



EMPLOYMENT TRIBUNALS

Claimant: Mr T Makinde

Respondent: Amazing Angels Care Limited

Heard at: Birmingham

On: 2/12/25

Before: Employment Judge Beck

Representation

Claimant: in person, Mr Effiong, Employment Tribunal advocate

Respondent: Not present or represented

RESERVED JUDGMENT

1. The complaint of direct race discrimination is well founded and succeeds.
2. The complaint of direct sex discrimination is not well founded and is dismissed.
3. The complaint of harassment relating to sex is not well founded and is dismissed.
4. The complaint of harassment relating to race is not well founded and is dismissed.
5. The complaint of unauthorised deductions from wages is well founded and succeeds.
6. The breach of contract claim is well founded and succeeds.

(See end of judgment for awards made)

REASONS

Background

1. The claimant lodged his claim form on the 20/11/24, bringing complaints of unfair dismissal, race and sex discrimination, and a claim for other payments. ACAS conciliation took place between the 11/9/24 and the 23/10/24.
2. The respondent was sent a copy of the claim form and notice of claim on the 5/3/25. The respondent did not provide a response by the required date, the 2/4/25. A letter advising the case could proceed under rule 22 of the tribunal rules was sent to the respondent on the 16/7/25.
3. A case management hearing took place before Employment Judge Akhtar on the 25/7/25. She made directions in view of the respondent's failure to engage; they would not be able to rely on any evidence at the final hearing without the permission of the judge. The claimant withdrew his unfair dismissal complaint, accepting he did not have 2 years' service to enable a claim to be brought. A list of issues was agreed with the claimant, which is replicated below, and a final hearing on liability and remedy was listed for the 2/12/25.

List of issues

The Issues

1. Direct race and sex discrimination (Equality Act 2010 section 13)

- 1.1 The claimant is male and describes his race as black African, Nigerian.
- 1.2 Did the respondent do the following things:
 - 1.2.1 Dismiss the claimant on or around 22 June 2024 before reemploying him on 1 July 2024;
 - 1.2.2 Exclude the claimant from work shifts in June 2024;
 - 1.2.3 Remove the claimant from a WhatsApp Group in June 2024, before adding him back to the group in July 2024;
 - 1.2.4 In a meeting of 1 July 2024, took no remedial action in respect of the actions set out at 1.2.1 – 1.2.3 above and dismiss the claimant's concerns about financial hardship and emotional distress;
 - 1.2.5 Refuse to provide any support or make arrangements to assist the claimant to get into work when his car broke down in or around June/July 2024;
 - 1.2.6 Fail to provide the claimant work for the contracted 39 hours a week on various dates between May 2023 and October 2024;
 - 1.2.7 Fail to comply with the employer sponsorship visa requirements by not providing the claimant with work for his contracted hours;

1.2.8 In a meeting around May/June 2024, did Neliet Selnars, a director of company state “you don’t like taking orders from a woman”. This was in response to a request by the claimant to take time off to take his pregnant wife to hospital;

1.2.9 In a meeting around May/June 2024, did Neliet Selnars state “she’s had difficulties with previous male staff”. C states that Ms Selnars was gaslighting him because of her previous interactions with male staff;

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

In respect of his race discrimination complaint, the claimant says he were treated worse than an employee by the name of Melvin, who he described as a black African Zimbabwean. In respect of his sex discrimination complaints the claimant relies on a hypothetical comparator.

1.4 If so, was it because of race or sex?

2. Harassment related to race and sex (Equality Act 2010 section 26)

2.1 Did the respondent do the following things:

2.1.1 Contact the claimant via a colleague on 4 October 2024 and tell him to withdraw his claim.

2.2 If so, was that unwanted conduct?

2.3 Did it relate to race or sex?

2.4 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?

2.5 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.

3. Remedy for discrimination

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

3.2 What financial losses has the discrimination caused the claimant?

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

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

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

3.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

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

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

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

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

3.11 By what proportion, up to 25%?

3.12 Should interest be awarded? How much?

4. Unauthorised deductions

4.1 Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

5. Breach of Contract

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

5.2 Did the respondent do the following:

5.2.1 fail to provide the claimant work for his contracted 39 hours per week between May 2023 and October 2024;

5.3 Was that a breach of contract?

5.4 How much should the claimant be awarded as damages?

Law

Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not reasonably practicable to present it within that period and the Tribunal considers it was presented within a reasonable period after that.

