



# EMPLOYMENT TRIBUNALS

**Claimant:** Abdalla Abdalla  
**Respondent:** Lasheen Stationery UK Limited

**Heard at:** London South, by CVP  
**Before:** Employment Judge O'Neill  
Mrs Jerram  
Mr Townsend  
**On:** 1– 3 July 2026

## REPRESENTATION:

**Claimant:** In person  
**Respondent:** Mx Nevolin, solicitor

## RESERVED JUDGMENT

1. The complaint of unfair dismissal is not well-founded.
2. The complaint of unauthorised deductions from wages is not well-founded.
3. The complaints of breach of contract and wrongful dismissal are not well-founded.
4. The complaint of direct race discrimination is well-founded and succeeds in part. The issue of remedy is reserved to a separate hearing.

## REASONS

### The Hearing

#### *Introduction*

1. The Claimant brought complaints of direct race discrimination, automatic unfair dismissal, breach of contract and unlawful deductions from wages.
2. The Respondent resists the claim in its entirety. It asserts that the Claimant was dismissed for reasons of capability, following concerns about his performance, and that the dismissal was fair. The Respondent denies that the Claimant was subjected to any discrimination and denies any breach of contract or unlawful deductions.
3. The case came before Employment Judge Elliott for a preliminary hearing for case management on 28 July 2023. At that hearing, the claims were clarified and a list of issues was identified (replicated below). Directions were made for the future conduct of the proceedings, including the provision of further particulars by the claimant, disclosure of documents, the preparation of a hearing bundle, and the exchange of witness statements.
4. The matter was thereafter listed for a final hearing of three days before a full Tribunal in September 2024. Subsequent postponements were sought on the basis of illness and bereavement affecting the Respondent's management. In consequence, previously listed hearing dates were vacated.
5. The Tribunal had the benefits of a bundle running to 243 pages and heard witness evidence from the Claimant and Mr Ahmed Lasheen.

***Preliminary matters***

6. *Application to adjourn*

- 6.1. The Respondent applied to adjourn the hearing. The application was made because the Respondent wished to call a further witness, Mrs Guillot, an Italian national who was then in France. The Respondent explained that Mrs Guillot was willing to give evidence, but it had been unable to obtain the necessary permission for her to give evidence remotely from abroad.
- 6.2. The Tribunal considered the potential prejudice to the Respondent if the hearing proceeded without Mrs Guillot's evidence. We balanced that against the prejudice to the Claimant if the hearing were adjourned. We took into account that the Claimant had already been awaiting a final hearing for approximately four years. We also

considered the likelihood that, if the hearing were vacated, it would not be relisted within a short period and would more likely be relisted in 2027 or 2028.

- 6.3. Having considered the parties' respective positions and the overriding objective, we concluded that a further adjournment would not be in the interests of justice. We noted that a hearing bundle had been prepared and that the remaining witnesses were available to give evidence. In those circumstances, we determined that the hearing should proceed.

7. Disclosure application

- 7.1. The Respondent indicated that it wished to make an application for further disclosure. However, it was unable to identify with any specificity the documents sought. Rather, it expressed concern that, as the evidence emerged during the hearing, further disclosure might become necessary.
- 7.2. The Tribunal considered the application in accordance with the overriding objective. We weighed the potential prejudice to the Respondent if further disclosure were refused against the potential prejudice to the Claimant if it were permitted. We noted that the case was likely to turn primarily on witness evidence concerning a relatively short period of employment. In those circumstances, it appeared unlikely that further disclosure would be required.
- 7.3. We further indicated that we would not ordinarily direct additional disclosure unless the Respondent could clearly identify the documents sought, explain their relevance to the issues in dispute, and demonstrate the prejudice that would arise from non-disclosure.
- 7.4. We also took into account that the Claimant's witness statement extended to some 30 pages and contained extensive references to the existing hearing bundle. As the Claimant was unrepresented, the introduction of further documentation at that stage risked disrupting his preparation for the hearing and causing unfairness. Accordingly, we declined to make any order for further disclosure at that stage, whilst leaving open the possibility of considering a focused application should the need subsequently arise.

8. The Tribunal also clarified the scope of the claims by reference to the list of issues identified at the preliminary hearing, including the Claimant's reliance on claims of automatic unfair dismissal in circumstances where he did not have the qualifying service to pursue an ordinary unfair dismissal complaint. The updated List of Issues is reflected below.

***List of Issues***

*Automatically Unfair Dismissal*

- 1) The Claimant accepts that he did not have 2 years' service with the Respondent in order to bring an ordinary unfair dismissal complaint.
- 2) What was the reason or principal reason for dismissal?
- 3) Was it because the Claimant asserted his statutory right to be paid his wages and at least the national minimum wage?
- 4) Was it because the Claimant was a protected shop worker ~~under section 36 Employment Rights Act 1996~~ and was dismissed contrary to section 101 for refusing to work on a Sunday. ~~Regard is had to paragraph 46 of the Grounds of Resistance. The contract of employment was not available at this hearing. It is in issue as to whether the Claimant refused to work on a Sunday.~~
- 5) The Tribunal will need to determine whether he was 'protected' or opted-out worker at the material time. In particular:
  - (a) whether the Claimant was a 'shop worker' ie he was employed under a contract which required or permitted him to undertake shop work.
  - (b) Whether he was 'protected': ie
    - did he give a valid written opting-out notice; and if so,
    - whether the relevant statutory notice period had expired by the effective date of termination.

*Breach of Contract & Wrongful Dismissal*

- 6) Did the Respondent breach the claimant's contract of employment by the following:

- (a) From November 2021 did the Respondent unilaterally vary the claimant's role/duties from Sales Assistant to cleaner and/or Personal Assistant?
  - (b) From November 2021 did the Respondent force the Claimant to work on Sundays at short notice and without prior agreement?
  - (c) Throughout his employment did the Respondent fail to pay the Claimant on time each month, save for on 30 November 2021?
  - (d) Did the Respondent dismiss the Claimant without notice, or without pay in lieu of notice?
- 7) If the Respondent breached the contract, should compensation be awarded to the claimant? If so, how much should be awarded?

Unlawful deductions from wages

- 8) Did the Respondent make an unlawful deduction from the claimant's wages?
- (a) Did the Respondent fail to pay the Claimant for his overtime hours? The Claimant said he was not paid for around 130 hours of overtime. The Claimant is ordered above to set out a calculation of this in an updated Schedule of Loss.
  - (b) Did the Respondent fail to pay the Claimant for his daily break of 30 minutes? The Claimant accepts that this was not in his contract in employment. The issue for the tribunal is whether he was forced to work during his break every working day since November 2021.
- 9) If such deduction was made, how much is owed to the claimant?

Direct race discrimination – section 13 Equality Act 2010

- 10) The Claimant describes his racial group as Black African.
- 11) Did the Respondent treat the Claimant less favourably than it treated or would treat a comparator by:
- (a) On 11 January 2022, did Mr Ahmed Lasheen ("Mr Lasheen"), owner of the respondent, say "tell me how the smell in the stadium look like" in relation to a football match taking place between Egypt and Nigeria? The

Claimant says he heard Mr Lasheen say this to someone on the telephone, whilst he was on the shop floor.

(b) About a week to 10 days after 11 January 2022 did Mr Lasheen say "*we Arabs learn quickly because of our genes*"? Mr Lasheen said this to a female over the phone. This is again said to have happened on the shop floor.

(c) About 4 or 5 days later, did Mr Lasheen say "*we are white and there are black people*"? This was again on the phone on the shop floor.

(d) About 5 or 6 days later, did Mr Lasheen say "*we are working with animals*" to Mr Mohammed Lasheen, Director of the respondent? Was this said by Mr Lasheen to his brother in person on the shop floor.

(e) On 17 May 2022, did the Respondent dismiss the Claimant because he is Black African?

(f) Not paying the Claimant on time.

(g) Making unlawful deductions from wages.

(h) Changing the nature of his work from a sales assistant to a cleaner.

(i) Forcing him to work on Sundays.

(j) Requiring him to work as Mr Lasheen's personal assistant.

(k) Harassing him when he asked about unpaid and late salary.

(l) Keeping him in the shop after the end of working hours, from November 2021 to April 2022, almost every day from 1 hour to 3 hours.

(m) Blaming the Claimant in respect of mistakes by co-workers.

12) The claimant's comparator is "Ms Judith", whose last name is unknown to the claimant. The Claimant says Judith was a sales assistant, mostly doing printing work. The Claimant understands Judith to be Italian. The Claimant also relies upon a hypothetical comparator.

13) If so, was any such less favourable treatment because of the claimant's race?

Remedy for discrimination

14) If the Claimant was discriminated against, what, if any, compensation should be awarded to the Claimant including any award for injury to feelings?

- 15) Have the Respondent complied with the ACAS Code of Practice on Disciplinary and Grievance Procedures ("the ACAS Code")? If not, should any compensation be increased to take into account any unreasonable failure by the Respondent to comply with the ACAS Code? The Claimant is ordered above to say what paragraph has not been complied with.
- 16) To what extent, if any, has the Claimant mitigated his losses?

*Time Limits*

- 17) Is the claim for breach of contract and/or unlawful deductions from wages out of time? Date -
- 18) Was it reasonably practicable for the Claimant to present the claim within time, and if not, was it presented within such time as the tribunal considers reasonable.
- 19) Is the discrimination claim out of time?
- 20) If so, do the allegations made by the Claimant amount to an act extending over a period of time as to bring the claim in time?
- 21) Alternatively, would it be just and equitable to extend time?

## **Facts**

### ***General assessment of evidence***

9. The Tribunal has made its findings of fact on the balance of probabilities and solely on the evidence placed before it. The Tribunal has adopted a structured approach to the evidence by reference to the issues identified for determination.
10. This case was notable for the limited contemporaneous documentation available to the Tribunal. The factual issues therefore depended largely upon witness evidence. In assessing that evidence, we considered its consistency, level of detail and inherent plausibility, together with the manner in which it was given. Where contemporaneous documents existed, we generally regarded them as the most reliable evidence of what occurred.
11. The events in issue took place in late 2021 and 2022, several years before the hearing. We therefore approached the witnesses' recollections with appropriate

caution. We recognised that memory fades over time and may be influenced by subsequent events, discussions and the litigation process itself. For that reason, we did not equate confidence of recollection with accuracy. We accepted that witnesses may have given honest evidence which was nevertheless mistaken in some respects due to the passage of time.

