



EMPLOYMENT TRIBUNALS

Claimant: Mr Stanley I Dowling

Respondent: Yo! Sushi UK Limited

Heard at: Nottingham

Heard on: 17, 18, 19, 20 November 2025 and 9, 10, 11 February 2026

Before: Employment Judge McTigue
Mr K Libetta
Mrs J Bonser

Representation

Claimant: In person

Respondent: Ms Shankar, Legal Executive

JUDGMENT having been sent to the parties on 8 March 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. These are the unanimous reasons of the Tribunal. The Claimant was employed as a General Manager by the Respondent at one of its branches in Nottingham. He claims that he was unfairly dismissed by the Respondent and also subjected to direct sex discrimination.
2. ACAS was notified using the Early Conciliation Procedure on 22 May 2024 and a certificate was issued on 3 July 2024. The ET1 form was presented on 1 August 2024.

Claims and Issues

3. In these proceedings the Claimant brings the following complaints:
 - 3.1. Direct sex discrimination;
 - 3.2. Unfair dismissal.

4. The issues were agreed at a Preliminary Hearing that took place before my colleague Employment Judge Ahmed on 20 November 2024. At the start of the hearing on 17 November 2025 the Claimant clarified that he also sought to rely on the Respondent's decision to reopen the investigation process on or about 27 March 2024 as an act of less favourable treatment for his sex discrimination complaint. The Respondent did not object. Consequently, the agreed issues were as follows:

Time limits

1. *Has the Claimant's claims of sex discrimination been brought in time? If not would it be just and equitable to extend time?*

Direct discrimination contrary to section 13 of the Equality Act 2010

2. *Did the Respondent treat the Claimant less favourably than it treats or would have treated others? (EqA 2010, s 13)*

The Claimant relies on the Respondent's actions during the 'second investigation' which began on or about 27 March 2024 and the subsequent disciplinary, dismissal and appeal processes and the reopening of that 'second instigation' process.

The Claimant relies on the following actual comparators: Ms Sheila Galinato (Deputy Manager referred to in the Response) and Ms Sara Hazrati (Claimant's line manager)

The Claimant also relies on a hypothetical comparator.

3. *Was any less-favourable treatment accorded to the Claimant because of the Claimant's sex?*

Unfair dismissal

4. *What was the reason or principal reason for the Claimant's dismissal? Was it a potentially fair reason?*

The Respondent relies on the potentially fair reason of conduct. Alternatively for "some other substantial reason", namely the irretrievable breakdown of the trust and confidence necessary to maintain the employment relationship.

5. *Did the Respondent act reasonably in the circumstances, including its size and administrative resources, in treating the alleged misconduct as a sufficient reason for the Claimant's dismissal?*

- 5.1 *In particular, did the Respondent form:*

5.1.1 a genuine belief that the Claimant was guilty of the misconduct alleged?

5.1.2 was that on reasonable grounds?

5.1.3 after such investigation as was reasonable?

6. In the alternative did the Respondent form a genuine and reasonable belief that the trust and confidence had been irretrievably broken down?

7. Was dismissal a sanction within the range of reasonable responses open to the Respondent?

8. Did the Respondent follow a fair procedure?

Compensation

9. What compensation, if any, should the Respondent be ordered to pay to the Claimant? In particular:

9.1 what financial losses has the Claimant sustained?

9.2 has the Claimant made reasonable attempts to mitigate his losses?

9.3 what injury to feelings, if any, has the Claimant sustained?

10. What basic award should be made to the Claimant?

11. Are there any grounds on which the basic award should be reduced, e.g. contributory fault or to take into account a statutory redundancy payment already received? If so, by how much?

12. What compensatory award should be made to the Claimant, taking into account what is just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer?

13. If the dismissal is found to be procedurally unfair, what is the percentage likelihood that the Claimant would have been dismissed fairly in any event, and when would such fair dismissal have taken place? (**Polkey v Dayton [1987] IRLR 503**)

14. Can the Respondent show that the Claimant has not made reasonable attempts to mitigate his losses? If so, by what date and at what rate of pay and relevant benefits could the Claimant have been expected to have obtained alternative employment if such reasonable attempts had been made?

15. Did the Respondent unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures? If so, would it be just and equitable to increase compensation for a breach of the Code?

Procedure, documents and evidence heard

5. The initial hearing in this matter took place on 17, 18, 19 and 20 November 2025. At the start of the hearing the Respondent made an application for postponement of the Final Hearing due to the unavailability of one of its witnesses, Nicola Riley. That was refused and oral reasons were provided to the parties at the time. We should observe that, in any event, the hearing went part heard and when it resumed on 9 February 2026, the Tribunal was able to hear the evidence of Nicola Riley.
6. On 17 November 2025 the Claimant made an application for specific disclosure of a number of documents. That was refused and oral reasons were provided to the parties at the time.
7. The Tribunal deliberated on 10 February 2026 and delivered judgment and reasons on 11 February 2026.
8. In terms of the evidence, for the Claimant the Tribunal heard evidence from the Claimant and Mr Robert Lane. The Claimant had also supplied statements from Brendan Meakin and Paul Topliss. Those two individuals did not attend the Employment Tribunal to give evidence under oath or affirmation and so we attach no weight to their evidence.
9. Evidence was heard from the following witnesses on behalf of the Respondent:
 - Sophie Prax, HR People Partner.
 - James McGeary, an Operations Manager, who undertook the second investigation.
 - Nicola Riley, a Restaurant Operations Director, who held the disciplinary hearing with the Claimant and was the dismissing officer in this matter. It should be noted that Nicola Riley is also referred to as Nicola Lee in some of the documentation as that is her maiden name.
 - Carl Webber, a Retail Director, who heard the Claimant's appeal against his dismissal.
10. There was a Tribunal bundle running to 350 pages. The Claimant provided a written skeleton argument as did the Respondent. Both parties made oral submissions which lasted approximately 30 minutes. The Tribunal carefully considered all the evidence and submissions before reaching its conclusions.