Section 27 (1) Employment Rights Act (1996) defines wages in relation to any worker means any sums payable to the worker in connection with his employment including (a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise. It includes other categories such as statutory sick pay, but excludes any payments within subsection (2). Subsection (2) defines the excluded categories as (a) any payment by way of an advance under an agreement for a loan or by way of an advance of wages (b) any payment in respect of expenses incurred by the worker in carrying out his employment, (c) any payment by way of pension, allowance or gratuity in connection with the worker's retirement or as compensation for loss of office, (d) any pay referable to the worker's redundancy and (e) any payment to the worker otherwise than in his capacity as a worker.

Article 3 [Employment Tribunals] Extension of Jurisdiction (England and Wales) Order (1994) provides that proceedings may be brought before an [employment tribunal] in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if -

- (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
- (b) the claim is not one to which article 5 applies; and
- (c) the claim arises or is outstanding on the termination of the employee's employment.

Section 13 Equality Act 2010 - Direct discrimination

(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".

Section 26 Equality Act 2010 - 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.

(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.

Anya v University of Oxford & Another [2001] IRLR 377 - it is necessary for the employment tribunal to look beyond any act in question to the general background evidence in order to consider whether prohibited factors have played a part in the employer's judgment. This is particularly so when establishing unconscious factors.

Igen v Wong and Others [2005] IRLR 258 and Madarassy v Nomura International PLC [2007] IRLR 246. The employment tribunal should go through a two-stage process, the first stage of which requires the claimant to prove facts which could establish that the respondent has committed an act of discrimination, after which, and only if the claimant has proved such facts, the respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. In concluding as to whether the claimant had established a prima facie case, the tribunal is to examine all the evidence provided by the respondent and the claimant.

Madarrassy v Nomura International Ltd 2007 ICR 867 - the bare facts of the difference in protected characteristic and less favourable treatment is not "without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent" committed an act of unlawful discrimination". There must be "something more".

Nagarajan v London Regional Transport [1999] IRLR 572, HL, - The crucial question in every case was, *'why the complainant received less favourable treatment ... Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?'*

Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065, HL, - The test is what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason? Looked at as a question of causation ('but for ...'), it was an objective test. The anti-discrimination legislation required something different; the test should be subjective: 'Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.'

Bahl v Law Society [2003] IRLR 640 – "where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible that he is subconsciously influenced by unlawful discriminatory considerations. But again, there should be proper evidence from which such an inference can be drawn. It cannot be enough merely that the victim is a member of a minority group. This would be to commit the error identified above in connection with the Zafar case: the inference of discrimination would be based

on no more than the fact that others sometimes discriminate unlawfully against minority groups.”

Richmond Pharmacology V Miss A Dhaliwell [2009] ICR 724. There are two alternative bases of liability in the harassment provisions, that of purpose and effect, which means that the respondent may be held liable on the basis that the effect of his conduct has been to produce the prescribed consequences even if that was not a purpose, and conversely that he may be liable if he acted for the purposes of producing the prescribed consequences but did not, in fact, do so. A respondent should not be held liable merely because his conduct has had the effect of producing the prescribed consequence. It should be reasonable that the consequence has occurred and that the alleged victim of the conduct must feel that their dignity has been violated or that an adverse environment has been created. Therefore, it must be objectively decided whether or not a reasonable person would have felt, as the claimant felt, about the treatment in question, and the claimant must, additionally, subjectively feel that their dignity has been violated, etc.

Pemberton v Inwood [2018] EWCA Civ 564. Underhill J "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)).

Liability hearing

Evidence heard and considered

4. I have considered a bundle provided by the claimant, of 140 pages, and the claimant's statement dated 1/12/25. The respondent has not provided any evidence or engaged with the tribunal.

5. Mr Effiong had previously e-mailed the tribunal on the 13/9/25, requesting a complaint of victimisation be added to the list of issues. Legal Officer Parmar advised on the 18/11/25, that this would be considered at today's hearing. Mr Effiong accepted this would require an amendment to the list of issues, which would require the respondent to be notified, and did not seek to pursue this additional complaint. It was also accepted that whilst the schedule of loss referred to notice pay, this complaint was not brought on the claim form, and the claimant did not pursue it.

