



EMPLOYMENT TRIBUNALS

Claimant: Miss A Khan

Respondent: The Bronze Spoon Ltd

Heard at: Reading in public **On:** 9, 10, 11 February 2026 and 12 March 2026

Before: Employment Judge C McCooley
Tribunal Member C Whitehouse
Tribunal Member C Baggs

Appearances

For the claimant: In person

For the respondent: Mr Lanre Fakunle, Solicitor, Peninsula

JUDGMENT having been given orally to the parties on 12 March 2026 and reasons having been requested orally by the claimant at that hearing, in accordance with Rule 60(3) of the Employment Tribunal Procedure Rules 2024:

JUDGMENT

1. The complaints of direct age and race discrimination and discrimination on the grounds of religion or belief are not well-founded and are dismissed.
2. The complaint of automatic unfair dismissal is not well-founded and is dismissed.
3. The complaint of breach of contract in relation to notice pay is well-founded.
4. The respondent shall pay the claimant **£222.81** as damages for breach of contract. This figure has been calculated using gross pay to reflect the likelihood that the claimant will have to pay tax on it as Post Employment Notice Pay.

WRITTEN REASONS

Introduction

1. The claims were presented on 2 July 2024. Early conciliation took place between 31 May 2024 and ended on 4 June 2024. The Respondent filed a response defending the claim on 27 May 2025. The final hearing was heard across four days.

Procedure

2. Relevant points of procedure are contained in the CMO dated 11 February 2026.
3. We considered a 183-page bundle, along with additional documents adduced by agreement during proceedings, including a full copy of the claimant's work rota from the respondent.
4. We considered witness statements from the claimant, her mother, her friend and her former colleague. We also considered a witness statement from Mrs Dias for the respondent. All witnesses gave oral evidence and were cross-examined by the other party.
5. The list of issues was agreed at an earlier case management hearing, save that we amended it on Day 1 of the final hearing to include automatic unfair dismissal, as captured in the CMO dated 11 February 2026.
6. The claimant sought to amend her claim form to pursue a number of different claims at that case management hearing, including a failure to provide written particulars, which was refused.
7. At the end of Day 3, the claimant said her preference was to provide written submissions, which we allowed, and the respondent agreed to do the same. We considered those submissions prior to our deliberations on 12 March 2026.

List of issues

8. The list of issues is agreed as follows:

1. Direct discrimination because of religion or belief (section 13 Equality Act 2010)

1.1 The Claimant is a Muslim. It is against her religious beliefs to serve alcohol.

1.2 Did the Respondent do the following things:

1.2.1 Require that the Claimant sell bottled beer and other alcohol to customers;

1.2.2 Increase sales of alcohol within the business and then as a consequence reduce the Claimant's hours after she raised concerns relating to selling alcohol because of her age and religious beliefs;

1.2.3 Increase sales of alcohol within the business and then as a consequence dismiss the Claimant after she raised concerns relating to selling alcohol because of her age and religious beliefs.

1.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant has not named anyone in particular who she says was treated better than she was. She relies upon a hypothetical comparator.

1.4 If so, was it because of the Claimant's religion or religious beliefs?

1.5 Did the Respondent's treatment amount to a detriment?

2. Direct race discrimination (section 13 Equality Act 2010)

2.1 The Claimant describes herself as Asian Pakistani. The Claimant does not speak Portuguese.

2.2 Did the Respondent do the following things:

2.2.1 Reduce the Claimant's hours and give priority to Portuguese speaking employees rather than the Claimant when allocating work;

2.2.2 Dismiss the Claimant because she did not speak Portuguese?

2.3 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. The Claimant says she was treated worse than Daniel.

2.4 If so, was it because of race?

2.5 Did the Respondent's treatment amount to a detriment?

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

3.1 The Claimant's age was 17-18 [DOB 11/5/2006] at the time that she complains that she was discriminated against.

3.2 Did the Respondent do the following things:

3.2.1 Require that the Claimant sell alcohol at a time when she was not permitted to sell alcohol because of her age;

3.2.2 Increase sales of alcohol within the business and then as a consequence reduce the Claimant's hours after she raised concerns about selling alcohol because of her age and religious beliefs;

3.2.3 Increase sales of alcohol within the business and then as a consequence dismiss the Claimant after she raised concerns relating to selling alcohol because of her age and religious beliefs.

3.3 Was that less favourable treatment?

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

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The Claimant has not named anyone in particular who she says was treated better than she was. She relies upon a hypothetical comparator.