12. The Tribunal was also provided with a number of meeting notes that were not contemporaneous records. Those documents were prepared after the events in question and for the purposes of these proceedings. We therefore treated them with caution. Whilst they assisted in understanding the author's account of events, they did not carry the same weight as records created contemporaneously and in the ordinary course of business. We treated them primarily as evidence of the author's recollection rather than as independent proof of the matters asserted.
13. In determining disputed facts, we assessed the oral evidence against the contemporaneous documents, the retrospective records, and the probabilities of the case as a whole. We distinguished between findings supported by documentary evidence and those based principally upon witness testimony. We also bore in mind that direct evidence of discriminatory motivation is uncommon. Where questions of motive or reason arose, we drew inferences only from primary facts established by the evidence and not from speculation or assumption.

Assessment of Claimant's evidence

14. We found the Claimant to be a thoughtful and generally measured witness. He did not appear to exaggerate his evidence or seek to improve his account to advance his case. In a number of respects, he was able to recall events with nuance and contextual detail. Equally, when questioned about certain matters, his recollection was more limited and he was at times unable to provide specific details. We did not regard that as necessarily undermining his credibility, given the age of the events in question. Overall, we considered him to be a truthful witness, although, as with all witnesses in this case, the reliability of his recollection varied depending on the particular event under consideration.

Assessment of Respondent's evidence

15. We found Mr Ahmed Lasheen to be a defensive witness on a number of issues. When challenged on matters adverse to his case, he did not always engage directly with the question being asked. On occasion he stated that he did not understand

the question, whilst on other occasions he responded by referring to documents or to other aspects of the evidence. During cross-examination by the claimant, he sometimes adopted a confrontational manner which made it difficult to obtain clear and direct answers. These matters were taken into account when assessing the weight to be attached to his evidence. They did not lead us to reject Mr Lasheen's evidence wholesale. However, they affected the extent to which we were able to place weight on his evidence where it conflicted with other evidence that we found more reliable.

16. Mr Mohamed Lasheen died prior to the hearing and a female employee, said to have been present during some of the alleged incidents and referenced as a comparator, now resides abroad and was unable to give evidence. The Tribunal has therefore not had the benefit of hearing direct evidence from either of those individuals.
17. In those circumstances, the Tribunal has determined the issues on the basis of the evidence that is available, including the claimant's oral evidence and any other relevant material.
18. The Tribunal has taken into account the absence of evidence from those individuals when assessing the weight to be given to the parties' respective cases, but does not draw any adverse inference from their non-attendance. The Tribunal has instead assessed the evidence by reference to its consistency, plausibility, and the surrounding circumstances as a whole.

***Employment relationship and contractual terms***

19. The Claimant's employment with the Respondent commenced on 30 September 2021 and terminated on 17 May 2022.
20. The Respondent operates a retail stationery business. During the Claimant's employment, Mr Ahmed Lasheen was involved in the day-to-day management of the business.
21. The Claimant worked at the Respondent's shop premises carrying out general retail duties, including serving customers and assisting with shop operations. The Claimant was recruited by Mohamed Lasheen.

22. The Claimant's contract of employment provided for a probationary period. It was confirmed during the hearing that he successfully completed his probation on 31 January 2022.

*Contract of employment*

23. The Claimant's contract of employment provided for a basic rate of pay of £8.91 per hour. That pay was calculated on a flat rate of 156 hours per month and was payable monthly in arrears on the last working day of each month by direct credit to his bank.
24. His contract stated that he would be required to work a 36 hour week and that his normal working hours would be Monday to Saturday inclusive with the six working hours fall between the shop opening hours which is normally between 9:00 AM and 7:00 PM with 30 minutes to be taken for lunch usually between 12:00 and 2:00 PM.
25. His contract further provided that the employer may require him to work such additional hours as are necessary and as the demands of his job and the needs of the business may require. In that case start and finish times would be determined on a local basis by the directors.
26. This contract provided that overtime shall normally be paid for but before overtime is worked the extent should be agreed with your director who will be responsible for signing off the agreed time expended where appropriate overtime will be paid at the rate of a multiplier of one times your basic hourly rate.
27. His contract provided that the holiday year runs from the start date of employment and his annual holiday entitlement would be 20 working days plus bank holiday and public holidays.
28. This contract also entitled him to one month's notice on termination.
29. The Tribunal finds that the Claimant's contract of employment provided for payment by way of a fixed monthly salary calculated by reference to 156 hours at the applicable hourly rate. That figure reflected the Claimant's contractual working pattern of 36 hours per week averaged over the year. Although expressed in hourly terms, the Claimant's entitlement was, in substance, to a standardised monthly salary payable in arrears. The contract further provided for overtime to be agreed in advance and paid in addition to that salary.

***Treatment of claimant***

Contractual duties

30. The Claimant's contractual duties included customer service, sales, stock replenishment, merchandising, housekeeping and maintaining clean and organised shelves. The written job description expressly referred to housekeeping responsibilities and the maintenance of store standards.
31. The Tribunal finds that the Claimant's principal duties throughout his employment remained those of a retail sales assistant. There was no formal change to his job title, contractual terms or job description. No revised contract or written variation was issued at any stage.
32. The Claimant carried out some tasks which fell outside the ordinary day-to-day duties of a retail sales assistant. The Tribunal accepts that these included assisting Ahmed Lasheen to move a mattress on one occasion and, on occasion, obtaining items from local shops. These matters were largely uncontroversial, Mr Ahmed Lasheen accepting that at least some such requests occurred. The dispute between the parties was not whether the requests were made, but whether they were merely friendly favours between colleagues or requests arising from the employment relationship. The Tribunal addresses that issue separately below.

Cleaning

33. The Claimant believed that, over time, he was increasingly treated as a cleaner rather than a sales assistant. In particular, he relied upon requests to clean, clear cups, tidy displays and undertake other housekeeping tasks. The Tribunal accepts that the Claimant genuinely held that perception. However, the contemporaneous documents do not show any formal change to his role and much of the conduct relied upon by the Claimant fell within duties which were expressly contemplated by his job description.

Personal errands

34. The Claimant's evidence was that Mr Ahmed Lasheen regularly required him to undertake tasks which he regarded as personal errands rather than work-related duties. These included obtaining cooking oil and other items from local shops, assisting Mr Ahmed Lasheen to move a mattress to his nearby flat, collecting personal items, and carrying out miscellaneous requests which were unrelated to the sale of stationery or the operation of the shop.

35. The Claimant stated that he complied with those requests because they came from one of the owners of the business and he felt unable to refuse them without risking his position. Mr Ahmed Lasheen accepted that the mattress incident occurred and accepted that he occasionally asked the Claimant to obtain items from local shops, although he characterised those requests as friendly favours between colleagues rather than work-related instructions.
36. The Tribunal rejects the Respondent's explanation that the tasks undertaken by the Claimant were merely reciprocal favours between colleagues. We find that the Claimant was instructed by Ahmed Lasheen to undertake personal errands, including obtaining items from local shops and assisting with personal matters outside the ordinary functions of a retail sales assistant. These requests were made in the context of the employment relationship and arose from Mr Ahmed Lasheen's managerial authority over the Claimant. They were not requests made on an equal footing between colleagues.
37. The Tribunal finds that the requirement for the Claimant to undertake personal errands and personal tasks for Ahmed Lasheen arose after Ahmed Lasheen became actively involved in the day-to-day supervision of the Claimant. The treatment did not consist of an isolated incident but formed part of an ongoing pattern during the remainder of the Claimant's employment.
38. The Tribunal also accepts the Claimant's evidence that he found these requests demeaning and considered them to be beneath the role for which he had been employed. We further accept that he felt he was being singled out for such treatment, although the reasons for that treatment fall to be considered separately when addressing the discrimination complaint.

*Till key & sales performance*

39. The Claimant's evidence was that, although he was employed as a retail sales assistant, he was not routinely entrusted with the till key and was therefore unable to complete sales independently. He stated that, when a customer wished to make a purchase, he would often have to ask Ahmed Lasheen for the key before he could access the till. The Claimant considered this to be a reflection of a lack of trust in him. He contrasted his position with that of Ms Guillot, whom he believed had access to the till and was not subject to the same restriction. The Claimant stated that he raised the issue during his employment but that the position did not change.

He relied upon this matter as one of a number of examples of what he considered to be less favourable treatment. In cross-examination, he accepted that he had been trained to use the Respondent's point-of-sale system and that operating the till formed part of his role.

40. Mr Ahmed Lasheen denied that the Claimant was prevented from operating the till. He gave evidence that the till key was ordinarily kept in or near the till area and was not allocated exclusively to any particular member of staff. He also explained that many transactions could be processed by card without use of the key.
41. The Tribunal accepts that the Claimant received training in the Respondent's point-of-sale system and that till operation formed part of his duties as a retail sales assistant. However, the Tribunal also accepts the Claimant's evidence that he was not routinely entrusted with the till key, he frequently required assistance before completing certain transactions, and did not enjoy the same degree of independent access to the till as would ordinarily be expected of a retail sales assistant.
42. The Respondent relied upon point-of-sale records showing that only a very small number of sales were recorded under the Claimant's user profile and contended that this demonstrated poor performance. The Tribunal does not accept that inference. Whilst the records show very low sales activity recorded under the Claimant's name, we consider that evidence to be broadly consistent with the Claimant's account that he was not routinely permitted to complete transactions independently and frequently required Mr Ahmed Lasheen's involvement before sales could be processed. The Tribunal therefore does not regard the low number of recorded sales as reliable evidence of poor sales ability on the Claimant's part.
43. The Tribunal has insufficient evidence to determine with confidence whether Ms Guillot enjoyed materially different access to the till or the till key. Ms Guillot did not give evidence and the documentary evidence does not establish the precise arrangements that applied to her. We are therefore unable to make any specific comparative finding in that regard.

Comparator evidence

44. The Claimant relied principally upon Ms Judith Guillot as an actual comparator. However, the Tribunal received limited evidence concerning the detail of her working arrangements, duties and treatment. Ms Guillot did not attend the hearing and the documentary evidence relating to her was sparse. Whilst there was

evidence that she carried out printing and personalisation work in addition to general shop duties, the Tribunal was not provided with sufficient evidence to permit detailed comparisons across all aspects of the Claimant's allegations. Where necessary, the Tribunal has therefore considered the position of a hypothetical comparator.