6. Mr Makinde gave evidence on oath to the tribunal. He was employed by the respondent from 17/5/23 according to his contract at page 56, as a care worker, subject to a 3-month probationary period, on a rate of 10.45 per hour. The offer letter at page 34 stated the post was for 39 hours a week, with a salary of £20,480 per year, with an anticipated start date of the 1/5/23. He had come to the UK on a certificate of sponsorship, in the bundle page 32, with Amazing Angels Care

Limited as his sponsor in January 2023. He explained he was from Nigeria and had been living in Cyprus, relocating to the UK from Cyprus. The certificate referred to his working hours as 39 hours per week, gross salary of £20,480 and his role as a care worker. He confirmed he commenced employment on the 17/5/23. He was required to attend client's homes and provide personal care to them. He confirmed nothing was ever said to him, or any letter received in relation to passing his probationary period. He received a monthly schedule in advance setting out the days he was working, which could be any days from Monday – Sunday.

7. The claimant went through his bank statements and pay slips in the bundle between May 2023 and July 2024. It was established for the period May 2023 – March 2024, the pay slips showed a rate of 10.75 per hour being paid. From April 2024 to June 2024, £11.44 an hour, corresponding to the increase in the National Minimum Wage from April 2024 onwards, to £11.44.

8. The claimant stated his gross weekly pay for the period May 2023 – March 2024, based on a 39 -hour week at £10.75 per hour was £419.25 a week, and £1,677.00 gross per month. For the second time period claimed, April to June 2024, based on a 39-hour week at £11.44 per hour, the weekly gross wage was £446.16, and monthly gross wage was £1,784.64. The claimant referred to page 38 in the bundle, which set out a schedule of the underpayments of salary per month which the claimant seeks to recover.

9. As an example in relation to March 2024, the claimant took me to his bank statement at page 112, and his pay slip at page 135, which showed he was paid £171.14 because he was only offered 15.92 hours instead of the 156 (39 x4) he was entitled to that month. His claim for that month was expressed as the difference between £1,677.00 and £171.14, which was £1,505.86. (This discounts £64.50 training fee which was paid separately on the 2/4/24 into the claimant's bank account)

10. In relation to July, August and September 2024, the claimant gave evidence that he was not offered any hours for those months, and confirmed there were no salary slips in the bundle, because he had not been paid, and sought to recover £1,784.64 per month for those three months. The claimant directed me to his bank statement for July 2024 at page 125 of the bundle, confirming that no payments had been received from the respondent.

11. The claimant gave evidence in accordance with his statement. He confirmed that Neliet Sellars was the director, she was from Zimbabwe. He confirmed that all the other employees he worked with were either from Zimbabwe or Nigeria. He described a colleague Melvin, who was from Zimbabwe, who he stated was on an identical sponsorship to him, and was always allocated 39 hours per week work, in accordance with his contract. He also described a female colleague Hilda, who he lived with, who was also from Zimbabwe, he stated she received 39 hours work per week and said that in his view female staff received more shifts than male staff. He felt that he was discriminated against because he was Nigerian, in the allocation of shifts.

12. The claimant described a meeting on the 16/5/24, in which Neliet Sellars said to him that he didn't like taking orders from a woman. He had requested flexible allocation of appointments that day, so he could accompany his wife to an antenatal appointment. This was refused, and the claimant states he was told he

was not being flexible for work, and believes this was dealt with as a written warning. (although this is not in the bundle as a document). He states that Neliet Sellars told him that he was gaslighting her; by causing problems and telling her he couldn't attend all his appointments that day.

13. The claimant describes working on the 21/6/24, and being sent a message at 9.59pm, asking him to work the following day on the 22/6/24. He was not on the Rota to work on the 22/6/24. He was unable to do so, as he had commitments supporting his pregnant wife. He describes messaging Makaita Kagwewe and advising he could not work on the 22/6/24. He received a message back stating 'not coming into work is grounds for dismissal. I have removed you from the Rota completely. You will be called by the director for further action. Discard your schedule for this month until further notice'. In evidence, the claimant stated he received no further shifts that month and was excluded from the employee What's app group chat. He did not receive any correspondence from the respondent and treated it as a dismissal from work.