3.4 If so, was it because of age?

3.5 Did the Respondent's treatment amount to a detriment?

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

The Tribunal will decide in particular:

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

3.6.2 Could something less discriminatory have been done instead;

3.6.3 How should the needs of the Claimant and the Respondent be balanced?

4. Automatic unfair dismissal (s.100 ERA 1996)

4.2. Was the reason or principal reason for dismissal: that on a date between 13 to 15 April 2024, the Claimant disclosed concerns to Mrs Dias that she was required to open and shut the shop alone, those concerns being that alcohol was in an open refrigerator in the premises and that no risk assessment was carried out regarding her opening and closing the shop alone?

5. Wrongful Dismissal (Notice Pay)

5.1 Did the claimant commit an act of gross misconduct?

5.2 Is the claimant owed 1 week's notice pay?

Factual background

9. The respondent is a small coffee shop which had been opened at the end of February 2024 by Ms Dias shortly before the claimant was employed. The claimant was one of its original members of staff.
10. The café caters, not exclusively, to the Portuguese community and sells Portuguese pastries and beers.
11. Ms Dias applied for a license to sell alcohol at the café. A notice was displayed in the window of the café as legally required for 28 days. Alcohol was permitted to be served from 15 March 2024.
12. During an interview with the claimant on 5 March 2024. Ms Dias says she referenced the notice in the window, gesturing to it. We accept the claimant's evidence that she does not recall Ms Dias explicitly referring to the notice, . However, we find there was a discussion about the sale of alcohol during the interview. We find that Mrs Dias asked the claimant whether she was happy to serve alcohol when she turned 18 (that would be in just over two months on 11 May).
13. Whilst Ms Dias says the claimant never raised an issue about selling alcohol with her at any point, we find that the claimant is more likely than not to have told Ms Dias that she would not be comfortable serving alcohol herself, owing to her Islamic beliefs. This is consistent with her concerns raised to Yasmin and her mother about selling alcohol and it also explains why Ms Dias, on her own case, said she should refer any alcohol requests on to her.
14. We do not consider the claimant's beliefs to have been a problem at the time of the interview and indeed she went on to begin paid shifts on 16 March 2024, following an unpaid trial shift.
15. The claimant normally worked at weekends and sometimes during the week when college allowed.

Hours

16. There was a dispute as to the contractual hours the claimant was entitled to, or expected, from the respondent.
17. The respondent says the claimant was under a zero hours contract and so not strictly speaking entitled to any set amount of hours. However, she acknowledges telling the claimant that the hours would vary each week but would total approximately 15 hours at the end of each month. We accept Ms Dias felt obliged to meet that target, whether or not it was zero hours, though could allocate them flexibly within each week as she wished or as the business demanded.
18. We also consider 15 hours, not the 20 mentioned by the claimant, was the amount discussed because the claimant's email to the respondent post dismissal on 31 May 2024 says: "*in fact, you informed me I would be having 15 hours per week.*"

19. The claimant says Ms Dias never mentioned the words 'zero-hours contract' and she had to look that term up. We accept that account and found Ms Dias didn't mention zero-hours contract during the interview or verbally until much later, nearer the time of dismissal, possibly upon receipt of legal or HR advice.
20. A full rota of hours worked by all staff was provided as additional evidence during the hearing. Understandably the claimant was suspicious about the previous removal of information from this document, in particular information connected to the 13 April 2024. The full document should have been disclosed from the start.
21. Nonetheless, the final document was accepted as seeming accurate by the claimant.
22. We also accept Ms Dias' evidence, that once sent to payroll, the rota itself cannot be later amended or edited to suit the respondent's case.
23. The calculation of hours worked by the claimant varies between 19 and 22 hours per week. The claimant accepts that among all the staff, she worked the most hours between 3 April to 5 May. Part of that was due to Ms Dias being in hospital for some of that time and the claimant covering for her absence.
24. The claimant also accepted in oral evidence that the hours allocation was ultimately driven by business needs.
25. A written contract was provided in the bundle, referring to a zero hours contract, but we place little weight on that because it was given to the claimant on 21 May, a long time after her employment commenced and after her last working shift. It is likely Ms Dias had not treated the precise terms of the contract as a priority in opening the business.
26. There was also reference to a probationary period in this contract but we do not find that was discussed with the claimant during the interview or explicitly prior to the contract being sent on 21 May, as there was insufficiently clear evidence as to when this took place.