***Pay & hours worked***

*Wages*

45. It is not disputed that throughout the Claimant's employment, his wages were on a number of occasions paid later than the contractual due date. The extent of the delay was generally modest, typically between one and five days, although on one occasion it was longer. The Claimant was required to chase payment on multiple occasions, and the documentary evidence shows that he did so by contemporaneous emails. In some instances, the Respondent made interim payments or advances to him, which were subsequently accounted for through payroll. The Tribunal accepts the Claimant's evidence on this issue.
46. The Tribunal finds that the Claimant repeatedly raised the issue of late payment with the Respondent and that, on a number of occasions, he did not receive payment until after making enquiries.

*Sunday working*

47. The Claimant's evidence was that he worked "almost every Sunday". He accepted in cross-examination that he had made no contemporaneous written complaint regarding Sunday working. The attendance records show Sunday working on 21 and 28 November 2021; 5 and 12 December 2021; 2, 9, 16, 23 and 30 January 2022; 6 and 20 February 2022; and 13 and 27 March 2022.
48. The Tribunal finds that the Claimant was a shop worker within the meaning of the Employment Rights Act 1996. He was employed by the Respondent in a retail stationery business and his duties consisted of work in and about the Respondent's shop, including serving customers and assisting with the day-to-day operation of the premises.
49. The Tribunal does not find that the Claimant was a protected shop worker or an opted-out shop worker at the material time. The Claimant accepted in cross-

examination that he had never provided the Respondent with any written notice objecting to Sunday working or seeking to exercise any statutory opt-out rights. There was no documentary evidence that any such notice was ever given. Accordingly, the Tribunal finds that the Claimant did not exercise the statutory opt-out procedure.

50. The Claimant gave evidence that another employee, Mrs Guillot, did not work as many Sundays as he did. However, the Tribunal has limited evidence concerning the Sundays worked by other members of staff.
51. The documentary evidence establishes that the Claimant worked on fourteen Sundays during his employment. However, the Tribunal has insufficient evidence to determine who worked on every other Sunday during the relevant period. In those circumstances, we do not accept that the evidence establishes that Sunday working fell disproportionately upon the claimant. On the balance of probabilities, we find that Sunday working was shared amongst staff and was not allocated in a materially unequal manner.

Agreement to Sunday working

52. The Tribunal finds that the Claimant agreed to work Sundays.
53. The Claimant in fact worked on fourteen Sundays during his employment. The Tribunal also considered the documentary evidence showing occasions on which the Claimant was asked to work on a Sunday and attended for work. There is no contemporaneous evidence of any refusal to work Sundays or objection to Sunday working. Whilst the Tribunal accepts that the Claimant may not have enjoyed Sunday working, his conduct in repeatedly attending for Sunday shifts leads us to conclude that he agreed to do so.
54. The Tribunal does not, however, accept the Respondent's submission that the Claimant's contract was varied so as formally to make Sunday part of his regular contractual working pattern with Mondays taken in lieu. There is insufficient evidence to support such a contractual variation and no contemporaneous documentation recording such a change. We therefore reject that contention.

Lunch breaks

55. The Tribunal accepts that the Claimant's evidence was that he was discouraged from leaving the shop during his lunch break and was often required to assist

customers whilst attempting to take it. He attributed the instruction not to leave the premises to Mohammed Lasheen and said that Ahmed Lasheen frequently interrupted his breaks by directing him back to the shop floor when customers required assistance. The Claimant did not identify any contemporaneous written complaint regarding lunch breaks, but maintained that he raised the matter verbally during his employment.

56. The Tribunal accepts that, as in many small retail businesses, there were occasions when employees taking a break might be required to assist customers if no other member of staff was immediately available. However, the Claimant has not satisfied the Tribunal, on the balance of probabilities, that he was routinely prevented from taking his contractual lunch break or that he was required to work through it on a regular basis. The allegation was unsupported by any contemporaneous document or complaint. Whilst we accept that the Claimant may on occasion have had his break interrupted or delayed by operational requirements, we do not accept that the evidence establishes a practice of denying him the opportunity to take his lunch break or preventing him from leaving the premises during it. Accordingly, the Tribunal finds that the Claimant has not proved this allegation.

#### Overtime

57. The Tribunal has considered the Claimant's payslips for the duration of his employment. These record the Claimant's basic contractual hours, typically stated as 156 hours per month, together with a separate entry for "extra hours". The payslips show that additional hours were recorded and paid on a number of occasions, including:

| Month    | Time sheet total Hrs | Payslip Basic Hrs | Payslip Extra Hrs | Payslip total hrs | Diff btwn worked & paid | Holiday Hrs | Payslip date | Payment date |
|----------|----------------------|-------------------|-------------------|-------------------|-------------------------|-------------|--------------|--------------|
| Oct 2021 | 146.5                | 156               | 2.5               | 158.5             | +12                     |             | 1/11         | 1/11         |

|               |       |       |       |        |        |      |       |       |
|---------------|-------|-------|-------|--------|--------|------|-------|-------|
| Nov<br>2021   | 173   | 156   | 17.88 | 173.88 | +.088  |      | 30/11 | 30/11 |
| Dec<br>2022   | 173   | 156   | 17    | 173    | 0      | 6    | 4/1   | 4/1   |
| Jan<br>2022   | 157.3 | 156   | 1.33  | 157.33 | 0      |      | 1/2   | 1/2   |
| Feb<br>2022   | 142   | 142   |       |        | 0      | 6    | 1/3   | 4/3   |
| March<br>2022 | 153.5 | 153.5 |       |        | 0      | 6    | 5/4   | 5/4   |
| April<br>2022 | 61.5  | 139.5 |       |        | +78    |      | 5/5   | 6/5   |
| May<br>2022   | 6     | 36.70 |       |        | +30.70 | 97.6 | 5/6   | 10/6  |

58. The Claimant's contract of employment provided for remuneration at an hourly rate, calculated on the basis of a monthly figure of 156 hours. The contract also distinguished between those contractual hours and any overtime hours, which were to be agreed in advance and paid separately. The Claimant's payslips for October 2021 to January 2022 recorded 156 basic hours together with separately identified "extra hours" of 2.5 hours, 17.88 hours, 17 hours and 1.33 hours respectively.
59. The Tribunal compared the Claimant's attendance records (in the bundle) with his payslips (in the bundle). The attendance records show that the Claimant worked approximately 146.5 hours in October 2021, 173 hours in November 2021, 173 hours in December 2021, 157.3 hours in January 2022, 142 hours in February 2022, 153.5 hours in March 2022, 61.5 hours in April 2022 and 6 hours in May 2022.
60. The Tribunal finds that there was a close correlation between the hours recorded in the attendance records and those paid through payroll. In October 2021, November

2021, December 2021 and January 2022, additional hours worked above the contractual monthly figure were recorded on the payslips as "extra hours" and paid accordingly. From February 2022 onwards, the payslips recorded varying figures for basic hours rather than the standard 156-hour figure. Those figures broadly corresponded with the hours shown in the attendance records and were accompanied by separate entries for holiday pay and, in May 2022, sick pay. In some months, including October 2021, April 2022 and May 2022, the Claimant was paid for more hours than were shown on the attendance records.

61. The Claimant disputed the accuracy of the attendance records and maintained that he worked substantially more hours than were recorded. However, he was unable to identify with any precision which entries were inaccurate or provide any contemporaneous records of his own from which alternative hours could be established. Whilst the Tribunal recognises that the attendance records were created by the Respondent, we consider them to be the most reliable evidence available of the hours worked by the Claimant. We therefore place significant weight upon them.

***Performance concerns & dismissal process***

62. The Respondent produced written records of two verbal warnings said to have been given to the Claimant.
63. The first, dated 15 January 2022, recorded concerns that the Claimant's performance fell below the required standard. The matters identified included lack of customer engagement; difficulty locating products and assisting customers; slow performance in relation to helium balloon orders; unsatisfactory visual merchandising (including misplacement of stock and disorganised display of greeting cards); inability to operate the till and point-of-sale system efficiently; and slow and error-prone stock-taking and labelling, said to have resulted in operational inefficiencies and loss of revenue.
64. The second, dated 16 March 2022, stated that there had been little or no improvement in those areas, save for minor improvement in relation to certain balloon orders. It recorded that the Claimant's performance remained unsatisfactory and that a final warning was issued, with a requirement for improvement within two weeks and a warning that failure to improve could lead to

further disciplinary action, including dismissal. It further recorded that the Claimant undertook to improve.

65. In his evidence before the Tribunal, the Claimant denied that the meetings or conversations said to constitute these verbal warnings took place. The Respondent relies upon written records relating to verbal warnings said to have been given to the Claimant on 15 January 2022 and 16 March 2022. The Tribunal is unable, on the evidence presently before it, to determine precisely when those records were created. However, the documents were in existence by August 2022, when they were provided to the Respondent's solicitors for the purpose of obtaining advice in relation to these proceedings. The documents are therefore relatively close in time to the events which they purport to describe, although they cannot be treated as necessarily contemporaneous records.
66. The Tribunal has taken that timing into account when assessing the evidential weight of the documents. They are not contemporaneous notes whose accuracy can simply be assumed. Equally, they are not documents created years later with no temporal connection to the events in question. We note that the documents were in existence by August 2022 and were disclosed to the Respondent's solicitors in the course of obtaining legal advice concerning these proceedings. We are therefore satisfied that they were created substantially closer in time to the relevant events than the hearing itself.
67. The Tribunal does not regard the documents as conclusive evidence that the meetings occurred precisely as recorded. We take into account that there are no contemporaneous meeting notes, emails, signed records or other documentary evidence showing that the warnings were communicated to the Claimant at the time. We also take into account the Claimant's evidence that the meetings did not occur. However, the concerns recorded in the documents broadly reflect the performance criticisms described by Ahmed Lasheen in his witness statement and oral evidence. The Tribunal therefore treats the documents as evidence of the Respondent's account of events and of concerns which were said to exist at the time, whilst exercising caution before treating the contents as an entirely accurate contemporaneous record.
68. We are not satisfied that the alleged performance deficiencies have themselves been proved. However, we accept that Ahmed and Mohamed Lasheen believed

there were performance concerns and relied upon those concerns when deciding to dismiss.

