



EMPLOYMENT TRIBUNALS

Claimant: Nassera Dahmani

Respondent: Manger Moi Limited

Heard at: London South

Before: Employment Judge Tueje

REPRESENTATION:

Claimant: Mr Bird (Trainee Solicitor)

Respondent: Mr Saber (Director)

JUDGMENT having been sent to the parties on 22nd May 2026 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

Factual Background

1. The brief factual background, insofar as is relevant to the issues which require determination, is as follows.
2. The claimant, Ms Dahmani, and the respondent entered into an arrangement in or around October 2024 under which Ms Dahmani carried out work involving driving to market stall locations, transporting equipment and stock for use at the stalls, setting up the stalls at the beginning of the trading day, and taking them down and returning the equipment at the end of the day. They agree that she was to work on Saturdays and Sundays.
3. The parties disagree as to the precise terms of that arrangement. Ms Dahmani contends that she was entitled to payment of £60 per day for carrying out a market set-up. The respondent contends that the agreed rate was £30 per market set-up. The parties agree that the work would ordinarily take approximately four to four and a half hours to complete.

4. Ms Dahmani says that she performed this work on 26 October 2024 and was accordingly entitled to payment of £60. The respondent's position is that 26 October 2024 was a training day rather than a working day.
5. The parties also disagree as to the nature of events on 27 October 2024. Ms Dahmani says that she worked as a driver on that date and was entitled to £60 for that work. The respondent's position is that she was again undertaking training and that she was paid for one of the two training days.
6. There are no exchanges in the bundle regarding arrangements for training for the market set-up. This is in contrast to later exchanges regarding training for market trading. Also, the WhatsApp exchanges in the bundle suggest that this was the forum where information was exchanged about setting up market stalls, rather than there being specific training dates. In any event, it doesn't seem to me that this is a role that would require the 2 days training the respondent alleges took place on 26th and 27th October 2024. For all these reasons, I reject the respondent's account that the claimant undertook training on these dates, and I prefer her account that she was carrying out work for which she should have been paid.
7. At page 29 of the hearing bundle is a document described as an Independent Contractor Agreement in respect of a driver role. The respondent contends that this document was emailed to Ms Dahmani on 28 October 2024. The document provides for remuneration of £30 per market set-up, and contains a provision permitting the contractor to provide a substitute. There is no email exhibiting or attaching the document within the hearing bundle, nor is there any contemporaneous correspondence referring to it. Ms Dahmani disputes having received that document on 28 October 2024 and maintains that she first saw it when it was disclosed during these proceedings. I note the document is unsigned.
8. I find that the claimant did not receive this contract. My reasons are that there is no documentary evidence showing the document was sent to her, and no adequate explanation as to why such documentation was not provided. Secondly, there is no reference to the document in the contemporaneous communication between the parties. In particular, when they exchanged messages about the claimant's pay, she wrote on 5th November 2024 that no one told her the rate of pay was £30 per set-up. One would have expected Mr Saber to respond that that was the rate stated in her contract, if he had in fact given her the driver contract on 28th October 2024 as he claimed.

9. Ms Dahmani says that she worked as a driver on 2 November 2024 and was entitled to payment of £60. She further says that, on the same date, she carried out additional work as a market trader and was entitled to a further payment of £65.
10. Ms Dahmani says that she also worked as a driver on 3 November 2024 and was entitled to payment of £60 for that work.
11. Following completion of the work, Ms Dahmani received a payment of £245 from the respondent. It is common ground that this payment was made. Shortly thereafter, Ms Dahmani queried the amount she had been paid and asserted that she should instead have received £305. She provided the respondent with a breakdown of the sums she claimed were due.
12. The corrected version, as contained in her contemporaneous message to the respondent sent on 4th November 2024 (see page 111 of the bundle) claims the following wages:

26 th October 2024	£60.00
27 th October 2024	£60.00
2 nd November 2024	£60.00 + £65.00
3 rd November 2024	£60.00
13. The dates in the claim form were incorrect. However, the respondent was aware of the dates the claim relates to as these dates are set out in its ET3 response form.
14. A second Independent Contractor Agreement is at page 35 of the hearing bundle. The parties agree that this document was emailed to Ms Dahmani on 4 November 2024. That agreement related to the market stall contractor. It contained a substitution clause similar to that contained in the document at page 29. It stated that the rate of payment would be between £10 to £13 per hour.
15. The respondent declined to pay the additional amount claimed by Ms Dahmani. The parties thereafter exchanged messages concerning the payment dispute. Initially, those communications were courteous. However, as the dispute progressed, the tone of the claimant's communications deteriorated. Ms Dahmani subsequently sent messages containing language which the respondent understandably found objectionable.
16. Following the dispute concerning payment, communications between the parties came to an end and Ms Dahmani's communications with the

respondent were blocked. Ms Dahmani alleges that, after she challenged the alleged underpayment, Mr Saber became abrupt and belittling towards her. She accepts, however, that prior to the dispute about her pay, he had treated her in the same manner as he treated other individuals engaged by the respondent.

Issues

17. In this case, the issues between the parties are as follows:
 - 17.1 Whether the Claimant was an employee or a worker, as defined by section 230 of the Employment Rights Act 1996.
 - 17.2 Whether the Claimant was an employee as defined by section 83 of the Equality Act 2010.
 - 17.3 Whether the wages paid to the Claimant on 4 November 2024 were less than the wages she should have been paid.
 - 17.4 If so, did that amount to less favourable treatment because of the Claimant's sex?
 - 17.5 Additionally, did it amount to an unauthorised deduction from wages?

Whether the Claimant was an employee or a worker, as defined by section 230 of the Employment Rights Act 1996, and whether the Claimant was an employee as defined by section 83 of the Equality Act 2010

18. Section 13 of the Employment Rights Act 1996 provides the circumstances in which an employer may lawfully make deductions from wages. The protection at section 13 applies to both employees and workers, and both definitions are contained within section 230 of the 1996 Act.
19. So far as is relevant, section 230 reads:
 - (1) *In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.*
 - (2) *In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.*

- (3) *In this Act “worker” (except in the phrases “shop worker” and “betting worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*
- (a) *a contract of employment, or*
 - (b) *any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;*
- (4) *and any reference to a worker’s contract shall be construed accordingly.*
20. The definition of an employee under section 83 of the Equality Act 2010 is essentially the same as the definition of a worker under section 230.
21. Section 83(2)(a) of the 2010 Act reads:
- (2) *“Employment” means—*
(a) *employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;*
22. The case law states that the different wording has no material effect on the meaning of either definition (see *F v Rodericks Dental Ltd* [2022] I.C.R. 1339). Neither party disputed this, therefore relying on the guidance in *Uber v Aslam*, which concerns the definition of worker status under the 1996 Act, is seemingly uncontroversial.
23. In applying the approach in that case, I note that the focus is on the actual arrangement between the parties, and whether or not that arrangement is one to which section 83(2) of the 2010 Act applies. In order to meet that test, all three elements of the *Uber* test need to be satisfied.
24. *Uber v Aslam* states:
- The judgment of this court in the *Autoclenz* case made it clear that whether a contract is a “worker’s contract” within the meaning of the legislation designed to protect employees and other “workers” is not to be determined by applying ordinary principles of contract law ...

25. Critical to understanding the *Autoclenz* case, as I see it, is that the rights asserted by the claimants were not contractual rights but were created by legislation. Thus, the task for the tribunals and the courts ... was to determine whether the claimants fell within the definition of a “worker” in the relevant statutory provisions so as to qualify for these rights irrespective of what had been contractually agreed. In short, the primary question was one of statutory interpretation, not contractual interpretation.
26. The modern approach to statutory interpretation is to have regard to the purpose of a particular provision and to interpret its language, so far as possible, in the way which best gives effect to that purpose. In *UBS AG v Revenue and Customs Comrs* [2016] UKSC 13; [2016] 1 WLR 1005, paragraphs 61–68, Lord Reed (with whom the other Justices of the Supreme Court agreed) explained how this approach requires the facts to be analysed in the light of the statutory provision being applied so that, if, for example, a fact is of no relevance to the application of the statute construed in light of its purpose, it can be disregarded. Lord Reed cited the pithy statement of Ribeiro PJ in *Collector of Stamp Revenue v Arrowtown Assets Ltd* (2003) 6 ITLR 454, paragraph 35:

“The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically.”