Portuguese-speaking staff

27. Part of the claimant's complaint involved there being preferential treatment to Portuguese-speaking staff. Ms Dias speaks Portuguese and has Portuguese heritage. Daniel, hired shortly after the claimant, is British with Portuguese heritage and also speaks Portuguese. The claimant's supervisor, Ana, also spoke Portuguese (and little English) and joined the business before the claimant. Yasmin, a colleague and friend, and the claimant did not speak Portuguese and have no Portuguese heritage.

31 March 2024

28. On 31 March, the claimant was due to work but she went home early whilst Daniel stayed on shift. Ms Dias had already indicated to the claimant by text that it was going to be a slow day with few customers and that she need not come in. The

claimant suggested she come in around lunch time and see how it went. In oral evidence she accepted the decision for her to go home was one made due to the business need of the respondent at the time. We also accept Ms Dias' explanation that it made sense for Daniel to be kept on shift as he was new to the business and needed training.

29. On 4 April 2024, Ms Dias went into hospital and was admitted until 9 April, and had a further outpatient's appointment. She gradually resumed work after that, though her health was fragile.

30. On 7 April 2024 Ms Dias posted an advert on Facebook for hiring more weekend staff, saying, among other things, speaking Portuguese, would be a bonus.

31. The claimant sent a text the same day challenging Ms Dias about the advert and her hours below:

"Hi Anna the hours you are telling to Ana next week suggest I only get 10 hours I don't know why. I cannot work on Thursday due to Eid as I told you. But I don't understand why we are hiring for weekends when you are not giving me barely any hours for the weekend."

32. Ms Dias replied to say:

"Hi Alisha. Firstly would be lovely if you respect my recovering time. Secondly the hours might change. Thirdly the people we are recruiting I don't think that has nothing to do with you. I am a bit tired of repeating myself on your hours and average. If you don't get it I'm sorry. Unfortunately there is no other polite way to put things. You are doing well we are noticing you. Yet I still have bills to pay. Unless you want to work for free there is no other way."

33. Sara and Maggie, Portuguese-speaking staff were then taken on a few weeks later.

34. During Ms Dias' recovery time until 9 April, the claimant worked more shifts than usual to cover for Ms Dias' absence.

Opening/Closing alone

35. Ms Dias says she was present at most of the claimant's shifts, though there would be times the claimant opened alone, with her arriving at most, 1 hour later. Ms Dias says she never left the claimant to close and was always available or by phone if need be, living around 15 minutes away.

36. The claimant said that on a day between 13 to 15 April 2024, she disclosed concerns to Mrs Dias that she was required to open and shut the shop alone, those concerns being that alcohol was in an open refrigerator in the premises and that no risk assessment was carried out regarding her opening and closing the shop alone, particularly in light of her age.

37. A photo of the café's metal shutter being down was sent by the claimant to Ms Dias on 13 April 2024. The claimant relied on this as evidence of her closing the café alone, at least on that occasion. She could not remember the circumstances of her sending the photo, or of actually working alone, but suggested the photo must mean this, as why else would she have sent it. Ms Dias did not remember anything about the photo and said the only reliable evidence was the shift rota which showed Yasmin was down as closing.
38. Given this lack of certainty, there was insufficient evidence for us to find that the claimant in fact closed the cafe on 13 April, or that she did so alone. Nor do we find that she ever shared concerns about opening or shutting alone with Ms Dias, and she acknowledged her case on this was not based on any specific events or incidents that triggered the concern, suggesting it was thought of retrospectively, post-dismissal.

Other health and safety concerns

39. It was the respondent's case that at no point did the claimant ever raise any health and safety concerns about the alcohol in the fridges being accessible to customers whilst she was opening/closing alone or that no risk assessment had taken place.
40. We prefer Ms Dias' evidence on this point. There were no specific dates which the claimant said she raised these concerns or details of the conversation that was had. The only contextual evidence of a possible health and safety concern was a photo and text of Ms Dias warning the claimant there would be a jug of bleach in the sink when she arrived, to which the claimant replied, "Ok fine." This cannot amount to the health and safety concern pleaded.
41. There was no other corroborative evidence that could meaningfully support the concerns being expressed, namely customers may access alcohol when she was alone and no risk assessment had taken place.
42. Whilst it is correct that the respondent did not carry out a risk assessment, the claimant at no point raised to Ms Dias a concern that this had not happened, as there was simply no evidence presented to us about this, ie what was said, when, etc.

