests in establishing claims for unfair dismissal under ERA section 103A and being subjected to detriment under ERA section 47B (1) were authoritatively determined by the Court of Appeal in **Fecitt v NHS Manchester [2012] IRLR 64**, a claim under ERA section 47B (1). These differences were explained by Elias LJ in paragraph 44 in which he held:

> "I accept, as Mr Linden argues, that this creates an anomaly with the situation in unfair dismissal where the protected disclosure must be the sole or principal reason before the dismissal is deemed to be automatically unfair. However, it seems to me that it is simply the result of placing dismissal for this particular reason into the general run of unfair dismissal law. As Mummery LJ cautioned in **Kuzel v Roche Products Ltd [2008] ICR 799**, para 48, in the context of a protected disclosure.
>
> Unfair dismissal and discrimination on specific prohibited grounds are, however, different causes of action. The statutory structure of the unfair dismissal legislation is so different from that of the discrimination legislation that an attempt at cross fertilisation or legal transplants runs a risk of complicating rather than clarifying the legal concepts**."**

57. Different tests are to be applied to claims under ERA sections 103A and 47B (1). Thus, for a claim under ERA section 103A to succeed the ET must be satisfied that the reason or the principal reason for the dismissal is the protected disclosure whereas for a claim under ERA section 47B (1) to be made out the ET must be satisfied that the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's detrimental treatment of the Claimant."

Harassment

65. S.26 Harassment

(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 also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(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.

Direct discrimination

66. Section 13 of the Equality Act 2010 states:

(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.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

Burden of Proof

67. Section 136 of the Equality Act 2010 states:

"(1) This Section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.

(5) This Section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to –

(a) An Employment Tribunal."

68. Guidance has been given to Tribunals in a number of cases. In **Igen v Wong [2005] IRLR 258** and approved again **in Madarassy v Normura International plc [2007] EWCA 33.**

69. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against her. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

70. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR 36** the House of Lords held that mere unreasonable treatment by the employer "casts no light whatsoever" to the question of whether he has treated the employee "unfavourably".

71. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that

> "all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so

> merely because the victim is either a woman or of a minority race or colour … Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way … The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable."

72. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

73. The Tribunal had the benefit of detailed written and oral submissions provided by Mr Jangra on behalf of the respondent and by the claimant. These are not set out in detail but both parties can be assured that I have considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

Conclusions

74. I have given careful consideration to all the evidence, both oral and documentary and I have reached the following conclusions on the identified issues by applying the relevant law to the findings of fact.

Time Limits

75. The first issue identified to be considered is with regard to whether the discrimination complaints were presented within the time limit in section 123 of the Equality act 2010.

76. The relevant claims of discrimination were in respect of allegations the claimant made of harassment related to race and direct race and sex discrimination. They are set out in the list of issues at paragraph 8 and paragraph 9.2.1. and are allegations of conduct by Ralph Windham January February and March 2024 prior to 11 March 2024

.

77. The claimant could not provide clear evidence of what happened and when it had happened and what her response was to the alleged conduct

.

78. The claimant did not raise a formal or informal grievance during her employment with the respondent. It was submitted by Mr Jagra that the claimant only chose to bring a harassment and discrimination claim at the time she presented her claim to the Tribunal. The claimant should have been aware of the time limits or have been in a position to ascertain them. There was an element of prejudice to the respondent as the cogency of the evidence had been affected due to the passage of time.

79.There had been no proposal or submission by the claimant that it would be just and equitable to extend time.

80. I am satisfied that those allegations are out of time and it is not just to extend time in the circumstances.

81. However, I have gone on to consider those claims together with the other claims as if they have been presented within time.

82. I also considered the time limit in respect of the claimant of detriment under section 48 of the Rights Act 1996. These complaints were about allegations made after the relevant time limit of 11 March 2024 and they are within time.

Protected Disclosure

83. The claimant contends that the emails she sent on 10 March 2024 and 11 March 2024 were a protected disclosure or protected disclosures.

84. The email of 10 March 2024 was a late addition to the documents (page 532). It was a request to check the attached documents and invited comments as to what had happened in respect of the consistency of figures.

85. The email of 11 March 2024 was a further query in respect of a difference in calculations between the claimant and Anne Marie Breewood, the Interim Finance Manager, with whom the claimant had a number of disagreements and criticisms.