Findings of Facts

11. On 1 July 2022 the Claimant commenced employment with the Respondent as a General Manager of the Respondent's Nottingham restaurant. His period of continuous employment ran from 14 March 2022. His contract of employment is in the bundle at pages 337-349. General Managers are also known within the Respondent as All Store Managers or ASMs. The Claimant worked shifts which meant there could be periods where he could have irregular contact with other employees.
12. We move to the Thursday 25 January 2024, a significant aspect of this case centres on the events of this day. On that day the Claimant worked until 3.00pm. In the evening he was off shift and so not working. Sheila Galinato, Deputy Manager, was on shift in the branch. There was an incident involving a male Chef, PT, and a female member of staff, SR. PT was the Claimant's brother-in-law. It appears PT's behaviour was of concern for three main reasons. Namely it appears PT made a sexist comment by using the phrase "*fucking bitches*"; second, he made a homophobic comment and used the term "*fucking queers*" when speaking about a pair of customers and third, he sexually harassed SR. Those incidents happened sometime after 5.00pm. At 7.30pm that evening SR messaged the Claimant. The text message appears in the bundle at page 57, it reads

"Hey just keeping you updated [P]'s behaviour today at work has been very weird and now he's raising his voice and swearing while talking and the whole restaurant can hear him and one table has complained. I think he is being really unfair towards Sheila as she is trying to sort out unhappy customers and he's being rude to her. Me and Danielle feel so uncomfortable being around him today. He made a comment about two men saying "fucking queers" and being too touchy towards me putting his hands on my shoulders and arm around my waist while talking to me which might not be intended in a weird way but when it's happening multiple times and along with his weird behaviour it just seems off and Danielle said she could tell and saw that I looked uncomfortable but he didn't pick up on that."

13. The Claimant asked SR if she had spoken to Sheila. SR informed the Claimant that Sheila Galinato knew. We pause to say that at the time of receiving those messages the Claimant was off shift and not working. Indeed, the Claimant was in a bar and had been drinking. Despite that the Claimant attempted to take action in respect of this situation at 7.32pm by contacting Sheila Galinato who was present in the branch at the time. On that point, we accept the Claimant's evidence as contained in his witness statement at paragraph 1e. The screenshots of messages which appear at page 58 of the bundle also support the Claimant's version of events.
14. We again pause to note that the Respondent's staff handbook known as 'The Little Book of YO!' states the following about Deputy Managers,

"The Deputy is the ASM's right-hand person and second pair of eyes. They oversee the restaurant in the absence of the ASM and confidently deal with every single issue that may arise. Our ASM's of the future, these guys will work with you to ensure your training is top notch and you approach every single task in YO! with confidence and knowledge." (page 233 of the bundle).

We find that Sheila Galinato was intended to be a second pair of eyes and ears in the branch. She was expected to oversee and manage the branch in the absence of

the Claimant.

15. The Claimant contacted Sheila Galinato at 7.32pm via WhatsApp but as there was no timely response from her the Claimant contacted SR again. The Claimant asked her if she was okay. SR said she was but in addition the Claimant gave SR permission to leave the branch early if she was feeling uncomfortable. SR left the restaurant at approximately 8.30pm that evening.
16. Later that evening at 10.01pm, Sheila Galinato eventually responded to the Claimant's earlier WhatsApp message. We find that by that point Sheila Galinato knew of PT's sexist comment, homophobic comment and that he had sexually harassed SR. We make that finding as Sheila Galinato was present in the restaurant when the events occurred, she was the 'eyes and ears' of the Respondent according to the staff handbook and, in addition, SR confirmed that Sheila Galinato knew about the matters in a statement that she later provided to the Respondent. Despite knowing of all relevant incidents, when Sheila Galinato responded to the Claimant at 10.01pm she only described PT's behaviour as unusual and worrying. She neglected to mention PT's sexist comment, homophobic comment or his sexual harassment. Sheila Galinato's message simply read,

"[S] has told me that she has messaged you already. It's basically that, his behaviour tonight was very unusual and it was worrying. I'm still scrubbing and mopping the floor as he has left already which is understandable as he's in tomorrow morning."
17. The following day, Friday 26 January 2024, the Claimant was off shift. Sheila Galinato and PT were on duty. SR was not at work. Sheila Galinato attempted to call the Claimant at 11.46am. The Claimant did not answer that call or call back, that however was understandable as he was off duty. At 10.25pm Sheila Galinato texted the Claimant saying, *"I did try and call you today but I will tell you Monday"*. Sheila then texted the Claimant extensively about standard restaurant operational matters and placed little significance to the events which had occurred in the restaurant on the previous evening.
18. On Saturday 27 January 2024 the Claimant was on duty from 10.00am until 10.00pm. Sheila Galinato was off.
19. On Sunday 28 January 2024 the Claimant was on duty between 12.00noon until 10.00pm, Sheila was again off.
20. On Monday 29 January 2024 the Claimant and Sheila Galinato were both present in the branch due to an overlap in their shift patterns. When Sheila Galinato arrived at work at 1.00pm that day she downplayed the incidents involving PT to the Claimant and informed him that she felt matters had been dealt with. Despite that the Claimant told Sheila Galinato to call the relevant Operations Manager, Sara Hazrati, as he thought it would be better not to be involved in the matter due to his personal relationship with PT.
21. At 2.00pm on Monday 29 January 2024 a weekly business regional call took place, present on the call was the Claimant and Sara Hazrati. As well as bring an Operations Manager Sara Hazrati was also the Claimant's Line Manager. In the course of the call, the Claimant told Sara Hazrati to expect a call from Sheila Galinato regarding a

Human Resources matter. Before leaving work that afternoon the Claimant instructed Sheila Galinato to call Sara Hazrati immediately. We find that Sheila Galinato knew that she was expected to escalate the matter to Sara Hazrati. We accept the Claimant's evidence contained in his witness statement at paragraph 4g on that point. There was no attempt by the Claimant to downplay the actions of his brother-in-law or seek to hide information from senior management about the events on 25 January or the involvement of his brother-in-law.