Selling alcohol

43. We accept the claimant's evidence that she did sell bottled alcohol on a number of occasions, as Yasmin and the claimant gave consistent evidence about this. We also accept the claimant told her mother about her dilemma, in feeling uncomfortable selling the alcohol as a Muslim; this conversation could only have taken place if she was in fact selling alcohol.
44. We also find that Ms Dias was likely aware that the claimant sold bottled beer on a number of occasions, as on her evidence, she worked with the claimant on most shifts. We also accept the claimant and Yasmin's consistent evidence that the claimant sold alcohol on multiple shifts. We also accept there was a

conversation at which Ms Dias showed the claimant where the bottle opener was, and the claimant expressed that she did not want to serve alcohol at that time. We do not find the claimant raised any further concerns about selling alcohol to Ms Dias. We note from texts in the bundle that the claimant can be direct and forthright about matters she is concerned about, such as her hours; she also accepted that, in all of these events, her reduced hours was the cause of greatest concern to her

45. We do not find Ms Dias explicitly required the claimant to sell alcohol. There was insufficient evidence from the claimant to say this was the case, namely how Ms Dias required her to sell alcohol and in what terms.
46. The final relevant facts on the topic of alcohol were that the claimant mentioned the installation of the beer bump as the time at which the respondent is said to have increased its alcohol sales. The pump was removed as being ineffective and not working properly at the end of June, therefore we do not find there was a material increase in alcohol sales upon the installation of the pump.
47. The respondent provided sales evidence so show that alcohol constituted 8% of total sales.

Absences

48. The claimant was due to be working with Yasmin on 10, 11 and 13 May. On 2 May, the claimant told Ms Dias that she and Yasmin could not attend their Saturday shift because they had family obligations, later clarified to be a wedding.
49. Ms Dias cancelled the remainder of the claimant's shifts for that weekend and Anna-Paula and Maggie worked the shifts instead. We find Ms Dias found the cancellation frustrating, as she had already issued the shifts and planned staff for that weekend.
50. We also accept that the claimant wanted to give Ms Dias as much notice of possible of these absences and hadn't realised the rota would be made before the weekend.
51. Ms Dias told the claimant the incident would be "added to your staff files" ie treated as a concern. The claimant asked what that meant but did not receive a reply.
52. The claimant was then absent on 18 May 2024 and 19 May. On 18 May, the claimant said there had been "an accident" and said, "I have go to the hospital I will come later to pick up keys". She also sent a photo of her being in traffic at 12.57pm, with the words: "I'm going to be late."
53. On the 19 May, there was discussion about whether the claimant was going to open the café as originally planned. The claimant said she was "not feeling 100% having been in hospital" and said it was best for her to come in next week. The claimant did not attend on either 18 or 19 May as planned.

54. Ms Dias then said “we are sending you an email/letter with a date next week for your performance review”.
55. Mrs Dias accepts that these two instances of absence were the reason for the claimant’s dismissal; she did not rely on any other ‘performance issues’ that were mentioned in the dismissal letter sent to the claimant.
56. On 21 May 2024 the respondent sent an email to the claimant with her contract informing her she was on a zero-hours contract and subject to a 3 month probationary period. We find that this is the first time the claimant was made aware of this, those terms had not been discussed prior.
57. A performance review meeting took place on 22 May 2024 between Ms Dias and the claimant. The claimant accepts not raising any of her discrimination or health and safety concerns at this meeting, she says this was because the focus was on her explanations for lateness and absence that Ms Dias said she was concerned about.
58. Regarding her explanation, the claimant said her mother had taken her to a clinic to check her blood sugars on 18 May and then been sent to A&E in light of the readings. The claimant said she had a dizzy spell linked to hypoglycemia and that there was also traffic. Ms Dias believed these were mutually exclusive explanations and that this was evidence of the claimant giving different accounts for her lateness that day. We understand that the claimant says each were true at different parts of the day and not mutually exclusive.
59. We find both were being honest in their understanding of events surrounding the absence. Objectively, it does appear that the claimant is suggesting she has been in an accident one minute; then is at the hospital for another matter; then is delayed by traffic (so presumably fine physically). This would seem misleading to Ms Dias. We do not necessarily find the claimant was lying about what happened but it is clear she did not appreciate the confusion her different explanations would have caused. We also accepted the claimant’s evidence that she had very low blood sugar at the time of sending some of the messages, which may have contributed to any confusion and mixed-messaging.
60. The claimant accepts not making any formal or written complaint to Ms Dias about any matter other than her hours and not being sent her written contract.
61. She was dismissed on 31 May 2024. The dismissal letter, entitled ‘probationary outcome letter’. is inaccurate to the extent that there had not been “prior reviews” which the letter mentions.
62. It is agreed the claimant’s last shift therefore was on 5 May 2024.