86. This was a proposed correction to, and criticism of, estimated figures. The claimant was a qualified accountant. The claimant indicated that she did not have all the calculations and the reference to ‘cooking’ was a reference to the claimant having to carry out another step to ensure that the figures provided would be consistent.

87. This was a normal step in this process and calculations made on the basis of estimates were usual and exactly what the respondent expected from the claimant in her role. There was no identification of any wrongdoing or breach, or potential breach of, a legal obligation. The claimant was making a request for Mr Windham to ask Anne Marie Breewood to provide her calculations.

88. This was part of the claimant's duties as a qualified accountant employed by the respondent. It was not established that the claimant made a protected disclosure to the respondent.

Detriment

89. The claimant claimed that the respondent had removed her access to IT systems on 12 March 2024. The evidence was that the claimant had two laptops and was having issues with one of those on 13 March 2024. The claimant indicated that her other work laptop was working.

90. The claimant's access to the respondent's IT system was suspended on 14 March 2024 in advance of the investigation meeting on 15 March 2024. There was no credible evidence that this was done on the grounds of the alleged disclosure or that the alleged disclosure had a material influence.

91. The decision to investigate the claimant's conduct was taken by Ralph Windham following discussions with Paul Grover, Finance Director and Phil Barnfather, HR Director. Ralph Windham said that he raised the issue regarding the backdated documents and would have done this regardless of the nationality or sex of the person who obtained the backdated documents. There was also no credible evidence that this decision or the decision to suspend the claimant, to proceed to a disciplinary hearing and reject the claimant's appeal against dismissal was materially influenced by the fact that that the claimant had made an alleged protected disclosure.

Automatic Unfair Dismissal

92. I am not satisfied that the reason or principal reason for the claimant's dismissal is that she made a protected disclosure.

93. The principal reason for the claimant dismissal was that of conduct and I am satisfied that the respondent genuinely believed that the claimant had been guilty of misconduct. The evidence of the respondent was clear and consistent. There was no link the alleged protected disclosure other than it was close in time to when the concerns were raised by Ralph Windham.

94. David Crook, who carried out the investigation, gave clear evidence that he had no knowledge of the alleged protected disclosure. I accept that the investigation and the suspension because of the allegations was in respect of the claimant conduct and not because of any protected disclosure.

95. Also, Rachel Leach was very clear and credible that she had no knowledge of the emails that the claimant said were protected disclosures Alan Pater has left the respondent and evidence with regard to the appeal was provided by James Colman who was the Employee Relations Manager who provided support to Alan Pater at the appeal hearing. He gave credible evidence that the decision to reject the appeal was not on the ground that the claimant had made the alleged disclosure.

96. The evidence of the respondent's witnesses that the reason for dismissal was the claimant's conduct and not the alleged protected disclosure. I am satisfied that was the case.

Unfair Dismissal

97. I am satisfied that the respondent held a genuine belief that the claimant had been guilty of misconduct.

98. During the investigation meeting the claimant confirmed that when there was no signed contract she asked Mr Wilk to print it out and send it back to her. She was aware that she was guilty of wrongdoing. After the Zoom meeting with PwC she sent a message to Ralph Windham (270) stating "just for the record, I was wrong and you were right! Just cite Bodama to me"

99. During the investigation meeting the claimant stated "I did it myself, I take full responsibility for it…" (283).

100. The respondent carried out a reasonable investigation and had reasonable grounds to conclude that the claimant was guilty of misconduct.

101. I have considered the dismissal on the objective standards of the hypothetical reasonable employer and I am satisfied that the dismissal was within the band of reasonable responses available to the respondent. The respondent's Disciplinary Policy refers to falsification of records as an example of gross misconduct.

102. The claimant was a qualified accountant and should have been aware of her professional responsibilities. In the circumstances, considering the claimant's position and the action of falsifying documents, the dismissal of the claimant was within the range of reasonable responses.

Wrongful dismissal

103. The claimant had been attempting to avoid difficulties with the Polish Tax Office. The claimant had indicated she had been informed by a friend who worked at the Polish Tax Office that they were targeting British businesses and picking on organisations, particularly those that claimed VAT from the Polish Tax Office.