22. On Wednesday 31 January 2024, Sara Hazrati contacted the Claimant asking him why she had not received a phone call from Sheila Galinato. The Claimant informed Sara Hazrati the matter may have been resolved. We find that was a reasonable opinion for the Claimant to hold based upon what he had been told by Sheila Galinato two days previously. Despite that, before leaving work that day the Claimant again told Sheila Galinato to call Sara Hazrati to inform her of the incidents involving PT.
23. On Thursday 1 February 2024, Sheila Galinato called Sara Hazrati. Sheila Galinato discussed the events on 25 January 2024 with Sara Hazrati. We do not know specifically what happened or what was said in that meeting and the Respondent did not call either Sheila Galinato or Sara Hazrati. That was somewhat unusual as Sheila Galinato is still employed by the Respondent. However, an outcome of that meeting was that Sara Hazrati thought she should raise the events of 25 January 2024 with the Claimant.
24. On Friday 2 February 2024, Sara Hazrati phoned the Claimant to discuss the information received from Sheila Galinato. The Claimant informed Sara Hazrati that he had received a message from SR on 25 January and that he had been told by Sheila Galinato that PT had merely raised his voice and that no further action was required. The Claimant also informed Sara Hazrati of the WhatsApp messages he had received from SR on the night in question. Sara Hazrati and the Claimant then agreed that the Claimant should take a statement from SR. Later that day the Claimant proceeded to take a statement from SR, that statement appears in the bundle at pages 75 to 77. The statement contains detailed information about the homophobic comments made by PT and the sexual harassment of SR. It contains much more detailed information than what is contained in the WhatsApp messages sent by SR to the Claimant on the night of 25 January 2024. The statement also contained additional information related to the suspicion that PT may have been intoxicated on the night in question, something that was not in SR's original WhatsApp messages. Shortly after taking the statement the Claimant sent it to Sara Hazrati. Subsequently Sara Hazrati informed the Claimant that PT should be suspended with pay. The following day, Saturday 3 February 2024 the Claimant suspended PT with pay.
25. On Tuesday 6 February 2024, an investigation meeting into the Claimant's actions in relation to the events involving PT and SR was conducted by Sara Hazrati in a branch of All Bar One. We pause there to query how seriously Sara Hazrati was taking allegations of sexual harassment if she was willing to talk about matters related to sexual harassment of one of the Respondent's employees in a public bar. At that meeting Marta, an HR Officer of the Respondent, was present to take notes. The notes of that first investigation meeting were not sent to the Claimant, indeed, those notes were not sent to the Claimant until after his second investigation.

26. We find that during the meeting on 6 February 2024 the Claimant read out the WhatsApp messages that he had received from SR on 25 January 2024 to Sara Hazrati in that meeting. We reach that finding as we accept the Claimant's evidence on that point, as contained at paragraph 3c of his statement. The claimant's account is also supported by the notes of that meeting which appear in the bundle at pages 90 to 92 and which demonstrate that Sara Hazrati was shown the WhatsApp messages that the Claimant had received from SR on 25 January 2024. The Claimant was not informed by Sara Hazrati that he needed to send the WhatsApp messages to her or anyone else during that meeting.
27. Sara Hazrati also conducted an investigation meeting with Sheila Galinato on 6 February 2024. During that meeting, Sara Hazrati informed Sheila that she had seen all the WhatsApp messages in question, that is apparent from 64 of the bundle. We find as a fact that that Sara Hazrati then had detailed information regarding the events of 25 January 2024 plus sight of the relevant WhatsApp messages. There was no attempt by the Claimant to hide the WhatsApp messages to protect his brother-in-law or downplay the seriousness of the incidents.
28. On 6 February 2024 Sara Hazrati also conducted an investigation meeting with PT. PT admitted that some of his behaviour on the night of 25 January 2024 was not acceptable and apologised. No letters of concern were issued by Sara Hazrati following those investigations even though she indicated to those she investigated that they would be issued with letters of concern. At that point in time the Claimant quite reasonably thought that the matter had been dealt with and formally concluded.
29. Around 25 February 2024 the Claimant spoke to Sara Hazrati expressing his concerns about PT returning to work. On that point he was overruled by Sara Hazrati who said that PT should return to work. Paul Topliss did, in fact, not return to work due to ill health and his decision to resign from the Respondent. We accept the Claimant's evidence on that point as contained in his witness statement at paragraph 4b.
30. On 11 March 2024, Sara Hazrati met Sophie Prax for a scheduled, regular HR catchup meeting. Marta Napielara who originally had HR oversight of the events relating to 25 January 2024 was on annual leave at that point in time. Due to Marta Napielara's leave, Sophie Prax became involved with the matter and it was at this point in time that Sophie Prax first became aware of the events of 25 January 2024. Sophie Prax came to the conclusion that SR had raised a grievance in respect of the matter. We find that was an unreasonable conclusion to reach because SR had clearly not raised either a formal or informal grievance at that point in time. In addition, later conversations with SR clearly demonstrate that she did not wish to raise a grievance about the matter.
31. On 12 March 2024, the Claimant had a conversation with Sara Hazrati. The Claimant was informed that there was an ongoing sexual harassment claim against the Respondent brought by an employee in another branch of YO! Sushi. The Claimant was also informed that HR were concerned that the Respondent was concerned it might be found liable for that sexual harassment as they had not sufficiently considered the victim's feelings in relation to the incident. Based on that the Claimant was informed by Sara Hazrati that the Respondent intended to reinvestigate the

events of 25 January 2024. We accept the Claimant's evidence on that point as contained in his witness statement at paragraphs 4g and 4h.

