



EMPLOYMENT TRIBUNALS (SCOTLAND)

In the Employment Tribunal (Scotland)

**Judgment of the Employment Tribunal in Case No: 8001288/2024 heard at
Edinburgh via the Cloud Based Video Platform on 19 & 20 August 2026**

Employment Judge JG d’Inverno

Miss D Charles

**Claimant
In Person
Supported by
Mrs S Charles
(Mother)**

Thurso Hotel Limited

**Respondent
No Appearance &
Not Represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is:-

(First) That the respondent breached its obligations, owed in terms of section 1 of the Employment Rights Act 1996 to the claimant in her capacity of a worker, by failing to provide her with written particulars of employment and the respondent shall pay to the claimant compensation therefor in the sum of £516.

(Second) In discriminating against the claimant by determining her contract with them because of perceived disability, the respondent caused the claimant consequential patrimonial loss to the extent of loss of six weeks’ wages, and the respondent pay to the claimant compensation therefor in the sum of £1,032.

(Third) That in shouting and swearing at the claimant in the context of the “hotplate” incident, the respondent, and in addition and in particular the respondent’s Chef, personally, directly discriminated against the claimant because of each of her protected characteristics of age, and of sex, and of race in terms of section 13 of the Equality Act 2010.

(Fourth) That in shouting and swearing at the claimant in respect of the “hotplate” incident the respondent, and in addition and in particular and personally the

respondent's Chef, subjected the claimant to unwanted conducted related to her protected characteristics of age, and of sex and thus, subjected the claimant to Harassment in terms of section 26 of the Equality Act 2010.

(Fifth) That in shouting and swearing at the claimant in relation to the misspelling of the word "porridge" incident; the respondent and in addition and in particular and personally the respondent's Chef, directly discriminated against the claimant because of her protected characteristics of age, sex, race, and disability, in terms of section 13 of the Equality Act 2010.

(Sixth) That in shouting and swearing at the claimant in respect of the misspelling of the word "porridge" incident, the respondents and in addition and in particular and personally the respondent's Chef, subjected the claimant to unwanted conduct relating to her protected characteristics of age, and of sex, and of race, and of disability and thus, Harassed the claimant in terms of section 26 of the Equality Act 2010.

(Seventh) That in shouting and swearing at the claimant in respect of the "dropped apple crumble incident", the respondent and in addition and in particular and personally the respondent's Chef and the respondent's Manager Andy Woodcock, directly discriminated against the claimant because of her protected characteristics of age, of sex, and of race, in terms of section 13 of the Equality Act 2010.

(Eighth) That in shouting and swearing at the claimant in respect of the "dropped apple crumble incident", the respondent and in addition and in particular and personally the respondent's Chef and the respondent's Manager Andy Woodcock, subjected the claimant to unwanted conducted because of her protected characteristics of age, of sex, and of race and thus, Harassed the claimant in terms of section 26 of the Equality Act 2010.

(Ninth) That the respondent shall pay to the claimant the sum of £11,500 in compensation for hurt to the claimant's feelings caused by the discriminatory conduct of the respondent including in particular the conduct of the respondent's

Chef and of the respondent's Manager Andy Woodcock.

REASONS

1. This case called for final hearing at Edinburgh via the Cloud Based Video Platform on 19 August 2026 at 10am, further to Notice of Hearing issued to both parties on 13 April 2026. The claimant appeared in person supported by her Mother. There was no appearance by or on behalf of the respondent company.
2. Enquiries made by the clerk of the registrar of companies confirmed that the respondent company remained a live and active company on the register. There had been previous occasions on which the respondent company had failed to appear. It had however been represented by it's area manager Mr Steve Ireland at the Closed Preliminary Hearing (Case Management Discussion) which proceeded in the case before Judge Whitcombe on the 24 March 2025, and was in receipt of the Case Management Orders and Note issued following that hearing which were sent to the respondent at it's registered address and to the claimant on 25 March 2025.
3. The start of the hearing was delayed until 10.45am to allow for the possible late arrival of or communication from a representative of the respondent.
4. The respondent had entered late appearance lodging a response form ET3 in which it set out it's position in the face of the claims, which position was further confirmed and recorded by Judge Whitcombe at paragraph 25 of his 25 March 2025 Note which was before the Tribunal, viz; -

"25. The respondent admits shouting and swearing on the part of the Chef and Andy [The Hotel Manager] but denies all of the claims arising from that shouting and swearing."

5. Having considered matters in the presence of the claimant, and being satisfied in the circumstances that it was in accordance with the interests of justice and in furtherance of the overriding objective to so do, the Tribunal determined, in terms of Rule 47 of the Employment Tribunal Procedure Rules 2024, that the hearing should proceed in the absence of the respondent while taking account of the position of the respondent, both as set out in it's response form ET3 and as recorded by Judge Whitcombe in the PH Note of 25 March 2025.
6. In the course of case management discussion, conducted at the outset of the hearing, the Tribunal confirmed with the claimant and records, that the central factual allegations in the claim as given notice of in the initiating application ET1 presented on 23 August 2024, and the claims and issues requiring investigation and determination at the Final Hearing, and the position of the respondent in the face of the allegations and claims, all remained as set out and recorded by Judge Whitcombe at paragraphs 13 to 25 inclusive of his

Case Management Orders and PH Note issued to parties on 25 March following the Closed Preliminary Hearing, which proceeded before him and was attended by both parties, on 24 March 2025, viz:-

“[SUMMARY OF CLAIMS AND ISSUES

Background

13. The claimant was formerly employed as a waitress for just under two months by the respondent in it's hotel business, between 1 May 2024 and 26 June 2024. The claimant was then 15 [years of age]. The central factual allegations in the claim form received by the Tribunal on 23 August 2024 are that:

- a. The claimant was shouted and sworn at by the Chef and “Andy” the General Manager. There was more than one incident of sort, but the main one followed the claimant dropping an apple crumble.
- b. A discriminatory communication was sent to the claimant to the effect that she would not have been employed if the respondent had been aware of her “depression and anxiety”.
- c. Dismissal, or failure to offer any more shifts.