*Worsening treatment*

69. The Claimant's evidence was that the attitude of management changed after he repeatedly raised concerns about late payment of wages. He inferred that the two brothers discussed his complaints and that his treatment deteriorated thereafter.
70. The Tribunal accepts that the Claimant genuinely perceived a change in his treatment during the latter part of his employment. We also accept that disputes concerning the timing of wage payments became a recurring feature of the employment relationship. The documentary evidence shows repeated enquiries by the Claimant concerning unpaid wages and a number of delayed payments.
71. The payslips indicate a change in pay calculation from Feb 2022 onwards. Whilst the Tribunal does not draw any specific conclusion from that change in itself, it forms part of the wider factual background to the parties' deteriorating relationship. The Tribunal finds that the employment relationship deteriorated during the latter part of the Claimant's employment.
72. The evidence does not permit the Tribunal to identify a single cause for that deterioration. Rather, we find that it arose from a combination of factors. These included recurring disputes concerning the timing of wage payments, growing interpersonal tensions between the Claimant and management, and a loss of confidence on both sides of the employment relationship. We find that these matters collectively contributed to the breakdown in the working relationship.
73. We find that those matters collectively contributed to the breakdown in the working relationship which existed by the time the decision was taken to terminate the Claimant's employment.

***Termination***

74. The Claimant's employment was terminated by the respondent, in writing, on 17 April 2022. He worked and was paid for his notice period. His effective date of termination was 17 May 2022.
75. The Respondent's termination letter said that the Reason for termination was performance and said "*We can confirm that there is no improvement in your*

*performance of duties as a sales assistant after two meetings and verbal warnings given to you in mid January and March 2022 by the company director”.*

76. The Tribunal notes that the termination letter is the only contemporaneous document recording the reason given to the Claimant for his dismissal. The letter expressly attributed the dismissal to an alleged lack of improvement following the verbal warnings said to have been given in January and March 2022. There is no reference within the letter to complaints regarding wages, Sunday working, race, or any other matter.
77. The Tribunal finds that the decision to dismiss the Claimant was taken jointly by Ahmed Lasheen and Mohamed Lasheen. We accept that Ahmed Lasheen was the individual who worked most closely with the Claimant on a day-to-day basis and who held concerns regarding his performance. However, we find that the decision to terminate the Claimant's employment was ultimately a management decision taken jointly by the two brothers. We do not find that either brother acted alone in deciding to dismiss the Claimant.
78. The Claimant's witness evidence was that both brothers were involved in the management of the business and that both were involved in decisions concerning his employment. We found the Claimant's evidence on this issue credible and had no reason to doubt it. There was no persuasive evidence that responsibility for the dismissal rested with one brother to the exclusion of the other. On the balance of probabilities, we find that the dismissal was a joint management decision.

***Racist remarks***

79. The Claimant's case is that a number of aspects of his treatment during employment were influenced by considerations of race. He relies both upon specific remarks allegedly made by Ahmed Lasheen and upon a number of workplace practices and decisions which he contends formed part of a wider pattern of discriminatory treatment. The Tribunal addresses each of those matters separately below.

***Remark 1: Stadium smell***

80. The Claimant alleges that on or about 11 January 2022 he overheard Ahmed Lasheen speaking on the telephone in Arabic whilst on the shop floor. The Claimant understood the conversation to relate to a football match between Egypt and

Nigeria being played in the Africa Cup of Nations in Cameroon. He alleges that Ahmed Lasheen stated, in substance, “tell me how the smell in the stadium looks like”. The Claimant’s evidence is that the remark was not addressed to him but was overheard whilst he was carrying out his duties in the shop.

81. Mr Ahmed Lasheen denied making the remark. However, he was unable to provide any account of the conversation or any alternative explanation for the words alleged to have been used. His evidence was that he did not recall making the statement and did not accept that he had said it.
82. The Claimant's account of the remark remained materially consistent throughout his evidence. He was able to identify the occasion by reference to the Africa Cup of Nations match which he believed was being discussed. The Tribunal accepts that the Claimant genuinely heard and understood the words which he attributes to Ahmed Lasheen.
83. Having considered the evidence as a whole, the Tribunal finds on the balance of probabilities that Ahmed Lasheen made the remark alleged by the Claimant. We reach that conclusion because the Claimant's account was detailed and consistent and because the remark was of a sufficiently unusual nature that it is unlikely to have been invented or reconstructed from a mistaken recollection.
84. The Tribunal notes, however, that the remark was overheard during a telephone conversation to which the Claimant was not a party. We therefore have only one side of the conversation and very limited surrounding context. The Tribunal is unable at this stage to make findings as to the meaning intended by the remark or the significance properly to be attached to it. Those matters are considered when addressing the discrimination complaint.

*Remark 2: Arabs learn quickly*

85. The Claimant further alleges that approximately one week to ten days later he overheard Ahmed Lasheen speaking in Arabic on the telephone to a woman. According to the claimant, Ahmed Lasheen stated that “we Arabs learn quickly because of our genes”. The Claimant’s evidence is that he was not a participant in the conversation but overheard the remark whilst working on the shop floor. He relies upon his understanding of the Arabic language and Egyptian dialect in attributing that meaning to the words used.

86. Ahmed Lasheen denied making the remark and stated that he did not hold the views attributed to him. He did not, however, provide any alternative account of the conversation said to have taken place.
87. The Tribunal found the Claimant's evidence concerning this remark to be detailed and internally consistent. In cross-examination he was able to explain how he understood the words used and to identify features of the Arabic language and grammar which supported his interpretation of the conversation. His account remained materially unchanged despite detailed questioning. The Tribunal considered that evidence to be persuasive and supportive of the reliability of his recollection.
88. The Tribunal also considers it significant that the wording attributed to Ahmed Lasheen is both unusual and specific. The Claimant's account did not appear formulaic or reconstructed. Rather, it bore the hallmarks of a witness recalling a particular statement that had remained in his memory over time.
89. Having considered the evidence as a whole, the Tribunal finds on the balance of probabilities that Ahmed Lasheen made the remark alleged by the Claimant.

*Remark 3: white people & black people*

90. The Claimant also alleges that some four or five days later he overheard Ahmed Lasheen make a further remark in Arabic during a telephone conversation on the shop floor. The Claimant's evidence is that Ahmed Lasheen said: "we are white and there are black people". The Claimant was unable to provide significant additional context for that conversation beyond his evidence that he overheard it whilst carrying out his duties. The remark was not alleged to have been addressed to him.
91. Ahmed Lasheen denied making the remark and was unable to provide any alternative account of the conversation relied upon by the Claimant.
92. The Tribunal found the Claimant's evidence concerning this remark to be credible and materially consistent. Although the conversation occurred several years before the hearing, the Claimant's account remained substantially unchanged during his evidence. The Tribunal also notes that the wording attributed to Ahmed Lasheen was sufficiently unusual and specific that it is unlikely to have been invented or reconstructed from a vague recollection.

93. Having considered the evidence as a whole, the Tribunal finds on the balance of probabilities that Ahmed Lasheen made the remark alleged by the Claimant.
94. As with Remarks 1 and 2, the Tribunal notes that the remark was overheard during a telephone conversation to which the Claimant was not a party. The Tribunal therefore has only limited evidence concerning the wider context of the conversation and makes no finding at this stage as to the meaning intended by the remark. That issue is addressed later in this judgment when considering the discrimination complaint.

Remark 4: working with animals

95. Finally, the Claimant alleges that approximately five or six days later Ahmed Lasheen said to his brother, Mohammed Lasheen, in Arabic and in the Claimant's presence, "we are working with animals". The Claimant's evidence is that the remark was made in the context of a missing balloon order which had been placed by a customer. He understood the plural reference to be directed towards himself and Ms Guillot, who were the two non-Arab members of staff working in the shop. The Claimant relies upon that interpretation as the basis for his allegation concerning the remark.
96. Ahmed Lasheen denied making the remark and disputed the Claimant's account of the incident. He did not, however, provide any alternative account of the conversation alleged by the Claimant.
97. The Tribunal found the Claimant's evidence concerning this remark to be credible and consistent. His account remained materially unchanged throughout the proceedings and was given in a measured manner. Whilst the events occurred several years before the hearing, the Tribunal was satisfied that the Claimant was recalling a specific incident which had remained in his memory.
98. The Tribunal has taken into account that the remark is alleged to have been made directly in the workplace, in the Claimant's presence and in the context of an operational issue concerning a customer order. The Tribunal found the Claimant's account of the circumstances in which the remark was made to be plausible.
99. Having considered the evidence as a whole, the Tribunal finds on the balance of probabilities that Ahmed Lasheen made the remark alleged by the Claimant.

100. The Tribunal makes no finding at this stage as to whether the remark carried any racial connotation or whether the Claimant's interpretation of the remark was correct. Those issues are considered separately when addressing the discrimination complaint.

### Conclusions

101. Having considered the evidence as a whole, the Tribunal finds on the balance of probabilities that the remarks were made. In reaching that conclusion, the Tribunal has taken into account that Ahmed Lasheen was unable to provide any alternative account of the conversations relied upon by the Claimant. His evidence was largely limited to denying that the remarks had been made or stating that he could not recall them. In the circumstances, and for the reasons set out above, we preferred the Claimant's evidence where the parties' accounts differed.
102. The Claimant's account of those remarks was detailed, internally consistent and materially unchanged throughout the proceedings. Although the events occurred several years before the hearing, the Tribunal was satisfied that the Claimant was recalling specific incidents which had remained in his memory.
103. The Tribunal also considers it significant that the remarks alleged were unusual and highly specific in their wording. In those circumstances, we consider it more likely than not that the Claimant was recounting comments he had genuinely heard rather than reconstructing conversations from memory or inference. Where the evidence of the Claimant and the Respondent differed on this issue, we preferred the Claimant's evidence.
104. The Tribunal emphasises that its finding that the remarks were made does not determine what meaning should properly be attributed to them. In three of the four incidents, the remarks were overheard during telephone conversations to which the Claimant was not a party and for which the Tribunal has only limited contextual information. The significance of the remarks, and whether they support the discrimination complaints, are matters addressed separately below.

## **Law**

### ***Dismissal***

105. An employee has the right not to be unfairly dismissed by his employer pursuant to s.94(1) of the Employment Rights Act 1996 (ERA96).
106. The Tribunal must first determine whether the Claimant was dismissed. The burden rests on the Claimant to establish, on the balance of probabilities, that there was a dismissal within the meaning of s. 95(1) of ERA96.
107. The Tribunal must also identify the effective date of termination (“EDT”) in accordance with s.97 ERA96. The EDT is the date on which the dismissal takes effect and, where notice is given, is the date on which that notice expires.
108. If the Claimant establishes that he was dismissed, the burden shifts to the Respondent to show the reason, or principal reason, for the dismissal. The reason for dismissal is the set of facts or beliefs which operated on the mind of the decision-maker at the time of dismissal. The Tribunal must identify the real reason for dismissal and is not confined to the employer’s stated explanation.