32. On 13 March 2024, Sophie Prax emailed SR. The emails are in the bundle at page 263. The relevant email was sent at 5.42pm and read,

"Hi [S], I am Sophie a People Partner at YO! Lovely to meet you. I have been made aware of an incident at site and would like to arrange a follow up meeting with yourself and Sara – Operations Manager. The reason for this meeting is to discuss:

- Your welfare and how you are feeling following the incident onsite.*
- Any concerns you may have regarding the incident and how the company can support with this."*

Sophie Prax in that email also indicated an intention to arrange a meeting with SR.

33. The following day, 14 March 2024, SR responded to Sophie Prax. In relation to the point of her welfare and how she was feeling about the incident, SR said,

"I feel fine working in the restaurant now that [P] is no longer working there. I did request for me and him to not be on any shifts and after he was on leave while being investigated they were put on a shift together but I told Stan I did not feel comfortable with that and he changed it".

34. In relation to Sophie Prax's concern that were she wrote any concerns she may have regarding the incident and how the company can support this, SR commented, *"No further concerns from me as [P] is no longer working here."* That email is on page 263 of the bundle.

35. On 21 March 2024, at 9.21am Sophie Prax arranged a meeting via Teams with SR scheduled to take place at 11am that day. The meeting took place as planned. It was chaired by Sara Hazrati and she was supported by Sophie Prax from HR. SR was present. The meeting has been described by the Respondent as a "grievance meeting". We find it was not a grievance meeting. We reach that finding as SR had not raised any grievance at that point in time. In addition, SR informed Sara Hazrati that she was comfortable reporting the events of 25 January 2024 and also happy with how the matter had been dealt with, indeed that is apparent from the notes of that meeting at page 124 of the bundle. In the meeting SR was asked by Sophie Prax to send her the messages that she sent to the Claimant on the night of 25 January 2024.

36. Following the meeting at 11.35am SR sent to Sophie Prax a copy of the WhatsApp messages she sent to the Claimant on 25 January (page 264 of the bundle). She also sent some brief notes she had made on the night of 25 January 2024. Those notes were not provided to the Claimant but there is no new information in those notes that, by that point in time, Sara Hazrati did not already have in her possession. Sophie Prax then emailed the notes and messages received from SR to Nicola Riley at 2.53pm that day. Nikki Riley responded to Sophie Prax at 2.57pm and stated,

"Immediate investigation of Stan. I have no confidence in his managerial ability, for

her to say that and him not to react is absolute negligence. Can we get James on that next week?”. (page 268 of the bundle)

37. On 27 March 2024, at 8.09am the Claimant received notice from Sophie Prax that he would be required to attend an investigation meeting that day at 1.00pm. The email is at page 274 of the bundle. The Claimant was told that

“The investigation is related to:

- Breach of trust and confidence
- Negligence to the business and colleagues
- Bringing the business into disrepute
- Failing to report a serious act of Harassment and conduct” (page 93 of the bundle)

38. Those allegations were vague and did not assist the Claimant in understanding what he was being investigated in relation to. The Claimant was also informed that he should bring with him any information that might be useful to the investigation. As an observation, it is very hard for an individual to bring relevant documents to an investigation meeting if they are not specifically aware of the matter they are being investigated in relation to.

39. In relation to the investigation meeting, the Respondent’s version of the notes appear in the bundle at pages 95-103. The Claimant’s version appear at pages 104-105. The Tribunal finds this was not a fair investigation. That is because, first, the Claimant was provided with inadequate notice and had inadequate time to prepare. Second, both sets of notes indicate that Sophie Prax, rather than just taking notes, took an active part in the investigation meeting. Third, Mr McGeary informed the Tribunal that no written report was produced by him following the investigation and indeed no written report appeared in the bundle.

40. On 5 April 2024, the Claimant was invited to a disciplinary hearing which took place on 9 April 2024. The meeting was chaired by Nicola Riley, Leigh Glanville was present to take notes. The Tribunal finds this was not a fair disciplinary meeting. We reach that conclusion as it was apparent to us that Nicola Riley had already pre-judged the matter due to the views expressed in her email on 21 March 2024. We also find that she pre-judged the matter due to her response to a Tribunal question where she stated that the purpose of a disciplinary meeting is for the Claimant to provide mitigation. We also did not find Nicola Riley to be a reliable witness as she gave evidence that she was in possession of an investigation report at the disciplinary hearing. Not only did that conflict with the evidence of Mr McGeary who said he did not produce a report but, at no point, has the respondent disclosed any investigation report. We accept the Claimant’s evidence that Nicola Riley was hostile and intimidating throughout the disciplinary hearing. We accept his evidence on that point as contained in his witness statement at paragraph 6d. We reiterate this was not a fair disciplinary hearing, Nicola Riley was not independent and had already pre-judged the matter. The disciplinary meeting was then adjourned and reconvened on 11 April 2024. On that later date the Claimant was informed that he was to be

dismissed with 4 weeks' notice in lieu. The notes of the disciplinary hearing appear in the bundle at pages 137-143.

41. The Claimant's employment then ended 11 April 2024 and he was sent a dismissal letter by Nicola Riley (pages 144-145 of the bundle). That letter does not sufficiently address the reasons why Nicola Riley considered the allegations against the Claimant were found to have been met. It does not indicate to the Tribunal that she considered the Claimant's case with due care and attention.
42. On 12 April 2024, PT resigned. His employment relationship with the Respondent eventually ended on 19 April 2024.
43. On 15 April 2024, the Claimant submitted an appeal against his dismissal. His appeal can be found at pages 146-148 of the bundle. The appeal hearing then took place on 2 May 2024. The Claimant was present and Mr Carl Webber conducted the appeal with Sarah Phinn was present to take notes. The notes of the meeting appear at pages 151-160.
44. On 13 May 2024, the Claimant was informed that his appeal had not been upheld and a letter in relation to that matter appears at page 161-162.