104. However, I am satisfied that the claimant had been guilty of gross misconduct. She was employed by the respondent as a Specialist Financial Accountant and she had asked the respondent's supplier to sign the contract and rate cards and to backdate them. This was dishonest and falsification of documents and, in those circumstances, the claim for wrongful dismissal is not well-founded and is dismissed.

Direct discrimination

105. The claimant's evidence with regard to the allegations of direct discrimination was unclear and vague. She was unable to state exactly what had been said, in what circumstances and when.

106. The one specific allegation of discrimination at paragraph 9.2.1 of the identified issues was unclear. Ralph Windham said that he remembered the claimant raising the issue of promotion. He had told the claimant that she did not warrant an exceptional pay rise and that, in order to get a promotion, she needed to apply for an advertised vacancy. It was denied that the way Ralph Windham communicated with the claimant about promotion had anything to do with her race or sex.

107. Ralph Windham gave clear and credible evidence that he found matters relating to the Polish business and operations complex and he conceded that he may have made a comment about the respondent's Polish operations but not that he made any allegation about Polish people or Poland.

108. I found his evidence preferable to that of the claimant and I accept his denial of making any discriminatory comments to the claimant or about Poland or Polish people.

109. There was no credible evidence that the claimant was treated less favourably than Matt Cook whose job had evolved and was then regraded to level 4 towards the end of 2023. The regrading was carried out when Matt Cook's updated job description had been submitted to a regrading panel.

110. There was no credible evidence that the claimant was treated was worse than Matt Cook or any hypothetical comparator. The claimant did not establish facts from which the Tribunal could conclude that the claimant had been subject to a detriment because of race.

111. There was no credible evidence that the claimant had been treated less favourably on grounds of her sex. The claimant was unable to provide any evidence with regard to discrimination because of sex or, indeed, race.

112. No allegations of discrimination were made by the claimant to the respondent during the investigation or disciplinary procedure.

113. The burden of proof did not shift to respondent. If it had, I am satisfied that the respondent has provided a non-discriminatory reason for treatment. Ralph Windham's comments related to the difficulties in respect of respondent's Polish operations and were not because of the claimant's race or sex.

Harassment related to race

114. Once again, the claimant's evidence was vague and incoherent. The evidence of Ralph Windham was clear and credible. He categorically denied making any comment to the effect of "all Polish are dodgy". He said that the Polish element of the respondent's business was an area of significant risk and that there were matters which were complex to understand and follow. He conceded that he may have made a comment about the business in Poland been dodgy or risky but not in the context of race or nationality, and certainly in no way targeted at the claimant.

115. Mr Windham conceded that he may have made the "pain in the arse" comment about the respondent's Polish operations as there were a number of legal and compliance issues and heightened risks caused by the Polish part of the respondent's operations. There were issues with the Polish operation and the way it had historically conducted its financial reporting and paid tax. It absorbed an enormous amount of management time and resources and it would be clear to the claimant that any remarks about Poland would have been in the context of working with Polish tax issues.

116. Ralph Windham said that the claimant did not ever challenge anything he said about Poland/the Polish operation of the respondent during her employment. The claimant did not shy away from communicating with senior people about matters relating to her performance or calling out behaviour that she felt was inappropriate or to which she was offended. He gave a number of examples and said that if he had said or done something that the claimant was unhappy about or had been offended by, she would have challenged him or raised the matter with someone else within the business.

117. Ralph Windham said that he did not accuse the claimant of forging the signature. That was never part of his thinking. He knew the claimant had asked Mr Wilk to sign the document and that she had received backdated documents from Mr Wilk.

118. There was no credible evidence that there was any conduct related to race that had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. It was not established that there was language that had that effect taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

119. In all the circumstances, the claims of unfair dismissal, automatically unfair dismissal for making a protected disclosure, wrongful dismissal, detriment on ground of making a protected disclosure, harassment and direct race and sex discrimination are not well-founded and are dismissed in their entirety.

120. The respondent conceded that the claimant had outstanding holidays for which she had not been paid. The parties agreed that a judgment by consent can be made for the sum of £1,421.06 gross, £930.58 net together with interest of £88.93.

Employment Judge Shepherd
5 August 2025

Sent to the parties on:

06 August 2025
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For the Tribunal:

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