Legal framework

The Law

Direct discrimination

63. Employees are protected from discrimination by Section 39 Equality Act 2010 (EqA) which reads:

“(2) An employer (A) must not discriminate against an employee of A's (B)—

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.”

64. Direct discrimination is rendered unlawful by Section 13(1) EqA:

“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.”

65. In order to succeed with a claim of direct discrimination under section 13, a claimant must have been treated less favourably than a comparator who was in the same, or not materially different, circumstances as the claimant. In *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL*, Lord Scott explained that this means that, *“The comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class”*.

66. In *Macdonald v Ministry of Defence; Pearce v Governing Body of Mayfield Secondary School [2003] ICR 937, HL* Lord Hope said with the exception of the prohibited factor, *“all characteristics of the complainant which are relevant to the way his case was dealt with must be found also in the comparator”*.

67. The definition of the comparator is at s23 EqA:

“(1) On a comparison of cases for the purposes of section 13, 14, 19 or 19A there must be no material difference between the circumstances relating to each case.”

“Because of”: reason for less favourable treatment

68. It is for the Tribunal to objectively determine, having considered the evidence, whether treatment is “less favourable”. While the claimant’s perception is, strictly speaking, irrelevant, the claimant’s subjective perception of their treatment is likely to inform the Tribunal’s conclusion as to whether, objectively, the impugned treatment was less favourable.

69. The test to determine whether less favourable treatment is “because of” the

protected characteristic is not a simple “but for” test. In other words, it is not sufficient that, but for the protected characteristic, the treatment would not have occurred, James v Eastleigh Borough Council [1990] IRLR 288.

70. In terms of the required link between the protected characteristic and the less favourable treatment, the two must be “inextricably linked”, Jyske Finands A/S v Ligebehandlingsnaevnet acting on behalf of Huskic: ECLI:EU:C:2017:278.
71. The correct approach therefore is to determine whether the protected characteristic had a “significant influence” on the treatment, Nagarajan v London Regional Transport [1999] IRLR 572.
72. The ultimate question to ask is “what was the reason why the alleged perpetrator acted as they did? What, consciously or unconsciously, was the reason?”, Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48. This is a question of fact for the Tribunal and is different to the question of motivation, which is irrelevant. The Tribunal can draw inferences from the behaviour of the alleged perpetrator as well as taking surrounding circumstances into account.
73. If there is more than one reason for the treatment complained of, the question is whether the protected characteristic (here, age, race or religious belief) was an “effective cause” of the treatment, O’Neill v Governors of ST Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372.

Burden of proof under the Equality Act 2010

74. The burden of proof for discrimination claims is set out in s136 EqA:

“(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 subsection (2) does not apply if A shows that A did not contravene the provision”.

75. In Laing v Manchester City Council and anor [2006] ICR 1519, Mr Justice Elias held that:

“the onus lies on the employee to show potentially less favourably treatment from which an inference of discrimination could properly be drawn”.

76. This requires the Tribunal to consider all the material facts without yet considering the respondent’s explanation at this stage. However, this does not mean that evidence from the respondent undermining the claimant’s case must be ignored, Efobi v Royal Mail Group Ltd 2021 ICR 1263.

77. It is not enough for the claimant to show that there has been a difference in treatment between them and a comparator, there must be “something more”.

78. In Madarassy v Nomura International plc 2007 ICR 867, Lord Justice Mummery held:

“The bare facts of a difference in status and a difference in treatment only indicate 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”.

79. In Virgin Active Ltd v Hughes 2023 EAT 130, it was highlighted by the Employment Appeal Tribunal that the consideration of whether there are material differences in the circumstances of an actual comparator compared to those of the claimant needs to take place before applying the shift in the burden of proof. Regarding a hypothetical comparator, the claimant must provide evidence consistent with the position that the comparator would have been treated more favourably. This requires the Tribunal to be able to draw inferences of likely treatment of a hypothetical comparator from the evidence before it.