Law

Unfair Dismissal

45. In respect of the unfair dismissal claim, where the dismissal is admitted, the respondent has the burden of establishing that it dismissed the claimant for an admissible reason in accordance with section 98 (1) of the Employment Rights Act 1996. Misconduct is an admissible reason.
46. In a misconduct dismissal the Tribunal in determining the fairness of the dismissal considers the following factors in accordance with **BHS v Burchell (1978) IRLR 379** namely whether (a) the employer believed that the employee was guilty of misconduct; (b) the employer had reasonable grounds for believing that the employee was guilty of misconduct; and (c) at the time it held that belief it had carried out a reasonable investigation.
47. In terms of investigations into possible misconduct, there is no set rule as to the level of inquiry the employer should conduct into the employee's (suspected) misconduct in order to satisfy the test in **BHS v Burchell (1978) IRLR 379**. Thus, in **Miller v William Hill Organisation Ltd EAT 0336/12** the EAT acknowledged that there is a limit to the steps an employer should be expected to take to investigate an employee's alleged misconduct. How far an employer should go will depend on the circumstances of the case, including the amount of time involved, the expense and the consequences for the employee being dismissed. Similarly, **Salford Royal NHS Foundation Trust v Roldan 2010 ICR 1457** demonstrates that it is particularly important to conduct a most careful investigation where the employee's reputation or ability to work in their chosen field is at risk.
48. In terms of the decision to dismiss, the Tribunal must consider whether the employer's decision to dismiss fell within the band of reasonable responses that a

reasonable employer in those circumstances might have adopted. In **Iceland Frozen Foods Limited v Jones (1982) IRLR 439**) Mr Justice Browne-Wilkinson summarised as follows:

“We consider that the authorities establish that in law the correct approach for the... tribunal to adopt in answering the question posed by s.98(4) is as follows:

(1) the starting point should always be the words of s.98(4) themselves;

(2) in applying the section [a] tribunal must consider the reasonableness of the employer’s conduct, not simply whether they (the members of the... tribunal) consider the dismissal to be fair;

(3) in judging the reasonableness of the employer’s conduct [a] tribunal must not substitute its decision as to what was the right course to adopt for that of the employer;

(4) in many (though not all) cases there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view, another quite reasonably take another;

(5) the function of the... tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.”

49. The range of reasonable responses test applies not only to the decision to dismiss but also to the investigation, meaning that the Tribunal must decide whether the investigation was reasonable and not whether it would have investigated things differently (**Sainsbury’s Supermarket Limited v Hitt (2003) IRLR 23**). Thus, when assessing whether the employer adopted a reasonable procedure, tribunals will use the range of reasonable responses test that applies to substantive unfair dismissal claims. In **Sainsbury’s Supermarket Limited v Hitt (2003) IRLR 23** Lord Justice Mummery stated:

“The range of reasonable responses test (or, to put it another way, the need to apply the objective standards of the reasonable employer) applies as much to the question whether the investigation into the suspected misconduct was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss for the conduct reason.”

50. In **Taylor v OCS Group Ltd 2006 ICR 1602** the Court of Appeal stressed that a tribunal’s task under s.98(4) of the Employment Rights Act 1996 (ERA) is not simply to assess the fairness of the disciplinary process as a whole but also to consider the employer’s reason for the dismissal, as the two impact on each other. It stated that where an employee is dismissed for serious misconduct, a tribunal might well decide that, notwithstanding some procedural imperfections, the employer acted reasonably in treating the reason as sufficient to dismiss the employee. Conversely, where the

misconduct is of a less serious nature, so that the decision to dismiss is nearer the borderline, the tribunal might well conclude that a procedural deficiency had such impact that the employer did not act reasonably in dismissing the employee. Further, the Tribunal must not substitute its own decision for that of the relevant decision-maker and decide how it would have responded had it been the employer (see **Foley v Post Office; HSBC Bank plc v Madden (2000) IRLR 82**).

Time limits

51. For the discrimination complaint, the relevant time limits provided by section 123 of the Equality Act ("EqA") 2010 are as follows:

- (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—**
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or**
 - (b) such other period as the employment tribunal thinks just and equitable.**
- (2) ...**
- (3) For the purposes of this section—**
 - (a) conduct extending over a period is to be treated as done at the end of the period;**
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.**
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –**
 - (a) when P does an act inconsistent with doing it, or**
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.**

52. Section 140B EqA 2010 provides as follows:

- (1) This section applies where a time limit is set by section 123(1)(a) or 129(3) or (4).**
- (2) In this section –**
 - (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and**
 - (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.**
- (3) In working out when a time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day**

B is not to be counted.

(4) If a time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.

Burden of proof in discrimination complaints

53. Section 136(2) and 136(3) of the Equality Act (“EqA”) 2010 provide that the tribunal must take the following approach to the ‘shifting burden of proof’:

- 53.1. the initial burden is on the claimant to prove facts from which the tribunal could decide, in the absence of any other explanation, that the respondent contravened the provision concerned (i.e. a ‘prima facie case’);
- 53.2. the burden then shifts to the respondent to prove that it did not contravene the provision concerned. If the respondent is unable to do so, the tribunal is obliged to uphold the claim.

54. The claimant must show a probability, rather than a mere possibility, that the respondent has committed the unlawful act: **Igen v Wong [2005] ICR 931, CA**. As Elias P put it in **Laing v Manchester City Council and anor [2006] ICR 1519**, “it is for the employee to prove that he suffered the treatment, not merely to assert it, and this must be done to the satisfaction of the tribunal after all the evidence has been considered” (para. 64). As Mummery LJ said in **Madarassy v Nomura International plc [2007] ICR 867**, “[t]he bare facts of 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” (para. 56).