14. Mr Makinde states a meeting took place on the 1/7/24, to consider his non attendance at work on the 22/6/24. It was established that he should not have been removed from the group chat. He had problems with his car which affected his ability to get to work, and the respondent loaned him £600 to enable him to have his car repaired. Minutes of this meeting were not produced to the claimant subsequently. The claimant points to page 37 in the bundle a screenshot of the employee WhatsApp group, which shows he was added back to the group on the 3/7/24. The claimant also states he received a phone call in July 2024 from Neliet Sellars asking if he was available for work. The claimant indicated he was, but his car was still faulty. In evidence, he stated he did not have any further contact from the company after this point and was not offered further work. He was not advised that he had been dismissed at any point.

15. Mr Makinde refers to Hilda speaking to him on the 4/10/24 and telling him to withdraw his claim. He was no longer living with her at this stage, and she was still working for the respondent. He maintains the respondent was pestering him via Hilda, because the claimant was from Nigeria, and because Hilda brought the claimant to the company, she would not have been pestering him if he was from Zimbabwe.

Findings in respect of liability

16. I accept the claimant's account that he commenced work on the 17/5/23 and had moved to the UK on a certificate of sponsorship, with a contract for 39 hours per week, and an annual salary of £20,480 with the respondent.

17. I accept the claimants unchallenged evidence that he was not allocated a full 39 hours per week Rota, for several periods during his employment from May 2023 to September 2024. I also accept the figures provided by the claimant, in terms of the weekly gross amounts per week being £419.25 for the period May 2023 – March 2024 and £446.16 for April 2024 onwards. I have cross referenced the claimant's schedule of claim at page 38, pay slips and entries in the claimant's bank statements, in relation to the claims for the months of May, July, November, December 2023, January, February, March, April, May June, July, August and September 2024, and make findings below in respect of them.

18. In respect of the workplace, I accept the claimant's evidence that those employed by the respondent working alongside the claimant were either from Zimbabwe or Nigeria. I accept his account that Melvin and Hilda were always allocated 39 hours of work per week in accordance with their contract of employment. I find as a fact a meeting took place on the 16/5/24, during which Neliet Sellars made the comment you don't like taking orders from a woman, and that he was refused flexible allocation of appointments that day.

19. In relation to the gaslighting allegation, the claimant account is not consistent with the allegation in the list of issues 1.2.9 'the claimant states Ms Selnars was gaslighting him because of her previous interactions with male staff'. The claimant's account in evidence was that Neliet Sellars told him he was gaslighting her, because he was causing her problems and unable to attend all his appointments that day. I would accept that she stated she has had difficulties with previous male staff. I have not been presented with any evidence regarding how she treated or had difficulties with other male staff.

20. Page 65 of the bundle supports the claimant case that he worked on the 21/6/24. It shows a copy of the Rota for June 2024, showing the claimant was due to be off work on the 22/6/24. It also supports his claim for unpaid wages for that particular month, as shifts reflecting 39 hours were not allocated to him for the last week in June. I accept the claimant's account he was asked to work on the 22/6/24 and was unable to do so, resulting in him being removed from the group chat and being told his shifts had been cancelled. I find this was a dismissal on or around the 22/6/24, supported by the text message in the bundle at page 36, which was then rescinded during the meeting the claimant had on the 1/7/24 with the respondent. I find the loan of £600 the claimant states the respondent offered him to fix his car, shows evidence of an intention to re-establish the employment relationship, as was the act of putting the claimant back on the Rota / What's App group. I accept further contact was made with the claimant in July 2024 asking him to work, and he was not told he had been dismissed at any point.

21. I accept the claimant's account in respect of Hilda, on the 4/10/24 asking him to withdraw his claim.

22. The date the claimant commenced employment, the 17/5/23 was a Wednesday; there were 14 days of the month of May left which could be possible working days. The claimant's pay slip records he worked 55.33 hours that month, receiving £594.80 at page 129 of the bundle, which must relate to work after the 17/5/23. His claim at page 38 cannot be correct, as he claims for the balance of £1,082.20 ((£1,677.00 - £594.80), based on working a full 156 hours that month, but he did not commence employment on the 1/5/23. On the basis I do not have specific details of dates worked that month / holidays taken / days off; I am disallowing that part of the claim.