80. It is only if the first stage of the burden of proof is passed that the burden then shifts to the respondent, who must then prove that the conduct in question was “in no sense whatsoever” based on the protected characteristic, Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931.

81. The word “detriment” has been construed broadly by Courts and Tribunals. In the leading case of Shamoon, the House of Lords held that it is only necessary for the claimant to show some disadvantage. He or she need not show any material physical or economic consequence that was materially to his or her detriment.

82. Finally, age discrimination, unlike other forms of direct discrimination, permits a defence of justification, whereby an employer may discriminate on the grounds of age if they can show it is objectively justifiable and proportionate.

Automatically unfair dismissal (Section 100 of the Employment Rights Act 1996)

83. Section 100 of the ERA says:

*(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—
(c) [s]he brought to h[er] employer’s attention, by reasonable means, circumstances connected with h[er] work which [s]he reasonably believed were harmful or potentially harmful to health or safety.*

84. It was not disputed that the claimant was an employee and the respondent had no health and safety representative or committee, it being a small business.

85. The key question will be determining the reason, or if more than one, the “principal reason” for dismissal, here the claimant’s disclosures about health and safety.

86. The reasonableness test set out in section 98 of the ERA 1996 has no relevance to automatically unfair dismissal as the statute makes it clear that dismissal for an inadmissible reason (ie those set out in the statute) is always deemed to be unfair.

87. No minimum period of qualifying service is required for this type of claim.

Wrongful dismissal/breach of contract

88. This claim requires the tribunal to consider as a matter of fact, whether there was a breach of contract in that the employer failed to pay the employee their contractual notice pay.

89. This requires a tribunal to decide as a fact whether the employee acted in a way so as to fundamentally breach their contract to enable the employer to summarily terminate the employment contract.

90. Unlike under a claim for 'ordinary' unfair dismissal, it is for the tribunal to make findings of fact as to the nature and extent of the employee's conduct, rather than place itself in the respondent's position with the knowledge it had at the time.

91. This means that a wrongful dismissal is not necessarily unfair, and an unfair dismissal is not necessarily wrongful, **Enable Care and Home Support Ltd v Pearson EAT 0366/09**.

Discussion

Direct discrimination because of religion/belief

92. The claimant is Muslim and we accept that she considers it to be against her religious beliefs to serve alcohol during the course of her work.

93. We first asked ourselves whether the respondent factually did the following things as alleged in the List of Issues:

1. *Require the claimant to sell bottled beer and other alcohol to customers.*

94. The claimant clarified it was bottled beer only she served and not any "other alcohol".

95. As above we have found that the claimant did serve bottled beer on a number of occasions during her shifts. However, we do not find that Ms Dias "required her" to do this. The claimant said Ms Dias told her directly that she must sell the alcohol or lose her job; she mentioned this only in oral evidence and not her witness statement. We do not find Ms Dias said this, given that she was aware that the claimant remained under 18; knew about her reservations towards selling alcohol as expressed in her interview; and knew that her licence and the wider law prohibited this. We therefore do not find this conversation took place or that there was any direct instruction from Ms Dias to serve alcohol.

96. In practice we do not think that every alcohol request was passed on to Ms Dias during a busy shift, and the reality was the claimant chose to serve the bottled alcohol, albeit feeling internally conflicted because of her religious beliefs; this was her choice and not a requirement of Ms Dias. If Ms Dias knew about the claimant serving alcohol, she did not prevent this or say anything about it to the claimant. That is not the same as 'requiring' or a suggestion there may be a negative consequence if alcohol was not served.

97. We also note Ms Dias was sensitive to the issue of selling alcohol within Islam and the different approaches taken within the faith, as she asked Yasmin who was 18 whether she was comfortable (she was).

98. Accordingly, we do not find this instance of less favourable treatment took place.

2. Increase sales of alcohol within the business and then as a consequence reduce the Claimant's hours after she raised concerns relating to selling alcohol because of her age and religious beliefs;

99. The claimant did not establish to a sufficient certainty that the respondent in fact increased its sales of alcohol. The pump it seems was not a commercial success and the figures of alcohol sales themselves remained low at all times.

100. Even if there were an increase in sales, there was no tangible correlation before us between the sale of alcohol and any reduction in the claimant's hours. Nor was there any link established between the alcohol sales and a specific concern shared about serving alcohol. As above, we are not persuaded that, beyond the interview, the claimant in fact raised concerns with Ms Dias about selling alcohol, given the lack of specifics, dates and times about this. We accept a conversation might have happened when told how to use the bottle opener but we had insufficient detail to say this was in fact raised as a concern.