55. As was confirmed by the Supreme Court in **Efobi v Royal Mail Group Ltd [2021] ICR 1263**, the initial burden is on the Claimant to establish facts from which the tribunal could conclude, in the absence of an adequate explanation, that an unlawful act of discrimination, harassment or victimisation had been committed. In establishing the facts, the claimant can rely on both primary facts and also inferences that can be properly drawn from those facts.

56. The approach was summarised by the EAT in **Qureshi v Victoria University of Manchester and another [2001] ICR 863** per Mummery J at 875C – H; “The process of making inferences or deductions from primary facts is itself a demanding task, often more difficult than deciding a conflict of direct oral evidence. In **Chapman v Simon [1994] IRLR 124**, 129, para 43 Peter Gibson LJ gave a timely reminder of the importance of having a factual basis for making inferences. He said, “*Racial discrimination may be established as a matter of direct primary fact. For example, if*

the allegation made by Ms Simon of racially abusive language by the headteacher had been accepted, there would have been such a fact. But that allegation was unanimously rejected by the tribunal. More often racial discrimination will have to be established, if at all, as a matter of inference. It is of the greatest importance that the primary facts from which such inference is drawn are set out with clarity by the tribunal in its fact-finding role, so that the validity of the inference can be examined. Either the facts justifying such inference exist or they do not, but only the tribunal can say what those facts are. A mere intuitive hunch, for example, that there has been unlawful discrimination is insufficient without facts being found to support that conclusion."

57. Where a claimant compares his treatment with that of another person, "it is important to consider whether that other person is an actual comparator or not. To do this the Employment Tribunal must consider whether there are material differences between the claimant and the person with whom the claimant compares his treatment. The greater the differences between their situations the less likely it is that the difference of treatment suggests discrimination": **Virgin Active Ltd v Hughes [2023] EAT 130**.
58. The burden of proof rule "*need not be applied in an overly mechanistic or schematic way*": **Khan and anor v Home Office [2008] EWCA Civ 578, CA**.
59. An employment tribunal may consider all relevant evidence at the first stage of the burden of proof test: **Commissioner of Police of the Metropolis v Denby EAT 0314/16**.
60. If a tribunal can make positive findings as to an employer's motivation, it does not need to make use of the burden of proof test at all: **Hewage v Grampian Health Board [2012] ICR 1054, SC**.

Direct discrimination (s.13 EqA 2010)

61. Section 13(1) EqA 2010 provides that: "*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.*"
62. The question of whether a person is treated less favourably is a question of objective fact that necessarily involves a comparison with others. The comparator can be either an actual comparator (where there is no material difference in the circumstances of the comparator to that of the Claimant) or as is usually the case, a hypothetical comparator.
63. The key issue in every direct discrimination case is the following question of fact: "*why did the alleged discriminator act as he did? What, consciously or unconsciously, was the [alleged discriminator's] reason?*": **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] ICR 1065**, at para. 29, per Lord

Nicholls. As Underhill LJ said in **Reynolds v CLFIS (UK) Ltd & others [2015] ICR 1010** (at para.11):

*“As regards direct discrimination, it is now well established that a person may be less favourably treated “on the grounds of” a protected characteristic either if the act complained of is inherently discriminatory (eg the imposition of an age limit) or if the characteristic in question influenced the “mental processes” of the putative discriminator, whether consciously or unconsciously, to any significant extent: we were referred in particular to the discussion in **Ahmed v Amnesty International [2009] ICR 1450**. The classic exposition of the second kind of direct discrimination is in the speech of Lord Nicholls of Birkenhead in **Nagarajan v London Regional Transport [1999] ICR 877; [2000] 1 AC 501**, which was endorsed by the majority in the Supreme Court in **R (E) v JFS Governing Body [2010] 2 AC 728**.”*

64. Once it is established that the treatment is because of a protected characteristic, unlawful discrimination is established and the respondent's motive or intention is irrelevant (**Nagarajan v London Regional Transport [1999] IRLR 572 HL**).
65. The protected characteristic does not need to be the only reason for the less favourable treatment, or even the main reason, so long as it was an 'effective cause' of the treatment: **O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372, EAT**.
66. In **Network Rail Infrastructure v Griffiths-Henry [2006] IRLR 865, EAT**, Elias P (as he then was) said, *“If there is a genuine non-discriminatory reason, at least in the absence of clear factors justifying a finding of unconscious discrimination, that is the end of the matter.”*
67. In some cases it is necessary to consider and exclude subconscious or unconscious discrimination when deciding the reason why an alleged discriminator did a particular act – see, e.g. **Geller v Yeshurun Hebrew Congregation [2016] ICR 1028** – but *“it does not follow from this that in every case an employment tribunal must expressly refer to the possibility of subconscious discrimination in its Reasons and consider this as a separate matter”*: **Kohli v Department for International Trade [2023] EAT 82**, para. 48, per Linden J.

Conclusions

68. To reach our conclusions we return to the agreed list of issues in the bundle at pages 45-47. We shall deal with the complaint of unfair dismissal first before addressing the complaint of direct sex discrimination.

4. What was the reason or principal reason for the Claimant's dismissal? Was it a potentially fair reason?

The Respondent relies on the potentially fair reason of conduct. Alternatively for “some other substantial reason”, namely the irretrievable breakdown of the trust and confidence necessary to maintain the employment relationship.

69. The dismissal letter of 11 April 2024 does not explicitly state that the reason for dismissal is conduct. However, we conclude that the potentially reason of conduct can be implied from that letter and that was the reason for the Claimant’s dismissal.

5. Did the Respondent act reasonably in the circumstances, including its size and administrative resources, in treating the alleged misconduct as a sufficient reason for the Claimant’s dismissal?