23. I have considered the claimant's pay slip at page 135, for 31/3/24, which show cumulative gross pay for the period May 2023 – March 2024 as £12,313.54. The cumulative figures on pay slips for October 2023 of £11,647.90 and January 2024 of £12,077.90 support the claimant's case that he was not paid during the months of November and December 2023, based on a gross annual salary of £20,480. Copies of the claimant's pay slips at pages 99 –103 support my conclusion that the claimant did not receive any salary from the respondent for those months. I accept the claimant's claim for £1,677 for both months.

24. I have considered that the claimant received expenses payments in July 2023 of £300.86, August 2023 of £759.20 and September 2023 of £1111.92. The claimant confirmed expenses were reflected on his pay slips as 'rate 2'. The claimant made a claim of £834.31 for July and did not make any claim for loss of wages for August and September 2023. I have deducted the expenses from the cumulative figure from May 2023 to March 2024, of £12,313.54, which gives a cumulative gross figure for pay of £10,141.56 for that period.

25. In January 2024 the claimant was paid for 5 days holiday, salary slip at page 134, a total of £430.00. His bank statement at page 107 shows a payment of £430.00 on the 26/1/24. He states he was not offered any hours that month, and I accept his unchallenged evidence on this point and his claim for £1,247, the difference between £1677.00 and £430.00.

26. The claimant has not produced a salary slip for February 2024. He states he was not offered any hours that month, and his bank account statement for that month at page 108 supports my conclusion that he did not work and receive any salary in February 2024. I allow his claim for £1,677.

27. In March 2024, the claimant's pay slip at page 145 shows he worked for 15.92 hours that month and received £171.14, which his bank statement at page 110 confirms was the amount paid to him that month. I accept his evidence he was not offered any other hours that month, and his claim for £1505.86, the difference between £1,677 and £171.14.

28. Considering that the claimant worked from the 17/5/23 to 31/3/24 of the financial year for the respondent, his maximum salary would have been £20,480 - £1,677 (month of April 2023 – not employed) - £838.50 (1st 1 / 2 of May 2023 when not employed) which totals £17,964.50. Having checked his salary slips and considered the total salary received for the period May 2023 – March 2024, was £10,141.56. (excluding expenses referred to above)

29. £17,964.50 - £10,141.56 leave a total of £7,822.94 potential unpaid salary. I have allowed claims for the following months:

November 2023	£1,677
December 2023	£1,677
January 2024	£1,247
February 2024	£1,677
March 2024	£1,505.86

	£7,783.86

I have disallowed the claim for May 2023 as per paragraph 22 above. The claimant also made claims for July 2023 of £834.31; this has been disallowed, as it would be greater than the salary entitled to, in accordance with my calculations above.

30. In respect of April 2024, the claimant's salary slip at page 136 shows gross pay of £1,033.60 (£999.28 for 87.35 hours at £11.44 = £999.28 and a £34.32 payment for training). The claimant's bank account shows additional payments of £600 on the 5/4/24, which the claimant states was a cash advance, and £54.50 and £10.00 on the 2/4/24 relating to training or expenses. The claimant states he was not

offered any hours more than those worked, 87.35, and claims the difference between £1,784.64 and £999.28 = £785.36. I accept the claimants unchallenged evidence he was not offered any other hours of work, and his claim for £785.36.

31. Considering May 2024, the claimant's bank account statement shows £1,562.15 being received on the 28/5/24, at page 120. His salary slip for that month at page 137 shows 134.35 hours worked at £11.44, a gross salary of £1,536.96. There is a discrepancy between the payment made and the salary slip. I have accepted the claimant's account he was not offered any hours more than those he worked. I have allowed the claim for the difference between £1,784.64 and £1,562.15 received, the sum of £227.49.

32. The claim made for June 2024 relates to £649.22. The claimant states he received £1,135.42, for 67.25 hours worked, £769.34 and 32 hours holiday, £366.08. This is reflected on his salary slip at page 138; he was also paid £307.62 for mileage that month. His bank account statement at page 122 shows he was paid £107.83 on the 7/6/24, and £1,394.03 on the 28/6/24. I refer to my findings in paragraph 20 concerning events that occurred in June 2024, which support the claimant's complaint that he was not allocated any shifts in June after the incident on the 21/6/24. He received total payments that month of £1,501.86, according to his bank account statements. (£1,394.03 and £107.83). I have assumed those payments included his mileage, and have deducted this, (£1,501.86 - £307.62 = £1,194.24). I have allowed a claim of £590.40, being £1,784.64 gross monthly pay - £1,194.24 received.