101. We note other concerns were expressed directly in a forthcoming way to Ms Dias and we would have expected similar articulacy with this concern.

102. We therefore do not find that this instance of less favourable treatment took place.

1.2.3 Increase sales of alcohol within the business and then as a consequence dismiss the Claimant after she raised concerns relating to selling alcohol because of her age and religious beliefs.

103. Our findings above apply here. We do not find that sales of alcohol increased or that concerns about selling alcohol because of her age and religious beliefs were expressed to Ms Dias in the way pleaded.

104. They therefore cannot be a reason for the claimant's dismissal. We find the reasons for the claimant's dismissal was for her absences across two

weekends; these reasons are unrelated to religious belief or age, and we explore them further in the Wrongful Dismissal discussion below. We therefore do not find this instance of less favourable treatment occurred.

105. For these reasons the direct religious discrimination claim does not succeed.

Direct race discrimination

106. The claimant describes herself as Asian Pakistani. She doesn't speak Portuguese.

107. We ask ourselves did the respondent do the following things:

2.2.1 Reduce the Claimant's hours and give priority to Portuguese speaking employees rather than the Claimant when allocating work

108. The comparator relied on here is Daniel and the specific date this is alleged to have happened, by way of example, is 31 March 2024.

109. The claimant was sent home on 31 March due to a lack of customers that day, and not because Daniel spoke Portuguese and he was therefore given priority. Daniel was required to stay on to be trained, and this training needed to include weekends. In oral evidence the claimant accepted her loss of shift that day was due to business needs.

110. Regarding any reduction in the claimant's hours, there were other non-discriminatory reasons why this may have occurred in a given week, for example, when Ms Dias returned to work after hospital; when additional staff were taken on; and balancing the needs of all existing staff.

111. We carefully considered the Facebook advert hiring for more staff which said speaking Portuguese would be a 'bonus' and that more staff who spoke Portuguese were then hired. That alone is insufficient evidence of discriminatory intent or behaviour. There was nothing further to suggest that these staff were then given priority in the allocation of work.

112. Overall, the claimant worked the most hours during the relevant period. She could not show that any reduction was due to preferential treatment of Portuguese-speaking staff, nor that any reduction in hours was due to staff speaking Portuguese rather than being in need of training.

113. Indeed, the fact that the claimant spoke English so proficiently, unlike staff for whom it was not their first language, was an asset to Ms Dias as the respondent needed both English- and Portuguese-speaking staff to enhance communication with customers. There was no nationality requirement. Ms Dias placed a high level of trust and responsibility in the claimant, for instance, giving her the keys and entrusting her with more hours whilst she was unwell; this is unlikely to have occurred if not speaking Portuguese was a disadvantage.

114. For these reasons, we do not find this instance of less favourable treatment occurred.

2.2.2 Dismiss the claimant because she did not speak Portuguese.

115. We find the reasons for the claimant's dismissal was for her absences across two weekends and not because she did not speak Portuguese. We explore the reasons for her dismissal more fully below.

116. Accordingly, we do not consider that either of the instances of less favourable treatment alleged took place and therefore the direct race discrimination claim fails.

Direct Age discrimination

117. We ask ourselves if the respondent did the following:

3.2.1 Require that the Claimant sell alcohol at a time when she was not permitted to sell alcohol because of her age;

118. As set out above, we do not find that Ms Dias required the claimant to sell alcohol. She may well have chosen to, albeit with internal conflict or situational pressure, but this was not a requirement and it was not a concern she expressed to Ms Dias, beyond that of her interview.

119. Ms Dias was aware the claimant was 17 years old, and that it would be illegal to require someone under 18 to serve alcohol. She may well have ignored occasions when the claimant did serve alcohol and we do not find Ms Dias prevented the claimant from selling alcohol or actively stopped her, if she was aware of it.

3.2.2 Increase sales of alcohol within the business and then as a consequence reduce the Claimant's hours after she raised concerns about selling alcohol because of her age and religious beliefs;

120. Our findings and discussion at 99-100 apply here regarding whether concerns were raised and whether alcohol sales increased.

121. When considering the payslips and allocation of hours, the claimant has not in fact shown us there was meaningful reduction in her hours. On average, over 8 weeks, the claimant did get 15 hours per week, as promised, and sometimes more, up to just under 20 hours per week.