The Purpose of Protecting Workers

27. The general purpose of the employment legislation invoked by the claimants in the *Autoclenz* case, and by the claimants in the present case, is not in doubt. It is to protect vulnerable workers from being paid too little for the work they do, being required to work excessive hours, or being subjected to other forms of unfair treatment (such as being victimised for whistleblowing).
28. *Ready Mixed Concrete Ltd v Minister of Pensions and National Insurance* (1968) sets out the relevant principles, which apply equally to written or oral contract of service. These are that firstly an individual is obliged to carry out work using their own skill or labour for another person who pays them for that work or skill. Secondly, there is a sufficient degree of control which makes it consistent with the person for whom the work is carried out being the boss of the person carrying out the work. _Finally, any other provisions of the contract are consistent with the arrangement being a contract of service.
29. In applying the above legal principles, I remind myself that in dealing with the claimant’s status there should be less focus on the description that the parties use to describe their arrangement. Therefore, irrespective of whether there is an agreement described as an independent contractor agreement, the real question is whether or not an individual is a worker or an employee is defined by legislation. Therefore, I have considered whether or not the

reality of their working arrangement meets, or does not meet, the statutory definition.

30. That is my approach when considering the contracts in the bundle, of which there are two. The first is at pages 29 to 34 for the market stall contractor position, and the second contract is at pages 35 to 41 for the driver position. They are both described themselves as independent contractor agreements for the respective positions.
31. However, the description of the agreements themselves do not take matters very far because it is the nature of the arrangement between the parties that I must focus on. In particular, whether or not it is consistent with the statutory definitions. In doing so, I have taken into account the circumstances of the case. Firstly, that Ms Dahmani used the respondent's vehicle to make deliveries, to deliver the market set-up and to collect it at the end of the day.
32. I've also taken into account that when she carried out that work, she did so at the time and place that she was directed to by the respondent. _And although this was a short engagement, during her time carrying out this work, the work was carried out by her personally.
33. I have taken into account that the written agreement for each position is described as an independent contractor agreement, and expressly allow a right of substitution. However, neither contract is signed by the Claimant, who now maintains the driver agreement was sent to her after she carried out the work, and that the market stall contractor agreement was only provided to her during disclosure in these proceedings.
34. Mr Saber relies on an exchange between him and Ms Dahmani on 28th October 2024 in which she queries whether she needs to send him an invoice. He argues an invoice is evidence of the claimant's contractor status, combined with the fact that the independent contractor agreement was sent to her, which he also states was sent on the same day, means that I should conclude that the nature of the relationship was that of a self-employed contractor.
35. I have noted that there is not a copy of the email in the bundle that would have attached that agreement.
36. But in any event, in my judgment, whether or not Ms Dahmani asked whether she should send an invoice, which she clearly did from the exchanges, is not sufficient evidence to establish that she was self-employed. While submitting an invoice is something an independent contractor rather than an employee

would ordinarily do, it is not particularly helpful to emphasise the use of a particular word without considering the context. The context includes the claimant referring to payments as “wages”, which is more consistent with being an employee rather than an independent contractor. Therefore, the specific words used are not determinative. Considering the exchange in the round, it seems to me more likely than not that the claimant is querying whether she needs to provide some written record of the times/dates worked.

37. I do not consider the claimant using the term “invoice” is sufficient to outweigh the other factors. Namely, that the degree of control that the respondent exercised over the work that Ms Dahmani did, as regards when she did the work, where she carried out the work, and the fact that she carried out this work using the company's vehicle, is more significant.
38. It also appears to be accepted that Ms Dahmani does not advertise herself more generally, or more widely, as somebody who carries out work of this nature.
39. Taking all of those factors into account, I have reached the conclusion that the work that Ms Dahmani carried out meets the requirements of being an employee for the purposes of section 230 of the Employment Rights Act and also, alternatively, a worker under the same provision. It also meets the requirements of employment under section 83 of the Equality Act for the same reason.

Whether the wages paid to the Claimant on 4 November 2024 were less than the wages she should have been paid. If so, did this amount to an unauthorised deduction from wages?

40. The next aspect of Ms Dahmani's claim is whether or not there was an unauthorised deduction.
41. As stated above, section 13 of the Employment Rights Act 1996 provides the circumstances in which an employer may lawfully make deductions from wages. The relevant provisions in section 13 are as follows:

(1)An employer shall not make a deduction from wages of a worker employed by him unless—

(a)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

(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.