*Automatically unfair dismissal*

109. In some circumstances, a dismissal will be automatically unfair if the reason or principal reason for the dismissal is one of those specified in Part X ERA96. In such cases, there is no requirement for the Claimant to have the qualifying period of continuous employment.
110. A shop worker or betting worker acquires protection under section 101 ERA 1996 by falling within the statutory Sunday working regime.
  - 110.1. A “shop worker” is defined by section 41 ERA 1996 as an individual who is or may be required under their contract of employment to do shop work, that is, work in or about a shop, including work ancillary to the sale of goods. The definition is contractual in focus; it is sufficient that the contract permits the employer to require such work.
  - 110.2. This will arise either because they are within the category of “protected” workers preserved by the legislation (for example, those whose contracts did not include Sunday working when the regime was introduced), or because they have subsequently exercised the statutory right to opt out of Sunday working by giving the appropriate notice to the employer.

- 110.3. Upon the expiry of the prescribed notice period, the worker is treated as a protected (or opted-out) shop or betting worker for the purposes of the Act.
111. The protection afforded is that dismissal will be automatically unfair if the reason, or principal reason, for dismissal is that the worker refused, or proposed to refuse, to work on Sunday, or gave (or proposed to give) an opting-out notice. The statutory scheme therefore removes the need for any qualifying period of employment and disappplies the ordinary test of fairness under section 98. However, in the case of opted-out workers, the protection does not apply where the refusal relates to Sundays falling within the statutory notice period following the opting-out notice. Subject to that qualification, the legislation provides a direct and specific protection against dismissal for declining Sunday working.
112. S.104 ERA96 provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason, or principal reason, for the dismissal is that the employee asserted a statutory right. A statutory right includes a right conferred by employment legislation, such as the right to be paid wages or to receive at least the national minimum wage.
113. The Tribunal must determine, as a question of fact, whether the Claimant asserted such a right and whether that assertion was the reason or principal reason for the dismissal.
114. Where it is alleged that dismissal followed the assertion of a statutory right, it is not necessary for the employee to have used precise legal language. It is sufficient that the employee communicated, in substance, a complaint or assertion that they were entitled to a legal right. The Tribunal must again identify the real reason for dismissal by examining what operated on the mind of the decision-maker.
115. In addition, special protection is afforded to certain shop workers in relation to Sunday working. Where an employee is a protected shop worker within the meaning of the legislation, dismissal for refusing or objecting to Sunday working may be automatically unfair. A worker is a “protected” worker within the meaning of section 36 or where they have become an “opted-out” worker by giving written notice objecting to Sunday working and the applicable statutory notice period has expired. In either case, the worker is treated as protected for the purposes of section 101 ERA 1996.

116. The Tribunal must determine whether the Claimant fell within that category, whether he refused or objected to Sunday working, and whether that refusal or objection was the reason or principal reason for dismissal.
117. In each case, the question remains one of causation. The Tribunal must determine whether the prohibited reason was the reason, or principal reason, for dismissal. If it was, the dismissal will be automatically unfair.

***Direct race discrimination***

118. Race is a protected characteristic within the meaning of the Equality Act 2010.
119. Section 13 of the Equality Act 2010 prohibits direct discrimination. A person discriminates against another if, because of a protected characteristic, they treat the Claimant less favourably than they treat or would treat others. Accordingly, two elements must be established: first, that there was less favourable treatment and, secondly, that the reason for that treatment was the protected characteristic.
120. In determining a complaint of direct discrimination, the Tribunal's primary task is to identify the reason for the treatment complained of. The Tribunal must determine what consciously or unconsciously operated on the mind of the alleged discriminator at the relevant time. Motive is irrelevant, and discrimination may occur without conscious intent. The protected characteristic need not be the sole or principal reason for the treatment, provided that it had a significant influence on the outcome.
121. Less favourable treatment is assessed objectively. The question is whether the Tribunal considers that the Claimant was treated less favourably. It is not sufficient that the treatment was merely different; it must be disadvantageous in the sense that a reasonable worker might regard it as such.
122. The comparison is ordinarily with an actual or hypothetical comparator who does not share the Claimant's protected characteristic and whose circumstances are not materially different. Where no actual comparator is identified, the Tribunal must construct a hypothetical comparator with materially similar circumstances.
123. In some cases, it may be appropriate to focus first on the reason for the treatment before addressing questions of comparison. If the Tribunal finds that the treatment was for a reason unrelated to the protected characteristic, the claim must fail. If,

however, the protected characteristic played a causative role, the Tribunal will ordinarily have little difficulty in concluding that the treatment was less favourable.

124. The fact that there is a difference in status and a difference in treatment is not, without more, sufficient to establish discrimination. The Tribunal must consider whether all the evidence, taken together, supports an inference that the treatment was because of race.
125. The burden of proof is governed by section 136 of the Equality Act 2010. The Claimant must first establish facts from which the Tribunal could conclude, in the absence of an adequate explanation, that discrimination has occurred. If that burden is satisfied, the burden shifts to the Respondent to prove that the treatment was in no sense whatsoever because of race.
126. Direct evidence of discrimination is rare. The Tribunal is therefore entitled to draw inferences from the primary facts, including from the absence of an adequate explanation, the credibility of witnesses, the consistency of the Respondent's account, and the surrounding circumstances as a whole. However, any inference must be grounded in the evidence; a mere suspicion is not sufficient.

### ***Unlawful Deductions from Wages***

127. An employer shall not make a deduction from a worker's wages unless the deduction is authorised by statute, authorised by a provision of the worker's contract, or the worker has previously signified in writing their agreement or consent to the deduction.
128. A deduction occurs where the total wages paid on any occasion are less than the amount of wages properly payable on that occasion. The question of what is "properly payable" is determined by reference to the contractual and legal entitlements of the worker. The Tribunal must therefore determine whether the Claimant had a legal entitlement to the sums claimed.
129. "Wages" include any sums payable to a worker in connection with their employment. This may include salary and, where applicable, overtime or other payments depending on the contractual arrangements between the parties.
130. A claim for unlawful deductions is a statutory claim. It is distinct from a breach of contract claim. The Tribunal's task is to determine whether there was an

entitlement to payment which has not been met, rather than to assess damages for breach.

131. A complaint must ordinarily be presented within three months of the date of the deduction or the last in a series of deductions. Where a series is alleged, the Tribunal must determine as a matter of fact whether there is a sufficient factual and temporal link between the alleged underpayments. The Tribunal may only extend time where it was not reasonably practicable for the claim to be presented in time and it was presented within a reasonable further period.

***Breach of contract /Wrongful dismissal***

132. A claim of wrongful dismissal concerns whether the Respondent acted in breach of contract in terminating the Claimant's employment. An employee is entitled to notice of termination in accordance with the terms of their contract or the statutory minimum, whichever is greater. Where an employer dismisses without notice or payment in lieu in breach of contract, the employee is entitled to damages representing the pay and benefits that would have been received during the notice period.
133. The Tribunal must determine the relevant terms of the contract, including those relating to notice, pay, and duties. Unless the contract provides otherwise, an employer is not entitled to withhold or reduce pay where the employee has performed work under a salary arrangement.
134. Where an employer seeks to justify dismissal without notice, it must establish that the employee committed a repudiatory breach of contract. A repudiatory breach is a breach which goes to the root of the contract or demonstrates an intention no longer to be bound by its essential terms. Whether such a breach occurred is a question of fact.
135. A repudiatory breach does not automatically terminate the contract. It gives the innocent party the right to accept the breach and treat the contract as at an end. The Tribunal must therefore determine whether there was a fundamental breach and whether it was accepted by the employer.
136. If no repudiatory breach is established, dismissal without notice will be wrongful and the Claimant will be entitled to damages for the notice period.

***Time limits***

137. A complaint of unlawful deductions from wages must ordinarily be presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made or, where there is a series of deductions, within three months of the last deduction in the series. The Tribunal may extend time where it was not reasonably practicable for the complaint to be presented within that period and the complaint was presented within such further period as the Tribunal considers reasonable.
138. A complaint for breach of contract presented to the Employment Tribunal must be brought within three months beginning with the effective date of termination of employment, subject to any extension arising from the Acas Early Conciliation process.
139. A complaint of discrimination under the Equality Act 2010 must ordinarily be presented before the end of the period of three months beginning with the date of the act complained of. Where the complaint relates to conduct extending over a period, time runs from the end of that period.
140. In determining whether conduct extends over a period, the Tribunal must consider the substance of the acts complained of and whether they form part of an ongoing state of affairs, continuing practice, or linked course of conduct. A succession of discrete acts will not necessarily amount to conduct extending over a period merely because they involve the same individuals or arise in the same employment relationship.
141. Where a discrimination complaint is presented out of time, the Tribunal has a discretion to extend time if it considers that it is just and equitable to do so. The exercise of that discretion is broad. The Tribunal must consider all the circumstances of the case and determine where the balance of justice lies.
142. Relevant considerations may include the length of and reasons for any delay, the extent to which the cogency of the evidence has been affected, any prejudice suffered by the parties, the steps taken by the Claimant once aware of the claim, and the overall merits and circumstances of the case. No single factor is determinative and the weight to be attached to each consideration will depend upon the facts of the particular case.

## **Application of law to the facts**

### ***Time Limits***

143. The Tribunal is satisfied that the complaints of automatic unfair dismissal, unlawful deductions from wages and breach of contract were presented within the applicable time limits
144. The discrimination complaint, at least insofar as it relates to the dismissal, is in time. Earlier allegations fall to be considered pursuant to section 123 Equality Act 2010.
145. The Claimant alleges four discriminatory remarks by Ahmed Lasheen. Only the first is anchored to a specific date, namely 11 January 2022. The remaining allegations are expressed in approximate terms, said to have occurred days later. No precise dates were provided.
146. The Tribunal has considered whether the alleged remarks formed conduct extending over a period within the meaning of section 123 Equality Act 2010. The remarks were said to have been made by the same individual within a relatively short period of time. However, they were separate comments allegedly made on separate occasions and were not linked to any identified policy, rule or continuing practice. The Tribunal therefore proceeds on the basis that each remark constituted a discrete act.
147. The Claimant's evidence was that he did not raise formal complaints during his employment because he feared doing so might adversely affect his position or result in the loss of his employment. We accept that evidence. Whilst that does not of itself determine the question of an extension of time, it provides a reasonable explanation for the Claimant's failure to pursue the matters complained of whilst the employment relationship remained ongoing. We have taken that explanation into account as one of the relevant factors in our assessment of whether it would be just and equitable to extend time.
148. The Tribunal does not regard the Claimant's willingness to complain about late payment of wages as inconsistent with that explanation. We accept his evidence that he felt more confident asserting rights relating to the payment of wages than raising allegations of discrimination whilst he remained employed. We do not consider that distinction to be implausible. An employee may be prepared to

pursue some workplace concerns whilst remaining reluctant to raise allegations of discrimination, particularly where they wish to preserve their employment and are uncertain about the consequences of doing so.