122. Any reductions there were, would have been due to Ms Dias returning to the cafe after a bout of ill health and there being no need for her hours to be covered by the claimant, and for the other reasons we have described above.

123. There was not a link established between any reduction in hours and the claimant's age, or raising concerns about selling alcohol because of her age. We do not find those concerns were expressed to Ms Dias, and on the claimant's

case as it emerged in oral evidence, the focus was on her religious beliefs as being the source of unease around selling alcohol, and not her age.

124. For this reason we do not find the less favourable treatment alleged took place.

125. In all of the direct discrimination claims, because the first hurdle of establishing less favourable treatment was passed, we did not need to go on to consider the next items on the list of issues, ie whether the burden of proof had shifted.

Automatic Unfair Dismissal

126. We ask ourselves what was the reason or principal reason for the claimant's dismissal?

127. As expressed in our findings, we do not find that the claimant raised concerns, on a date between 13 to 15 April 2024, about being required to open and shut the shop alone, and in particular, the concern that alcohol was in an open refrigerator in the premises. Nor do we find she disclosed any concern about the lack of a risk assessment taking place regarding her opening and closing the shop alone.

128. Because we find the disclosures did not take place, the disclosures cannot be the reason for the claimant's dismissal.

129. We conclude that the reason for the claimant's dismissal was because of her absences across two weekends, which we now deal with below.

Wrongful dismissal

130. Here we ask whether the claimant's conduct amounted to a repudiatory breach to justify the termination of her contract without notice.

131. The hours the claimant was entitled were variable but should average 15 hours per week.

132. It is agreed between parties that the written contract now relied on by the respondent was not sent to the claimant until 21 May, after her last shift and just ten days before her dismissal.

133. We therefore do not place a weight on this document to support the respondent's case that there was a valid probationary period in place.

134. The claimant says no probation period was mentioned at the time of the interview or up until the review meeting was scheduled by text, following her absences.

135. Nor do we find that the claimant considered a zero hours contract to be in place, given her repeated messages about her expected hours and because we

accept her oral evidence that she had to look up the meaning of that term for these proceedings.

136. For these reasons we do not find that any probationary period was in fact in operation at the relevant time.

137. We therefore consider the absences themselves across the two weekends and whether they amounted to a repudiatory breach.

138. The absence on 10 May because of the wedding was inconvenient to the respondent, particularly as it involved two members of staff and having to rearrange the rota once finalised. However, the claimant was trying to give as much notice of possible and mentioned Yasmin intending to be a help to Ms Dias. There was no suggestion the claimant had been in breach of any specific term of the contract, written or otherwise, by notifying Ms Dias of the absences in this way, nor that the notice of around 1.5 weeks was insufficient.

139. Regarding the absences on 18 and 19 May, we accept that the claimant genuinely was ill because of her hypoglycemia and very low blood sugar levels. The reasons provided by the claimant for her absences did seem inconsistent and unclear at the time they were communicated to Ms Dias. However, objectively, with the benefit of the claimant's explanations and the fact we accept her blood pressure was extremely low that weekend, her failure to attend on 18 and 19 May did not amount to a repudiatory breach.

140. Nor did the fact of the claimant giving seemingly inconsistent accounts, itself amount to a repudiatory breach, given that they were arguably true at different points over the weekend eg traffic and being at the hospital.

141. It is unfortunate the absences took place consecutively, and we understand why repeated absences would cause Ms Dias to question the reliability of the claimant.

142. However, we do not find that gross misconduct occurred entitling Ms Dias to dismiss the claimant without notice.

143. Accordingly, we find that one week's notice pay is owed.

144. Using the average hours worked by the claimant per week, which was variable, we calculated this to be £222.81. The calculation is 155 hours (total number) divide by 8 weeks, which equals 19.375 hours. We multiplied this by £11.50 which gives the gross figure owing.

Conclusion

145. In conclusion, we do not find that any instance of less favourable treatment concerned in connection with race, age, or religious discrimination. Accordingly, each of those claims fails. We do not find that the reason for the claimant's dismissal was because she disclosed health and safety concerns to the

respondent, as we find those concerns were not voiced at the time in the way alleged. We do, however, find that the claimant was wrongfully dismissed in that she was entitled to notice pay of one week, based on the events of her absences and the contractual position at the time.

Approved by:

Employment Judge McCooley

10 April 2026

Sent to the parties on:

13 April 2026.....

For the Tribunal Office:

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