5.1 In particular, did the Respondent form:

5.1.1 a genuine belief that the Claimant was guilty of the misconduct alleged?

5.1.2 was that on reasonable grounds?

5.1.3 after such investigation as was reasonable?

70. In relation to the Respondent’s size and administrative resources, the Respondent is a well-known chain of restaurants. It is not a small undertaking, instead it has an established HR function and, as such, we would expect it to be well versed in employment law and the requirements as set out in the ACAS Code. We that in mind we are unable to conclude the Respondent had a genuine belief based on reasonable grounds. Our reasons for that are that the Claimant was sent a very brief dismissal letter by Nicola Riley. That letter sent on the 11 April 2024 is in our opinion deficient. It appears in the bundle at pages 144-145 and does not adequately address the reasons why the allegations against the Claimant are found to be met or why the Respondent thought he had committed misconduct. The letter indicates a lack of consideration of the Claimant’s case, for example it does not indicate that Nicola Riley considered the role that others in the organisation had played in respect of any potential failures to safeguard SR.

71. In addition, we find there was no genuine belief as the decision to dismiss the Claimant was predetermined. Nicola Riley had clearly formed a view on the Claimant’s culpability prior to the matter being re-investigated for a second time. That is demonstrated by the email where she states, *“I have no confidence in his managerial ability, for her to say that and for him not to react is absolute negligence”*. The fact that Nicola Riley gave evidence to the Tribunal that, in her opinion, the purpose of a disciplinary hearing was for the Claimant to provide mitigation also showed that she had a pre-disposed and closed mindset towards the Claimant.

72. We also conclude that the investigation by Mr McGeary was not reasonable or fair. The Claimant was given insufficient notice of that investigation meeting and insufficient time to prepare. The Claimant was told that the investigation was related to breach of trust and confidence, negligence of the business and colleagues, bringing the business into disrepute and failing to report a serious act of harassment and conduct. As previously noted, those allegations are extremely vague. Whilst Mr McGeary told the Claimant he could bring with him any information he thought might be useful in relation to his investigation, we conclude that it is extremely difficult for an individual to bring relevant information if they are unsure or unaware of the precise

matter they are being investigated in relation to.

73. We also find the investigation was deficient as Sophie Prax took an active part in the investigation meeting rather than just taking notes as she was supposed to do.
74. The investigation was also not fair as no written report was produced by Mr McGeary to document his conclusions following the investigation. There was therefore no written document detailing why Mr McGeary thought the matter should proceed to a disciplinary hearing.
75. Finally, it was not a fair investigation because Mr McGeary did not interview SR, Sheila Galinato or Sara Hazrati. In summary, this was a wholly inadequate investigation.

6. In the alternative did the Respondent form a genuine and reasonable belief that the trust and confidence had been irretrievably broken down?

76. We do not conclude that the Respondent had a genuine and reasonable belief that trust and confidence had broken down. We are unable to reach that conclusion as the dismissal letter sent by Nicola Riley on 11 April 2024 fails to make any reference whatsoever to trust and confidence.

7. Was dismissal a sanction within the range of reasonable responses open to the Respondent?

77. We conclude dismissal was not a reasonable response here as, for the reasons provided above, the Respondent did not have a genuine belief based on reasonable grounds that the Claimant had committed any form of misconduct.

8. Did the Respondent follow a fair procedure?

78. The Respondent failed to follow a fair procedure. The procedure was not fair due to inadequate notice of the second investigation meeting being provided to the Claimant. He was also provided with vague and imprecise detail as to what specifically he was being investigated in relation to on that second occasion.
79. The procedure was also not fair as the second investigation was limited to the Claimant alone and not the actions of those around him, most notably Sara Hazrati and Sheila Galinato. The effect of this was that when it came to the events of 25 January 2024 and what information was in various individuals' possession, the dismissing officer, Nicola Riley, simply did not have sufficient regard to all relevant information and evidence.
80. It appears to this Tribunal that the investigation and disciplinary process lacked transparency. We say that as the Respondent's case was that the reopening of the investigation proceeded on the basis of new information coming into its possession. However, at no point has the Respondent provided a sufficient explanation to the Tribunal of what that new information was. Indeed, we conclude that the Respondent, via Sheila Galinato, was in possession of all relevant information about the events of 25 January 2024 from the outset. Sheila Galinato was present on the night in question and working in her capacity as Deputy Manager. In addition, Sara Hazrati,

Operations Manager, had knowledge of the contents of the relevant WhatsApp messages from SR since at least 2 February 2024 and was shown them by the Claimant on 6 February 2024.

81. We also find that the appeal by Carl Webber was not a re-hearing and so did not correct the initial procedural failings in the initial investigation and disciplinary.

82. The claim of unfair dismissal is well founded and succeeds. We now turn to the complaint of direct sex discrimination.

1. Has the Claimant's claims of sex discrimination been brought in time? If not would it be just and equitable to extend time?

83. Based on the relevant dates of ACAS early conciliation any event before 23 January 2024 would be out of time. In this case, Nicola Riley took the decision to reopen the investigation on 21 March 2024. The claim of sex discrimination is in time as the Claimant's complaint centres on the alleged less favourable treatment received as a result of the reopening of that investigation process.

2. Did the Respondent treat the Claimant less favourably than it treats or would have treated others? (EqA 2010, s 13)

The Claimant relies on the Respondent's actions during the 'second investigation' which began on or about 27 March 2024 and the subsequent disciplinary, dismissal and appeal processes and the reopening of that 'second investigation' process.

The Claimant relies on the following actual comparators: Ms Sheila Galinato (Deputy Manager referred to in the Response) and Ms Sara Hazrati (Claimant's line manager)

The Claimant also relies on a hypothetical comparator.