149. The Tribunal has concluded that it is just and equitable to extend time. The delay was modest. It accepts the Claimant's evidence that he was reluctant to raise allegations of discrimination during his employment because he wished to preserve his position and avoid jeopardising his employment. Once the employment relationship ended, the Claimant pursued his claims within a relatively short period.
150. Although not all potentially relevant witnesses were available to give evidence at the hearing, the Tribunal is not satisfied that the delay itself caused any material forensic prejudice to the Respondent. The Tribunal has been able to determine the factual issues on the basis of the evidence available.
151. Taking all relevant circumstances into account, including the relatively short delay, the Claimant's explanation for that delay, the absence of material prejudice attributable to it, and the importance of determining the allegations on their merits, we consider that the balance of justice favours an extension of time. The Tribunal therefore extends time to hear the discrimination complaints.

### ***Dismissal***

152. It is common ground that the Claimant did not have the qualifying period of continuous employment required to pursue a complaint of ordinary unfair dismissal.
153. The Claimant's case is that throughout his employment he repeatedly asserted statutory rights, in particular by complaining about the late payment of wages, alleged unlawful deductions, and unpaid overtime, and that his persistence in raising those matters led directly to his dismissal. He further contends that he was required to work on Sundays contrary to his contractual and statutory position, that he objected to that requirement, and that his dismissal was, at least in part, a consequence of those objections. Accordingly, the Claimant contends that the reason or principal reason for his dismissal was that he asserted statutory employment rights and/or that he refused (or resisted being required) to work on

Sundays as a protected shop worker, such that the dismissal falls within the scope of automatically unfair dismissal.

154. In those circumstances, the Tribunal has jurisdiction to consider the complaint of dismissal only if, and to the extent that, the Claimant establishes that the reason, or principal reason, for dismissal falls within a category of automatically unfair dismissal relied upon, namely:

154.1. asserting a statutory right (s.104 ERA96); and/or

154.2. connected with refusal of Sunday working (s101 ERA96).

155. The Claimant was a "shop worker" within the statutory meaning. However, the Claimant was not a protected shop worker or an opted-out shop worker within the meaning of the statutory scheme. We have found that he never provided the Respondent with any written notice objecting to Sunday working and did not exercise the statutory opt-out procedure. Accordingly, he did not acquire the statutory protection relied upon under section 101 ERA 1996.

156. In relation to section 101 ERA 1996, we have found that the Claimant agreed to work Sundays and in fact worked fourteen Sundays during his employment. Whilst he may have been dissatisfied with that arrangement, he did not provide any written opt-out notice and was not a protected shop worker at the material time. We are therefore satisfied that the statutory regime concerning protected shop workers was not engaged.

157. Further and in any event, we have not found that the Claimant refused Sunday working or that any dismissal decision was connected with such a refusal. We therefore conclude that the complaint under section 101 ERA 1996 is not well-founded.

158. The Claimant also relies upon section 104 ERA 1996. We accept that throughout his employment he repeatedly raised concerns regarding the timing of his wage payments and repeatedly sought payment of wages which he considered were due. Indeed, it was not disputed by the Respondent that the Claimant frequently chased payment of his wages. We are satisfied that, by doing so, the Claimant asserted statutory rights relating to wages.

159. However, the existence of a protected assertion does not itself establish that it was the reason, or principal reason, for dismissal. The Tribunal must determine the

reason which operated on the minds of the decision-makers. We have found that the only contemporaneous document recording the reason for dismissal was the termination letter, which attributed the dismissal to concerns regarding performance and a lack of improvement following earlier warnings. We have also found that the decision to dismiss was taken jointly by Ahmed Lasheen and Mohamed Lasheen. Whilst the Claimant's repeated complaints regarding late payment of wages formed part of the wider deterioration in the employment relationship, we have not found evidence establishing a sufficient causal link between those complaints and the decision to dismiss him. In particular, we are not satisfied that the complaints regarding wages materially influenced the decision-makers when the decision to dismiss was taken, nor that they formed the operative reason for that decision.

160. We find that the stated reason was performance, but the broader reality was that the dismissal arose from the breakdown in the working relationship between the Claimant and the Respondent's management. The Claimant's concerns regarding pay formed part of that background. However, they were only one aspect of a broader deterioration in relations and, viewed in context, were not the feature of that deterioration which caused the dismissal. We are not satisfied that the assertion of statutory rights was the reason, or principal reason, for dismissal.
161. Accordingly, the Claimant has not established that his dismissal was automatically unfair under either section 101 or section 104 ERA 1996. The complaint of automatic unfair dismissal is therefore dismissed.

### ***Direct Race Discrimination***

#### **Remark 1**

162. We have found that Mr Lasheen said, in the context of an Egypt v Nigeria football match, *"tell me how the smell in the stadium look like"*.
163. Viewed in isolation, the remark is ambiguous. We only have one side of a telephone conversation. We do not know the preceding discussion, the point being made, or whether there was a linguistic or translation issue. The Tribunal therefore approaches the interpretation of the remark with caution.

164. The Claimant's case is that the remark was a derogatory reference to black Africans. That is a possible interpretation. We accept that the remark is capable of bearing that interpretation.
165. However, the Tribunal does not consider that such an interpretation necessarily follows from the words used. The remark did not expressly refer to race, nationality, ethnicity or colour. Nor did it identify Nigerian supporters as opposed to Egyptian supporters or spectators generally. The Tribunal also notes that the wording was unusual and that we have only a limited understanding of the surrounding conversation.
166. The Tribunal recognises that other, non-racial interpretations of the remark are possible. Standing alone, the words are capable of a race-neutral meaning and there are a number of conceivable explanations which would not involve any racial connotation. However, no such explanation was advanced by Mr Lasheen. His evidence was not that the remark had an innocent explanation but rather that it had not been made at all. Having rejected that evidence and found that the remark was made, the Tribunal is left to assess its likely meaning on the evidence available.
167. Taking account of the words used, the context of a football match between Egypt and Nigeria, the absence of any alternative explanation supported by the evidence, and the limited context available to the Tribunal, we conclude that the Claimant's interpretation is marginally more likely than not to be correct. Accordingly, the Tribunal finds that Remark 1 was more likely than not a remark carrying racial connotations. The Tribunal recognises that the remark is capable of more than one interpretation and reaches this conclusion with some hesitation.
168. The significance of that finding for the purposes of section 13 Equality Act 2010 is considered further below.

**Remark 2:**

169. We have found that Mr Lasheen stated, in substance, "*we Arabs learn quickly because of our genes*".
170. The Tribunal finds that Remark 2 was plainly racial in content. It expressly attributed a positive characteristic, namely an ability to learn quickly, to Arabs as a group by reason of their genetic inheritance.

171. The Tribunal further finds that the remark conveyed a belief that members of a particular ethnic or racial group possessed an inherent advantage arising from their genetic composition. That is a proposition based directly upon race or ethnicity.

172. We therefore conclude that Remark 2 was a racist remark.

173. The Tribunal must then determine whether the making of that remark constituted less favourable treatment of the Claimant because of race for the purposes of section 13 Equality Act 2010.

**Remark 3:**

174. We have found that Mr Lasheen said "*we are white and there are black people*".

175. Again, we only have one side of a telephone conversation. The remark expressly refers to racial categories. Unlike Remark 1, race is therefore directly invoked.

176. However, not every reference to race is necessarily a racist statement. The phrase is descriptive on its face. Without the surrounding conversation, it is impossible to know whether the speaker was discussing demographics, football teams, nationality, appearance, racism itself, or some other topic.

177. The Tribunal therefore asks whether the remark, viewed objectively and in context, conveyed a derogatory or preferential racial meaning.

178. The existence of Remark 2 is relevant. The Tribunal has found that Mr Lasheen expressed a view of genetic superiority based on race or ethnicity. That finding tends to make a race-related interpretation of Remark 3 more plausible than would otherwise be the case.

179. Nevertheless, the Tribunal must make specific findings about Remark 3 itself. The words used do not expressly articulate racial hostility, superiority or prejudice. The question is therefore whether, viewed in context, the remark was more likely than not intended to convey a racial meaning.

180. Standing back and considering the evidence as a whole, the Tribunal concludes that the Claimant's interpretation is marginally more likely than not to be correct.

181. Whilst the wording is capable of a neutral interpretation, the Tribunal considers it significant that the remark expressly distinguished between racial groups and was made during the same period as Remark 2. In the absence of any alternative

explanation supported by the evidence, we conclude that the remark is more likely than not to have carried racial connotations.

182. Accordingly, the Tribunal finds that Remark 3 was more likely than not a remark carrying racial connotations. The significance of that finding for the purposes of section 13 Equality Act 2010 is considered further below.

**Remark 4:**

183. We have found that Mr Lasheen said to his brother, "*we are working with animals*".
184. Like Remark 1, this remark contains no express racial reference. In isolation, the phrase is a commonplace expression of frustration about other people. It is frequently used in workplaces without any racial connotation. There is no evidence that the Claimant or any other particular racial group was identified in the remark.
185. The Claimant's case was that the remark referred to himself and Ms Guillot because they were the two non-Arab members of staff working in the shop. We accept that this was the interpretation which the Claimant placed upon the remark. However, the Tribunal is not satisfied that the evidence establishes that the reference to "animals" was linked to race rather than to the operational problem which the Claimant himself said had prompted Mr Lasheen's frustration. The remark did not identify any racial group and there is no evidence that race formed part of the discussion taking place at the time.
186. The Tribunal accepts that language describing people as animals can, in some circumstances, be racially charged. However, there must be some evidential basis for concluding that this was the meaning conveyed. There is insufficient evidence to support such a finding. Even taking account of Remark 2, we do not consider that the balance of probabilities favours a conclusion that Remark 4 was intended or understood as a racist remark.
187. We therefore find that Remark 4 was an insulting and derogatory remark, but we are not satisfied that it was made because of race.

**Overall assessment of the remarks**

188. The Tribunal has found that all four remarks were made.
189. The remarks were made by the same individual, Mr Ahmed Lasheen, within a relatively short period of time.