42. As I have said, this is dealt with by section 13 of the Employment Rights Act. Section 13 essentially provides that an employer should not make a deduction from the 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.
43. Essentially, this aspect of the claim relates to a dispute about the claimant’s rate of pay, and whether she carried out work on 26th and 27th October 2024 for which she should have been paid, or whether she received training on those dates for which she was paid for one of the two training days.
44. I have already concluded that I consider the claimant carried out work for which she should have been paid on 26th and 27th October 2024.
45. As to the rate of pay, the issue is whether or not Ms Dahmani had agreed to be paid £30 for each market set-up, as Mr Saber contends on behalf of the respondent, or whether or not the agreed amount was £60, as Ms Dahmani contends. Ms Dahmani bears the burden of proving her case; in other words, that it was £60 and not £30. Mr Saber, again, relies on a written contract, which begins at page 35. The relevant part is clause 10, which is on page 36 and states that the rate is £30.
46. Mr Saber has not provided any records showing what Ms Dahmani was paid for the shifts that she worked, nor has he set out a breakdown of anything of that sort. So, the documentary evidence about payments and shifts comes

from Ms Dahmani, and that evidence is contemporaneous. It shows that Ms Dahmani was paid £245.

47. I do not understand there is any dispute that £245 is the amount she was actually paid.
48. The contemporaneous exchanges show that when she was paid that sum, she queried the amount and stated that she should have been paid £305 instead. That was when she provided a breakdown stating that, on 26 October 2024, she worked as a driver and should have been paid £60.
49. The same again on 27 October 2024, and again on 2 November 2024 and 3 November 2024, namely that she should have been paid £60 on each of those occasions. Additionally, on 2 November 2024, she also worked as a market trader and should have been paid £65. Those amounts do total £305.
50. There is no equivalent breakdown of the amounts that justify the payment of £245, and it is difficult to see how the rates of pay the respondent contends, and the dates and type of work the claimant carried out, correspond to the £245 paid to her. It is agreed that she should have been paid £65 for working as a market trader on 2nd November 2024. But the remaining £180 does not break down into the payments the respondent claims the claimant was entitled to, namely payment for one of two training dates and working on 2nd and 3rd November 2024 at the rate of £30 per market set-up.
51. The respondent cross examined the claimant regarding the incorrect dates set out in the claim form. The claim form refers to November as the first two occasions on which work was carried out and December as the second occasion on which work was carried out.
52. As stated above, it seems to me that, despite that error, the parties are quite clear about the dates being referred to: these are stated in the ET3 response form.
53. Issue was also taken with the hours stated in the claim form. Again, I do not consider that point determinative. Whilst the claim is presented in what I have to say is an unclear way, what is clear is that Ms Dahmani's claim is that she should have been paid £60 on each of the occasions that she worked, except on 2 November 2024, when she should have been paid a total of £125: £60 for driving and £65 for trading. Notwithstanding that confusion, I consider that the basis of the claim is sufficiently clear for the respondent to understand, and it evidently did understand and respond to it.

54. Ms Dahmani has provided contemporaneous evidence regarding the rate of pay she is claiming in the form of the messages exchanged between the parties that are contained in the hearing bundle. She has consistently stated that she was entitled to £60 for driving (or market set-up) and £65 for market trading. In those circumstances, I find that she has discharged the burden of proof, particularly as no proper breakdown has been provided by the respondent.
55. In addition to that, although not determinative, there are other aspects of the surrounding circumstances that satisfy me that Ms Dahmani has made out her case. The first is Mr Saber's oral evidence. His evidence was that there had been a discussion between him and Ms Dahmani before, or at the time, that she began working and that, as part of that discussion, Ms Dahmani had agreed to accept £30 for each set-up and collection. There had also been a discussion that the work should take about four and a half hours to carry out.
56. I consider it less likely that somebody would agree to work at that rate than the reverse being true. The rate the respondent alleges the claimant agreed to is considerably below what the National Minimum Wage was at that time.
57. The second aspect of the surrounding circumstances which I consider supports Ms Dahmani's case is her reaction to the underpayment, which I find supports Ms Dahmani's case. While I cannot condone some of the language that was used by her, it seems to me to be consistent with somebody who is genuinely angered at having carried out work for which she was not properly paid, or not paid at all. Her initial enquiries as to why she was paid £245, as against £305, were polite enough.
58. But when she was met with a refusal to pay the agreed sum, and then her communications were blocked, she clearly boiled over into anger at that situation. I find that this is consistent with somebody who has genuinely been underpaid. Whilst not condoning the way that Ms Dahmani responded, I do consider that it supports her account.
59. As I say, those two factors are not determinative. However, when taken together and looked at in the round, and in particular having regard to the contemporaneous exchanges about the query and the pay, I find that Ms Dahmani has discharged the burden of proof. My finding is therefore that she was underpaid, meaning that there was an unlawful deduction from wages, in the amount of £60 in relation to the work that she carried out.