33. The claimant seeks £1,784.64 gross monthly salary for the months of July, August, and September 2024. I have noted his bank statement in the bundle for July 2024, at page 127, which shows no salary received from the respondent that month. I asked the claimant about the months of August and September 2024, as his bank statements were not contained in the bundle. He confirmed he had not been offered any hours for those months, and he did not receive any payments. He confirmed he did not work any days after the 21/6/24 and did not receive any pay slips after June 2024. I have no evidence that the claimant was offered any work or received any salary for those 3 months. There is no evidence before the tribunal the claimant's contract had been terminated, I find he was entitled to expect an allocation of 39 hours per week as per his contract, and he was not allocated any work for those 3 months. Accordingly, his claim for £1,784.64 per month for those 3 months is allowed.

34. In summary for the period April 2024 – September 2024, I have allowed the following claims:

April 2024	£785.36
May 2024	£227.49
June 2024	£590.40
July 2024	£1,784.64
August 2024	£1,784.64
September 2024	£1,784.64

	£6,957.17

35. I consider in respect of the direct sex and race discrimination claims, the findings I have made above in paragraphs 18, 19 and 20 on the facts, and 22 –34 in respect of salary outstanding. I have found as a fact that: (referring to the list of issues)

1.2.1 the claimant was dismissed on / around 22/6/24 and re-employed on the 1/7/24;

1.2.2 the claimant was excluded from work shifts in June 2024;

1.2.3 the claimant was removed from a What's App group in June 2024 and added back in in July 2024;

1.2.6 Failed to provide the claimant with work for his contracted 39 hours a week on various dates between May 2023 and October 2024;

1.2.7 Failed to comply with the employer sponsorship visa requirements by not providing the claimant with work for his contracted hours;

1.2.8 In a meeting in May / June 2024, Neliet Selnars stated the claimant 'did not like taking orders from a woman'.

36. I have not found as a fact that in the list of issues at 1.2.4, the respondent took no remedial action in respect of actions 1.2.1 -1.2.3 and dismissed the claimants' concerns about financial hardship and emotional distress. I consider I have not heard sufficient detailed evidence about what occurred in this meeting, to allow me to conclude this on the balance of probabilities.

37. In relation to point 1.2.5 on the list of issues, that the respondent refused to provide any support or make arrangements to assist the claimant to get to work when his car broke down in June 2024, I do not find that this was the position. The claimant in his evidence to the tribunal indicated the respondent offered him a loan of £600, so he was able to fix his car, I find this was evidence of the respondent providing him with support.

38. Considering 1.2.9 on the list of issues, I refer to paragraph 19 and the conflicting evidence I have heard regarding who was gaslighting who, I am not satisfied this allegation is made out on the facts presented.

39. I conclude that on the ground's the claimant's other colleagues from Zimbabwe, (Melvin and Hilda) who were on the same sponsorship contracts as the claimant, and were allocated 39 hours weekly, and my findings at 1.2.1 - 1.2.8 above, are facts from which a tribunal could decide, in the absence of another explanation, that direct race discrimination has occurred. I am satisfied that the claimant has put sufficient evidence before the tribunal to allow me to reach this conclusion. The burden of proof passes to the respondent, to prove its treatment of the claimant was in no sense whatsoever because of the protected characteristic of race. The respondent is not participating in these proceedings and has not provided any evidence. Therefore, the respondent has failed to discharge its burden of proof to show that it did not directly discriminate against the claimant on the grounds of race.

40.; In respect of the claim of direct sex discrimination, I accept the comment was made by Neliet Selnars in the meeting in May / June 2024, to the claimant that he did not like taking orders from women. I have not made a finding about the gaslighting comment alleged. I have accepted the claimant's evidence that his male colleague Melvin, and his female colleague Hilda, was routinely allocated 39 hours per week, and were on the same contract as the claimant. The claimant's evidence was female employees were routinely given more hours than male employees. I note the claimant also stated that Melvin was given 39 hours per week. No other evidence has been presented to me relating to sex discrimination. I do not consider the claimant has provided sufficient facts from which I could decide in the absence of any other explanation, that the respondent has directly discriminated against the claimant on the grounds of sex. Therefore, I dismiss the complaint of direct sex discrimination.