190. The Tribunal has found that Remarks 1, 2 and 3 were racist remarks. The Tribunal's conclusion regarding Remark 4 is as set out above.
191. The Tribunal does not assess the remarks in isolation from one another. The fact that multiple race-related remarks were made during the same period forms part of the overall factual matrix when assessing the remaining complaints of direct discrimination.
192. However, the weight to be attached to each remark differs. Remark 2 carries substantial evidential weight because it expressly attributes a positive characteristic to a particular ethnic group on the basis of genetic inheritance. By contrast, Remarks 1 and 3 are affected to varying degrees by the absence of surrounding context and the ambiguity identified above.
193. The Tribunal therefore takes the remarks into account when considering whether the remaining treatment complained of was because of race.
194. The Tribunal must distinguish between findings that the remarks were made and findings that those remarks themselves constituted actionable direct discrimination against the Claimant.
195. Remarks 1, 2 and 3 were not directed at the Claimant. Rather, they were comments overheard by him during telephone conversations to which he was not a party. Whilst we have found that Remarks 1, 2 and 3 carried racial connotations, and that Remark 2 was plainly racist in content, the Tribunal is not satisfied that the making of those remarks themselves constituted less favourable treatment of the Claimant for the purposes of section 13 Equality Act 2010.
196. The Tribunal therefore does not find that the making of Remarks 1, 2 or 3, considered as standalone acts, amounted to direct race discrimination against the Claimant. However, those remarks form part of the evidential background when determining whether other treatment complained of occurred because of race.
197. For the reasons already given, the Tribunal is not satisfied that Remark 4 was made because of race and that allegation likewise fails as a standalone complaint of direct discrimination.

**Alleged less favourable treatment**

**198. Burden of proof**

- 198.1. The Tribunal has applied section 136 Equality Act 2010. The burden initially rests upon the Claimant to establish facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent committed an act of discrimination.
- 198.2. In determining whether that burden is discharged, the Tribunal considers all the evidence and stands back to evaluate the facts as a whole rather than examining each fact in isolation.
- 198.3. In the present case, we have found that Mr Ahmed Lasheen made Remarks 1, 2 and 3. We have further found that those remarks carried racial connotations and that Remark 2 was plainly racist in content.
- 198.4. We have also found that Mr Ahmed Lasheen exercised day-to-day managerial authority over the Claimant and required him to undertake personal errands which were outside the ordinary functions of a retail sales assistant. We rejected the Respondent's explanation that these were merely reciprocal favours between colleagues.
- 198.5. Standing back and considering the evidence as a whole, we are satisfied that the Claimant has established facts from which the Tribunal could conclude, in the absence of an adequate explanation, that some of the treatment complained of may have been because of race.
- 198.6. The burden therefore shifts to the Respondent to prove that race played no part whatsoever in the treatment complained of. Whether the Respondent has discharged that burden falls to be considered in relation to each allegation individually.

## **199. Dismissal**

- 199.1. We take into account our finding that Ahmed Lasheen made race-related remarks. Those findings are relevant and require careful scrutiny of the Respondent's explanation for the dismissal. However, the Tribunal must determine the reason for the dismissal itself and not merely whether race-related conduct occurred elsewhere during the employment relationship.

- 199.2. However, the dismissal was not Ahmed Lasheen's decision alone. We have found that the decision was taken jointly by Ahmed Lasheen and Mohamed Lasheen. We further find that Mohamed Lasheen recruited the Claimant approximately seven and a half months before the dismissal and there is no evidence before the Tribunal that he shared the racial attitudes reflected in Remark 2. Nor is there any evidence that race formed part of the discussions leading to dismissal or otherwise entered the decision-making process.
- 199.3. We have found that the employment relationship had significantly deteriorated by the time of the dismissal. Recurring disputes concerning pay, interpersonal tensions and a loss of confidence on both sides contributed to that deterioration. The Respondent also relied upon concerns regarding the Claimant's performance, although the evidential strength of those concerns is limited for the reasons already discussed. Whilst the Claimant's complaints regarding late payment of wages formed part of the background to that deterioration, we do not find that they were the reason, or principal reason, for the decision to dismiss him.
- 199.4. Standing back and considering the evidence as a whole, including our findings regarding Remarks 1, 2 and 3, we are nevertheless not satisfied that race materially influenced the joint decision to dismiss. We attach particular weight to our finding that the dismissal decision was taken jointly by Ahmed Lasheen and Mohamed Lasheen. We have not found evidence that Mohamed Lasheen shared Ahmed Lasheen's racial attitudes and there is no evidence that race was discussed or taken into account during the decision-making process.
- 199.5. We are unable to conclude that the Claimant's race was an effective cause of the dismissal. Rather, we find that the decision resulted from the breakdown in the employment relationship between the parties, against a background of interpersonal tensions, disputes concerning pay and the Respondent's stated concerns regarding the Claimant's performance.

## **200. Late payment**

- 200.1. The Claimant alleges that his wages were paid late because of race. We accept that wages were frequently paid after their contractual due date. However, we have also found that delays affected Ms Guillot, who was not Black African. Indeed, the evidence showed that in some months the Claimant was paid before Ms Guillot. We accept that the Respondent advanced non-discriminatory explanations for the late payments, including payroll and administrative difficulties, and we note that the Claimant was ultimately paid all sums due to him.
- 200.2. Standing back and considering the evidence as a whole, including our findings regarding the remarks made by Mr Lasheen, we are not satisfied that the late payment of wages occurred because of the Claimant's race. The evidence points to a payroll issue affecting more than one employee rather than differential treatment on racial grounds.
- 200.3. This allegation of direct race discrimination therefore fails.

**201. Failure to pay wages or overtime**

- 201.1. The Claimant alleged that the Respondent failed to pay wages and overtime due to him because of race. We have considered the documentary and oral evidence with care. However, we are unable to conclude that the Claimant was not paid wages or overtime to which he was entitled. Whilst wages were at times paid late, we have not found that sums properly due remained unpaid
- 201.2. In those circumstances, the Tribunal is unable to identify any less favourable treatment arising from a failure to pay wages or overtime. Further, there is no evidence that payroll arrangements operated differently as between the Claimant and employees outside his racial group.
- 201.3. Standing back and considering the evidence as a whole, including our findings regarding the remarks made by Mr Lasheen, we are not satisfied that any issue concerning wages or overtime arose because of the Claimant's race.

- 201.4. Accordingly, the factual basis of this allegation is not established and the complaint of direct race discrimination in this respect fails.

**202. Change the Claimant's duties from sales assistant to cleaner**

- 202.1. The Tribunal found that there was no contractual or practical change to the Claimant's role from retail sales assistant to cleaner. The Claimant remained employed as a retail sales assistant throughout his employment.
- 202.2. The Tribunal accepts that the Claimant was not routinely entrusted with the till key and did not enjoy the same degree of independent access to the till as might ordinarily be expected of a retail sales assistant. However, we are not satisfied that this amounted to a change in his role from sales assistant to cleaner. Rather, it concerned the manner in which certain aspects of his existing role were carried out.
- 202.3. We further found that many of the cleaning, housekeeping and tidying duties relied upon by the Claimant were expressly contemplated by his job description and formed part of his contractual duties.
- 202.4. Whilst we accept that the Claimant genuinely came to feel that he was increasingly being treated as a cleaner, we are not satisfied that the nature of his role was in fact changed in the manner alleged.
- 202.5. Accordingly, the Claimant has not established the factual basis of the less favourable treatment identified in the List of Issues. This allegation of direct race discrimination therefore fails.

**203. Requirement to work Sundays**

- 203.1. We accept that the Claimant worked on Sundays during his employment. However, we find that Sunday working arose following changes to the shop's opening arrangements and formed part of the working arrangements for staff generally.
- 203.2. We find that Sunday duties were shared amongst employees and that the Claimant did not work every Sunday. We further find that the Claimant agreed to undertake Sunday work and that such work was permitted by the contractual arrangements between the parties.

203.3. The Tribunal has insufficient evidence to conclude that the Claimant was treated differently from other employees in relation to Sunday working. Nor are we satisfied that any Sunday-working requirement was imposed because of the Claimant's race

203.4. In those circumstances we do not find that requiring the Claimant to work Sundays constituted less favourable treatment.

**204. Treat the Claimant adversely when he raised concerns about pay**

204.1. The Claimant alleged that he was treated adversely after raising concerns about the timing of his wage payments. We accept that the Claimant repeatedly raised such concerns and that disputes concerning late payment became a recurring feature of the employment relationship.

204.2. We also accept that the relationship between the Claimant and management deteriorated during the latter part of his employment and that the Claimant genuinely perceived a change in the way he was treated after repeatedly chasing payment of wages.

204.3. However, the Tribunal is not satisfied that any deterioration in the working relationship occurred because of the Claimant's race. Rather, we have found that the difficulties arose from recurring disputes concerning pay, interpersonal tensions between the parties, and a gradual loss of trust and confidence on both sides.

204.4. Standing back and considering the evidence as a whole, including our findings regarding the remarks made by Mr Lasheen, we are not satisfied that the treatment complained of occurred because the Claimant was Black African.

204.5. This allegation of direct race discrimination therefore fails.

**205. Blame the Claimant for the mistakes of others**

205.1. The Claimant alleged that he was blamed for the mistakes of other employees. However, the incidents relied upon were described only in general terms and without sufficient detail to permit reliable findings as to when the events occurred, what was said, who was responsible

for the alleged mistakes, or the circumstances in which responsibility was attributed.

205.2. The Tribunal was not provided with evidence capable of establishing, on the balance of probabilities, that the Claimant was in fact blamed for the errors of other employees. Nor was there evidence from which we could conclude that any such treatment, if it occurred, was because of the Claimant's race.

205.3. Accordingly, the Claimant has not established the factual basis of this allegation and the complaint of direct race discrimination in this respect fails.

#### **206. Kept after hours**

206.1. The Claimant alleged that he was routinely required to remain in the shop after the end of his working hours, sometimes by between one and three hours per day.

206.2. The Tribunal has considered that allegation in light of the attendance records, payslips and the Claimant's oral evidence. We have already found that the attendance records are the most reliable evidence available concerning the hours worked by the Claimant. We have further found that there was a close correlation between those records and the hours for which he was paid.

206.3. The Claimant was unable to identify with precision the dates or occasions on which he was allegedly required to remain at work beyond his contractual hours, nor was he able to provide contemporaneous records establishing a regular practice of the kind alleged.

206.4. The Tribunal is therefore not satisfied, on the balance of probabilities, that the Claimant was routinely required to remain in the shop for an additional one to three hours per day after the conclusion of his working hours.