84. We have to consider whether or not any less favourable treatment was because of sex. We remind ourselves that broadly speaking section 136 of the Equality Act 2010 provides that once there are facts in which Employment Tribunals could decide that an unlawful act of discrimination has taken place, then the burden of proof then shifts to the Respondent to prove a non-discriminatory explanation.

85. We conclude the Claimant was treated less favourably. First by the reopening of the grievance and closed investigation process; second by being subjected to the Respondent's disciplinary procedure and third by being dismissed.

86. The Claimant has used Sara Hazrati and Sheila Galinato as comparators. In terms of Sara Hazrati, we conclude she is a valid comparator. There are no significant material differences between her and the Claimant. Sara Hazrati had full knowledge of the events of 25 January 2024 and failed to take any action after receiving the relevant information. If the Respondent was apparently so concerned about its duty of care to SR it is quite telling that Sara Hazrati took no action to protect SR as she failed to escalate concerns upwards.

87. We also conclude Sheila Galinato is a valid comparator. There are no significant differences between her and the Claimant. Sheila Galinato was present that night on

25 January 2024 and had full knowledge of the events as she was responsible for managing the branch that night. Her WhatsApp messages of the following day show that she was more concerned about stock and general handover issues than the actions of PT on the night in question. Indeed, she merely describes Paul Topliss's actions as unusual and worrying on the night in question and fails to detail his actions in full to the Claimant.

88. In terms of comparison, Sheila Galinato's previously closed investigation process was not reopened. Sheila Galinato was not subjected to the Respondent's formal disciplinary procedure. Sheila Galinato was not dismissed. Sara Hazrati was not investigated about what information was in her possession in relation to the events of 25 January 2024. She was also not investigated in relation to the how she failed to investigate the allegations of harassment. Indeed, we note that Sara Hazrati was so unconcerned by the matters of 25 January 2024 that she did not even issue letters of concern following her investigation. That was despite her indicating that letters of concern would be issued.

3. Was any less-favourable treatment accorded to the Claimant because of the Claimant's sex?

89. We conclude that the Claimant has put forward facts from which we can infer discrimination has taken place. The facts from which we can infer discrimination has taken place are as follows.
90. The investigation was opened for a second time against the Claimant alone. Sheila Galinato was not re-investigated even though she was present in the restaurant on the night in question and she had been investigated on the first occasion. Sara Hazrati was also not reinvestigated even though she:
- 90.1. made errors in the original investigation by not asking to see or seek possession of the relevant WhatsApp messages,
 - 90.2. failed to check on SR's welfare,
 - 90.3. failed to escalate the allegations of harassment
 - 90.4. failed to issue letters of concern.
91. In addition, nobody else was investigated and it was only the Claimant that was disciplined and ultimately dismissed for his role in the events of 25 January 2024, that was despite the fact that he made no attempt whatsoever to disrupt or mislead the investigation.
92. We ask ourselves should we draw an inference based on those facts. We conclude we should because the Respondent failed to call either Sara Hazrati or Sheila Galinato to give evidence. We also draw an inference because Nicola Riley's evidence was unsatisfactory. Ms Riley could not recall a significant amount of information. Her answers to even simple questions were evasive and she was not able to clarify what new information came into her possession to justify the reopening of the second investigation which ultimately led to the Claimant's dismissal. We also draw an inference because, despite the Respondent's assertion, there was no

grievance from SR. Instead, it appears to us the Respondent assembled a grievance when none existed in order to pursue a disciplinary case against the Claimant.

93. We are also prepared to draw an inference because there are clear contradictions in the Respondent's case. This most notably occurred in relation to who took the decision to reopen the investigation into the Claimant. This should be a simple matter, but the Respondent has not provided any clarity on matter. The email on page 268 of the bundle suggests that it was Nicola Riley who took the decision to reopen the second investigate. However, Sophie Prax gave evidence that she took the decision to reopen the second investigation, whilst Carl Webber gave evidence that it was Sophie Phinn who took the decision to reopen the second investigation.
94. Considering all the above, we conclude that the burden of proof has shifted to the Respondent. We also conclude that the Respondent failed to provide a non-discriminatory reason for its treatment of the Claimant. Indeed, no non-discriminatory reason was put forward by the Respondent in its submissions. The claim for sex discrimination is therefore well founded and succeeds.
95. In terms of remedy, we find that after taking into account the Claimant's tips he had a gross weekly pay figure of £796.32 and a net weekly pay figure of £614.42. That provides him with a basic award of £1400.
96. We conclude that the claimant would have been able to find employment paying him an equivalent rate of pay within 52 weeks of his dismissal. He would certainly have been able to find a job in the restaurant sector due to his prior experience. His loss of net earnings was therefore £32,011.28. However, we reduce this to reflect the fact that he received a payment in lieu of notice of £3200 from the Respondent and also mitigated his loss by working for three different employers post dismissal from which he obtained the net sum of £15,462.39. We award the Claimant £500 to reflect his lost statutory rights.
97. We increase the compensatory award by 10% to reflect the Respondent's failure to follow the ACAS code and also award the claimant aggravated damages of £2000. Before awarding that sum, we reminded ourselves that as was made clear by the Court of Appeal in **Alexander v Home Office 1988 ICR 685**, aggravated damages can be awarded in a discrimination case where the defendants have behaved 'in a high-handed, malicious, insulting or oppressive manner in committing the act of discrimination'. We felt such an award was appropriate here due to the Respondent attempting to assemble a grievance from SR, when none existed, in order to pursue a disciplinary case against the Claimant. That aggravating feature increased the impact of the discriminatory conduct on the Claimant. Finally, the claimant was awarded the sum of £10,000 for injury to feelings. We had evidence that the Claimant had undertaken talking therapies, had ongoing problems with sleep and anxiety had commenced anti-depressants.
98. The total amount we therefore award to the Claimant is £32,593.65.

Approved by Employment Judge McTigue

Date: 24 April 2026

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