41. The claimant also pursues complaints of harassment related to sex and race. I have accepted as a fact that, as per the list of issues at 2.1.1, the claimant was contacted by a colleague on the 4/10/24 and asked to withdraw his claim. The claimant in evidence stated the main reason Hilda contacted him was because he was Nigerian, she would not have contacted him if he had been from Zimbabwe. The claimant and Hilda previously lived together, were friends and work colleagues. I have not been presented with any evidence to support this action being taken on the grounds of the claimant's sex. In relation to the claimant's race, considering the previous relationship of the parties, I am not satisfied that there is sufficient evidence to show that the conduct was related to race. Therefore, the complaint in relation to harassment on the grounds of sex and race fails.

Evidence heard in respect of remedy

42. The claimant confirmed he was able to secure a new role from the 21/10/24, with a company called Lily Rose, in a similar role, with an annual salary of £25,750.

43. He described moving to the UK from Cyprus in 2023, he came to the UK alone, selling his property there. He also described selling his property in Nigeria, and bringing his wife and child to the UK, his child was 2 years old at the time, and his wife could not work. His wife became pregnant with their second child, who was born on the 7/8/24.

44. He felt betrayed by Hilda, who he saw as a friend; he expected her to support him and look out for his family, but she did not. He felt less of himself because of the discrimination he received, particularly when he was not allocated work by the respondent. He was able to go straight into his new job in October 2024 and did not need anytime off. He had previous difficulties with heart palpitations in 2023 but has only had odd days off in his new job, and he is being investigated by medical professionals regarding his heart palpitations issues.

45. The claimant stated he did not need to see a doctor at this time when he was experiencing difficulties with the respondent, about either his physical or mental health. He had good support from his family and friends who helped him through a difficult time.

Findings in respect of remedy

46. I have found that the respondent was in breach of contract to pay the claimant

for his contracted hours between May 2023 – October 2024. I have dealt with this as an unauthorised deductions from wages claim and make the following awards as set out above:

£ 7,783.86	Unpaid wages May 2023 – March 2024
£ 6,957.17	Unpaid wages April 2024 – September 2024

£14,741.03	

47. I have concluded that the claimant was subject to direct race discrimination. The claimants past loss of earnings are covered by the award I have made above of £14,741.03, in respect of unpaid wages. The claimant was able to secure a new job almost immediately, which paid more than the salary received when employed by the respondent. Therefore, there is no claim for future loss of earnings.

48. I consider what injury to feelings award is appropriate in this case. I note the claimant was able to secure a new role almost immediately, did not require time off work, or medical treatment or intervention. Since he has been employed in his new role, he has not needed to have time off sick, apart from odd days. During this time, he has also been supporting his wife, who has obtained a job and now works full time, and his two children. The claimant in evidence did not give any description of the effect of the discrimination on him, apart from saying it made him feel less of himself.

49. I consider the guidance from the **EAT in Prison Service and Johnson (1997) IRLR 162**, that injury to feelings awards should be compensatory, focusing on the injury to the claimant, rather the actions of the respondent. Also, the tribunal should consider the value in everyday life of the sum awarded, and the public need to respect awards made by the tribunal.

50. This claim was issued on 20/11/24. The **7th Addendum to the Presidential Guidance issued on the 5/9/17 in respect of employment tribunals awards for injury to feelings (Vento guidelines)** apply in respect of this claim. In relation to injury to feelings awards, the lower band is between £1,200 - £11,700, the middle band between £11,700 and £35,200, and the higher band £35,200 - £58,700.

51. Considering my findings at paragraph 48 above, I find that an award at the end of lower band is appropriate, and award £3,000 for injury to feelings. This will attract interest calculated as follows:

Injury to feelings award: £3,000

Interest payable:	£ 529.97

	£3,529.97

Interest: 806 days (date of discrimination to date of calculation 30/11/23 - 13/2/26)
x 0.08 x 1/365 x 3,000 - £529.97

52. Total award:

Unpaid wages	£14,741.03
Injury to	£ 3.000.00
feelings award	
Interest	£ 529.97

	£18,271.00

Employment Judge Beck

Date: 13/2/26