206.5. Accordingly, the factual basis of this allegation has not been established. Further, there is no evidence from which the Tribunal

could conclude that any requirement to remain after hours, insofar as it occurred, was because of the Claimant's race.

206.6. This allegation of direct race discrimination therefore fails.

## **207. Personal errands**

207.1. The Tribunal has already found (paragraphs 34-38) that the Claimant was required by Mr Ahmed Lasheen to undertake personal errands arising from Mr Lasheen's managerial authority and that the Claimant felt obliged to comply with those requests. We have further found that the Claimant regarded the requests as demeaning and beneath the role for which he had been employed. We are satisfied that requiring an employee to undertake personal domestic errands unrelated to the Respondent's business constituted disadvantageous treatment.

207.2. The Tribunal must determine whether that treatment amounted to less favourable treatment because of race.

207.3. The Tribunal has not found sufficient evidence to make detailed findings regarding the treatment of Ms Guillot. We are therefore unable to determine the allegation by reference to an actual comparator and instead consider the position of a hypothetical comparator.

207.4. The Tribunal has found that Mr Ahmed Lasheen made a number of race-related remarks within a relatively short period of time. Those remarks form part of the evidential background when assessing the reason for the treatment complained of.

207.5. Taking the race-related remarks together with the evidence concerning the personal errands, and bearing in mind that the remarks and the treatment emanated from the same individual, the Tribunal is satisfied that the Claimant has established facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the treatment may have been because of race. The burden of proof therefore shifts to the Respondent pursuant to section 136 Equality Act 2010.

207.6. In reaching that conclusion, the Tribunal has considered the cumulative effect of the evidence rather than any single factor in

isolation. We have found that Ahmed Lasheen made a number of race-related remarks during the same period in which the Claimant was being required to undertake the personal errands in question. In particular, Remark 2 reflected a belief that members of a particular ethnic group possessed inherent advantages by reason of their genetic inheritance. We have also found that the same individual who made those remarks was the person who selected the Claimant to undertake the errands and who exercised managerial authority over him.

- 207.7. We further take into account that the treatment in question was not merely an extension of the Claimant's ordinary retail duties. The errands included personal and domestic tasks which we have found to be demeaning and unrelated to the Respondent's business. The Tribunal also takes into account that there was no evidence before it that Ms Guillot belonged to the claimant's racial group. In those circumstances, the Tribunal considers that the race-related remarks were capable of being understood as having particular resonance for the claimant.
- 207.8. Whilst none of these matters would, viewed in isolation, be sufficient to establish that the treatment was because of race, when considered cumulatively they are capable of supporting an inference that race may have materially influenced the treatment complained of.
- 207.9. The Respondent relied upon the explanation that these were merely reciprocal favours between colleagues. For the reasons already given, we reject that explanation. No other satisfactory non-discriminatory explanation for the treatment was established by the evidence. The Tribunal considered and rejected the possibility that the Claimant was selected simply because he was junior, compliant, or available.
- 207.10. Accordingly, the Respondent has failed to discharge the burden resting upon it under section 136. We are not satisfied that the Respondent has established that race played no part whatsoever in the treatment complained of.
- 207.11. Standing back and considering the evidence as a whole, including the race-related remarks made by Ahmed Lasheen, his role as the

individual responsible for the treatment, the absence of any satisfactory non-discriminatory explanation and our finding that the Respondent has failed to discharge the burden imposed by section 136, we conclude that race materially influenced the treatment.

- 207.12. In reaching that decision we do not find discrimination merely because the Respondent's explanation has been rejected. Rather, taking the race-related remarks, particularly Remark 2, the fact that the treatment emanated from the same individual, the absence of any convincing alternative explanation, and the demeaning nature of the treatment itself, we positively infer that race formed a material part of the reason for selecting the Claimant to undertake those tasks.

Conclusion

- 207.13. Race need not be the sole or principal reason for the treatment. It is sufficient that it materially influenced the treatment complained of.
- 207.14. Having considered the evidence as a whole, we find that race materially influenced the decision to require the Claimant to undertake the personal errands in question. The complaint of direct race discrimination in respect of that treatment therefore succeeds.

***Unlawful Deductions from Wages***

208. The Claimant advances a claim for unlawful deductions from wages, including unpaid overtime said to amount to approximately 130 hours.
209. The burden rests upon the Claimant to establish, on the balance of probabilities, that he performed work for which he was not paid and to identify the sums said to be due. Whilst the Tribunal accepts that precise records may not always be available to employees, there must nevertheless be sufficient evidence from which the Tribunal can determine both the work carried out and the remuneration said to be outstanding.
210. In the present case, the Claimant was unable to identify with any precision the dates, hours or occasions on which he alleged that unpaid overtime was worked. Nor was he able to provide documentary evidence showing the hours he claimed to have worked, whether by way of personal records, messages, emails, diary entries

or other contemporaneous material. The Claimant was likewise unable to point to any particular incidents from which the Tribunal could infer a consistent pattern of unpaid overtime.

211. By contrast, the Respondent produced timesheets and payroll records and payslips which enabled the Tribunal to compare recorded hours with the sums paid to the Claimant. The Tribunal found a close correlation between the attendance records and the hours recorded through payroll. The documentary evidence demonstrated that overtime hours were separately identified and paid on a number of occasions.
212. Although the Claimant disputed the accuracy of the attendance records, he was unable to identify with precision which entries were incorrect or provide alternative records demonstrating that he had worked materially greater hours than those recorded. The Tribunal has found that the attendance records are the most reliable evidence available concerning the hours worked by the Claimant and has placed significant weight upon them. In some months, the payroll records show that the Claimant was paid for more hours than were recorded in the attendance records.
213. The Tribunal therefore had no reliable evidential basis upon which to conclude that the Claimant worked additional authorised overtime for which he was not paid.
214. Similar difficulties arise in relation to the Claimant's allegation that he was required to work through breaks without payment. The Tribunal has found that, whilst the Claimant's lunch break may on occasion have been interrupted by operational requirements, he did not establish that he was routinely prevented from taking his contractual break or required to work through it on a regular basis. Nor did he provide sufficient evidence from which the Tribunal could determine the occasions on which this occurred, the duration of any such work, or the remuneration said to be outstanding.
215. Having considered the evidence as a whole, the Tribunal is not satisfied that the Claimant has established that the Respondent failed to pay overtime, failed to pay for work undertaken during breaks, or otherwise failed to pay sums properly due to him.
216. Accordingly, the Claimant has not discharged the burden of proving that any unlawful deductions were made from his wages. The complaint of unlawful deductions from wages is therefore dismissed.

***Breach of Contract /Wrongful dismissal***

*Material terms of the contract*

217. The Claimant was employed under a written contract of employment. The contract contained provisions regarding pay, working hours and notice. It also provided that the Claimant could be required to undertake such other duties as might reasonably be required from time to time in support of the Respondent's business. The contract further contemplated the possibility of Sunday working. The Claimant was contractually entitled to one month's notice of termination.

*Change of duties*

218. The Claimant contended that the Respondent changed his duties in breach of contract. We have found that the Claimant was required on occasion to undertake cleaning duties, including cleaning the shop and windows. We have also found that he was occasionally required to undertake personal errands for Ahmed Lasheen. However, we are satisfied that the cleaning duties fell within the scope of the contractual provision requiring the Claimant to undertake reasonable duties in support of the Respondent's business. Whilst the personal errands were inappropriate and outside the ordinary functions of a retail sales assistant, they were occasional in nature and did not result in any formal or contractual alteration to the Claimant's role. We therefore do not find that the Respondent materially altered the Claimant's duties in breach of contract.

*Sunday working*

219. The Claimant further alleged that he was required to work Sundays in breach of contract. We do not accept that allegation. The contract permitted Sunday working and the evidence established that Sunday duties formed part of the Respondent's wider staffing arrangements. We also find that the Claimant agreed to work some Sundays and did so during his employment. Accordingly, no breach of contract has been established in respect of Sunday working.

*Late payment of wages*

220. We accept that the Respondent breached the contractual term requiring wages to be paid on the agreed date by making a number of payments late. However, the Claimant has not established any recoverable financial loss arising from those

delays. The wages in question were ultimately paid in full. Accordingly, no damages are payable in respect of that breach.

Notice and dismissal

221. The Claimant also advances a claim for wrongful dismissal. However, he accepted in evidence that he was informed in writing on 17 April 2022 that his employment was being terminated and that he continued working thereafter until his employment ended on 17 May 2022. He was paid throughout that period.

222. We find that the Claimant received and worked his contractual notice period of one month. Accordingly, the Respondent did not dismiss him in breach of the contractual notice provisions and the claim for wrongful dismissal is not well founded.

Conclusion

223. For those reasons, we do not find that the Respondent acted in breach of the Claimant's contract in relation to his duties, Sunday working or notice of termination. Although we do find that the Respondent breached the contract by making a number of wage payments late, but the Claimant has not established any recoverable loss arising from those breaches. Accordingly, the claims for breach of contract and wrongful dismissal are dismissed.

## **Remedy**

224. The Tribunal has found that the complaint of direct race discrimination succeeds only in relation to the requirement that the Claimant undertake personal errands.

225. All other complaints are dismissed.

226. The Tribunal has not heard full evidence or submissions on remedy and is not in a position to determine compensation on the evidence presently before it.

227. The issues which remain to be determined include:

227.1. Whether the Claimant suffered injury to feelings as a result of the discriminatory treatment and, if so, the appropriate amount of compensation.

- 227.2. Whether any financial losses are attributable to the discriminatory treatment.
- 227.3. Whether interest should be awarded.
- 227.4. Whether any adjustment should be made in respect of the ACAS Code of Practice, insofar as that issue remains pursued.
228. At the remedy hearing, the parties will have the opportunity to provide evidence and submissions concerning those matters.
229. The Claimant should provide a revised Schedule of Loss identifying the compensation sought and explaining how it has been calculated. The Respondent shall have the opportunity to respond to that Schedule of Loss.
230. The issue of remedy is therefore reserved to a separate remedy hearing.

Approved by:

**Employment Judge O'Neill**  
**31 August 2026**

Judgment sent to the parties on:  
23 September 2026

For the Tribunal Office:

P Wing

#### **Notes**

- Public access to Employment Tribunal decisions  
Judgments and written reasons are ordinarily published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the parties.
- Recording and Transcription

A written transcript of any recording of the hearing will not be provided automatically. Any person wishing to obtain a transcript must make their own arrangements with the transcription provider.

- Remedy

The issue of remedy has been reserved. Separate case management directions will be issued.