Whether the wages paid to the Claimant on 4 November 2024 were less than the wages she should have been paid. If so, did that amount to less favourable treatment because of the Claimant's sex?

60. The Equality Act 2010 sets out the legislative provisions relevant to the complaints of discrimination. An explanation of the Act's provisions are contained in the Employment statutory code of practice published by the Equality and Human Rights Commission (the "Code"), which is a tool to assist tribunals when interpreting the law.
61. Section 4 of the Act lists the protected characteristics covered by its provisions, which includes sex.

Direct Discrimination

62. Section 11 of the Equality Act 2010 states:

In relation to the protected characteristic of sex—

- (a) a reference to a person who has a particular protected characteristic is a reference to a man or to a woman;*
- (b) a reference to persons who share a protected characteristic is a reference to persons of the same sex.*

63. Under section 13(1) of the Equality Act 2010 direct discrimination takes place where a person treats the claimant less favourably because of a protected characteristic than that person treats or would treat others. Under section 23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case.
64. Ordinarily, it is appropriate for a tribunal to consider whether the claimant received less favourable treatment than the appropriate comparator, then consider whether the less favourable treatment was because of the protected characteristic. However, in some cases, for example where a hypothetical comparator is used, the reason why the claimant was treated as he was would be considered first (see *Shamoon v Chief Constable of Royal Ulster Constabulary* [2003] IRLR 285).
65. Decisions are frequently reached for more than one reason. Provided the protected characteristic or, in a victimisation claim, the protected act, had a significant influence on the outcome, discrimination is made out (see *Nagarajan v London Regional Transport* [1999] IRLR 572).
66. It is recognised that very little discrimination today is overt or even deliberate. Individuals may even be unconsciously prejudiced.

Burden of Proof

67. Section 136 of the Act deals with the burden of proof, and includes the following:

(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.

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

68. Therefore, to determine whether the burden of proof has been discharged requires a two-fold test.
69. Firstly, the claimant must establish, on the balance of probabilities, facts from which the inference could properly be drawn by the tribunal that, in the absence of any other explanation, an unlawful act was committed.
70. If so, the second stage is engaged, which shifts the burden of proof to the Respondent who is required to prove on the balance of probabilities, that the treatment in question was in no sense whatsoever on the grounds of the claimant's protected characteristics.
71. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen v Wong* [2005] IRLR 258. At stage one, the burden is on the claimant, who must show there are primary facts from which the Tribunal could decide, in the absence of any other explanation, that there has been unlawful conduct. All that is needed at this stage are facts from which an inference of prohibited conduct is possible. At this stage of the test, the employer's explanation is disregarded.
72. Once the claimant discharges the burden of proof it shifts to the Respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic.
73. The Court of Appeal in *Madarassy v Nomura International plc* [2007] ICR 867, a case brought under the then Sex Discrimination Act 1975, states:

74. The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg sex) and a difference in treatment. Those bare facts 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.
75. So the final aspect of the claim as brought relates to the claim for direct sex discrimination. The legislative provisions are found at section 13 of the Equality Act, which states that a person, A, discriminates against another, B, if, because of a protected characteristic, A treats B less favourably than A treats others, or would treat others.
76. So, under section 13, direct discrimination occurs where there has been less favourable treatment because of a protected characteristic and, under section 23, that comparison can be made by either an actual or a hypothetical comparator. However, there should be no material difference between the circumstances relating to the claimant and the comparator, or the hypothetical comparator. Section 136 of the Equality Act deals with the burden of proof in cases such as this, and it provides that, 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, but subsection (2) does not apply if A shows that A did not contravene the provision.
77. So, in other words, it essentially sets up a two-stage test to deal with the burden of proof. Guidance in relation to how that should be applied is provided by the case of *Igen v Wong*, which states that, at the first stage, the burden is on the claimant, who must show that there are primary facts from which the Tribunal could decide, in the absence of any other explanation, that there has been unlawful conduct. At that stage, all that is required are facts from which an inference of prohibited conduct could be drawn.
78. The employer's explanation at that stage is disregarded. If a claimant discharges that burden of proof, or discharges that evidential burden, it then shifts to the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of protected characteristics. What I should say, and I do not know if I did say this, is that it is an evidential burden, which is probably clear from the description that it is simply to adduce evidence from which that inference could be drawn.
79. But when the burden shifts to the respondent, that must be proved on the balance of probabilities. So, in relation to the burden of proof, that has also

been dealt with by the Court of Appeal in the case of *Madarassy v Nomura International plc*. What was said there was in the context of the former Sex Discrimination Act 1975, which is now substantially reflected in the Equality Act. The burden of proof does not shift to the employer simply on the claimant establishing a difference in status and a difference in treatment.

80. Those bare facts 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.
81. Therefore, even where a factual allegation is made out and a claimant is able to establish that she has been treated less favourably, that treatment will not amount to unlawful direct discrimination unless the unfavourable treatment was because of a protected characteristic; in this case, sex. Ms Dahmani's case is that the reason for the underpayment, which I have found to be made out, is because she is a woman. Her reasons for asserting that it was direct discrimination, so far as her oral evidence is concerned, are essentially twofold.
82. Firstly, it was Mr Saber's abrupt and belittling behaviour, as Ms Dahmani described it. Secondly, it was that she was the only woman in the team of chefs and delivery drivers and, according to her witness statement, they did not have problems with their pay.
83. I find that Ms Dahmani's first reason, namely Mr Saber's alleged abrupt and belittling behaviour, even if true, identifies a difference in status and/or treatment. However, I am not satisfied that, on its own, it shows that any such difference was because of her sex. I also note that the claimant states that prior to her challenging the underpayment the respondent treated her like any other individual working there, including the male employees. Therefore, it seems to me more likely that it was her challenging the underpayment that resulted in the respondent's abrupt and belittling behaviour.
84. Secondly, the fact that the claimant was the only woman amongst the chefs and drivers, and she was treated differently, is about a difference in status and treatment. But without more, this does not establish that the difference was because of the claimant's sex.
85. Furthermore, during her oral evidence Ms Dahmani's accepted evidence was that, if she had been a man and she challenged Mr Saber, he may have reacted in the same way. It is not determinative, but it does tend to support the conclusion that I have come to, namely that it was her challenging the

pay she received, and not her sex, that caused the respondent to treat her in the way she alleges.

- 86. In all the circumstances, I do not consider that Ms Dahmani has provided evidence from which it could be inferred that the underpayment was because of her sex.
- 87. It follows that, having failed to discharge the evidential burden, the claim for direct sex discrimination fails.

Statement of particulars of employment

- 88. The final issue is whether Ms Dahmani is entitled to an award on the basis of the alleged failure to provide a statement of particulars of her employment.
- 89. I have already referred to the two contracts that are in the bundle. These are the only written particulars of employment in the bundle.
- 90. The contract that's on page 29 of the hearing bundle, on the parties' agreed evidence, was emailed to Ms Dahmani on 4 November 2024. As for the contract at page 35, Ms Dahmani states that she did not receive it until it was disclosed as part of these proceedings. However, Mr Saber says that the contract at page 35 was sent to Ms Dahmani on 28 October 2024.
- 91. For the reasons stated at paragraph 8 above, I have made a finding of fact that the contract at page 35 was not sent to the claimant on 28th October 2024 as the respondent maintains.
- 92. This means that prior to Ms Dahmani's employment beginning, which I have found to be on 26th October 2024, she was not sent a contract of employment. It also means that the provisions of section 38 of the Employment Act 2002 have not been complied with. By the date she presented her claim, she had been provided with the contract at page 29 of the bundle on 4 November which is said to deal with the market contractor role.
- 93. However, I have found that the contract that is on page 35 of the bundle was first provided to the claimant as part of disclosure within these proceedings. Therefore, it follows that it was not given to the claimant by the date her employment began on 26th October 2024.
- 94. This means the claim under section 38 is made out in respect of the driver role.

95. Although this was not part of the claimant's pleaded case, under section 38, whether it is claimed or not, I must consider whether to make an award.
96. I am also aware that, by subsection (5), it is only if there are exceptional circumstances that I should refuse to make an award. I am not aware of, nor have I been told of, any exceptional circumstances that would justify me refusing to make an award. Therefore, I find it appropriate to make an award.
97. I need to decide whether that award should be two weeks' pay or four weeks' pay. I consider it just and equitable to make an award of the maximum four weeks. That is because the failure to comply with the legislative provisions has left it open to the respondent to try to argue that Ms Dahmani was engaged on the basis of a rate of pay of £30 per market set-up. In other words, the respondent has sought to take advantage of its failure to provide the required statement, by trying to defend this claim arguing that the parties had agreed a lower rate of pay than was actually the case.
98. I have rejected that argument but, of course, it would not have been possible for the respondent to pursue that argument if it had provided an accurate statement of particulars at the relevant time. For that reason, I consider that it is just and equitable to make an award of the maximum four weeks.
99. Because I have found that £60 was the appropriate rate of pay, I find that the amount of the award is £480 (£60 per set-up on Saturday and Sunday), as set out in the skeleton argument.
100. It follows that the total award to be made in this case is £540. That comprises £60 for the underpayment and £480 for the failure to provide particulars.
101. That is the total value of the award that will be made in this case, broken down in the way that I have described and for the reasons I have given.

Approved by:
Employment Judge Tueje
6 July 2026

Judgment sent to the parties on:
29 July 2026

.....
For the Tribunal:

Notes

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Postscript: The Hearing Bundle

- 1. There was extensive discussion regarding the bundle before and during the final hearing.*
- 2. I had initially been provided with a bundle comprising approximately 158 pages. Mr Bird informed me that a later combined and paginated bundle had been lodged, comprising approximately 185 pages and incorporating both the claimant's documents and the respondent's disclosure and exhibits. Having reviewed the position, I concluded that the later bundle contained all documents upon which either party sought to rely and directed that the hearing proceed using that combined bundle. The earlier version was not used.*
- 3. The respondent raised a number of objections concerning the contents of the bundle and the timing of disclosure. He submitted that certain documents had been provided after the dates specified in the Tribunal's case management orders and contended that those documents should be excluded. The documents identified included a contract of employment, certain screenshots and message records, and a number of emails.*
- 4. As to the contract of employment, the respondent accepted that it was a genuine document originating from his company. He was unable to identify any prejudice arising from its inclusion. In those circumstances, I saw no proper basis for excluding the document and directed that it remain within the bundle.*
- 5. I also considered the respondent's objections to screenshots and message records appearing in the bundle. Following discussion, the respondent*

accepted that those documents could remain and no order was made for their removal.

- 6. The respondent further objected to a number of emails which he said had been disclosed late. However, he was unable to identify the emails in question within the bundle. In the absence of sufficient identification of the documents concerned, I was unable to determine any application for their exclusion and accordingly made no order removing any emails from the bundle.*
- 7. The respondent also relied upon alleged failures to comply with directions requiring the parties to agree a bundle and sought, amongst other things, the strike-out of the claim. I declined to entertain any strike-out application raised for the first time at the hearing, there having been no prior notice of such an application. In any event, agreement of a bundle is necessarily a matter requiring cooperation between both parties and I was not persuaded that the matters raised justified the relief sought.*
- 8. Finally, the respondent suggested that the Tribunal should revert to an earlier bundle served in April. I noted that the earlier bundle did not contain the respondent's own exhibits and that reverting to it would therefore exclude material on which the respondent himself wished to rely. Following discussion, that objection was not pursued.*
- 9. Accordingly, I directed that the hearing proceed using the later combined bundle of approximately 185 pages. I declined to exclude any of the challenged documents and the bundle remained intact for the purposes of the hearing.*
- 10. After dealing with this issue at length at the start of the hearing, at the start of the second day the respondent sought to revisit the issue of the bundle, complaining that the version he had was not paginated. I reminded him that this matter had been dealt with the day before when I had explained we would be using the 185-page bundle, and I had given my reasons. We therefore continued using the 185-page bundle for the remainder of the hearing.*