Claims and Issues

Relevant Characteristics

14. The claimant contends that she was a disabled person, for the purposes of section 6 of the Equality Act 2010, by reason of severe dyslexia. The respondent does not admit that disability and also disputes knowledge of disability.

15. The claimant's case is also partly based on the *perceived* disability of “depression and anxiety”, which she says the respondent wrongly perceived her to have.

16. For the purposes of the age discrimination complaints the claimant defines the relevant age group as “under 18s” or “being 15-16 years old”.

17. For the purposes of the race discrimination complaints, the claimant relies on her ethnic origins which she describes as mixed heritage and a caribbean background.

18. The claimant also relies on her female sex.

Complaints

19. I will set out the complaints as I understand them, following discussions today and having read the claim form (ET1), the response (ET3) and the claimant's case management agenda. If either side thinks that the following summary fails to reflect

the complaints fully and accurately they must write to the Tribunal giving their reasons, no later **7 April 2025** so that an Employment Judge can review the issues. Otherwise, the case will proceed to a final hearing on the following basis.

20. The incidents of shouting and swearing are alleged to have amounted to one or more of the following types of discrimination:

- a. Direct age discrimination, contrary to sections 5, 13 and 39 of the Equality Act 2010;
- b. Age related harassment contrary to sections 5, 26 and 40 of the Equality Act 2010;
- c. Direct disability discrimination, contrary to sections 6, 13 and 39 of the Equality Act 2010;
- d. Disability related harassment, contrary to sections 6, 26 and 40 of the Equality Act 2010;
- e. Direct *perceived* disability discrimination, contrary to sections 6, 13 and 39 of the Equality Act;
- f. Harassment related to *perceived* disability, contrary to section 6, 26 and 40 of the Equality Act 2010;
- g. Direct race discrimination, contrary to sections 9, 13 and 39 of the Equality Act 2010;
- h. Race related harassment, contrary to sections 9, 26 and 40 of the Equality Act 2010;
- i. Direct sex discrimination, contrary to sections 11, 13 and 39 of the Equality Act 2010;
- j. Harassment related to sex, contrary to sections 11, 26 and 40 of the Equality Act 2010;

21. The communication saying that the respondent would not have hired the claimant if it had known about her depression and anxiety is alleged to have been:

- a. Direct *perceived* disability discrimination contrary to sections 6, 13 and 39 of the Equality Act 2010;
- b. Harassment related to *perceived* disability, contrary to sections 6, 26 and 40 of the Equality Act 2010;

- c. The claimant's dismissal and/or the refusal to offer her any more shifts is alleged to have been one or more of the ten types of discrimination referred to in paragraph 20, above.

23. The claimant also seeks arrears of wages in relation to certain shifts, and notice pay based on a belief that two week's notice would have been "standard". She will need to identify the relevant shifts and payments or underpayments in the calculation of her losses.

24. Finally, the claimant seeks the additional remedy of two or four weeks' pay for failure to provide her with a written statement of terms and conditions.

25. The respondent admits shouting and swearing on the part of the Chef and Andy, but denies all of the claims arising from that shouting and swearing."

7. Neither party submitted any proposed alterations to Judge Whitcombe's summary of the issues which, accordingly in terms of his Order, were the issues before the Tribunal for determination at final hearing.

Sources of Oral and Documentary Evidence.

8. Both the claimant, Miss Danisha Charles, and her Mother Mrs Stacey Charles gave evidence on oath and answered questions put by the Tribunal.
9. Mrs Charles was not present at and had no direct knowledge of the main incident or indeed of any of the incidents referred to. She spoke rather to de recenti telephone conversations with the claimant on the day of the main incident and to subsequent correspondence passing between herself and the respondent's managers.
10. The claimant had lodged a number of documents as attachments to correspondence sent to the Tribunal in response to Judge Macleod's Case Management Orders of 6th, sent to parties on 29 January 2026, and to certain of which the Tribunal was referred in the course of evidence and submissions.
11. For the respondent the Tribunal took account of:
 - a. The terms of response form ET3;
 - b. The respondent's position in the face of the complaints as confirmed by their representative Mr Steve Ireland (Area Manager) at the Closed Preliminary Hearing of 24 March 2025 and as recorded by Judge Whitcombe in his Case Management Orders and Note issued following the same on 25 March 2025;

- c. The position of the respondents as set out in the terms of their post incident correspondence with the claimant's Mother including their correspondence of 30th June 2024 timed at 10:05, in which they make reference to their perception of the claimant as suffering from depression and anxiety, and in terms of which they terminated the contractual relationship between themselves and the claimant.

Finding in Fact

12. On the oral and documentary evidence presented the Tribunal makes the essential findings in fact restricted to those relevant and necessary to the determination of the issues.
13. The claimant, whose date of birth is 16 August 2008 and was 15 years of age in the months of May and June 2024.
14. In the summer of 2024 the claimant was engaged in a full-time college course of further education which involved attendance on three days per week.
15. The claimant wished to work part-time while at college.
16. The claimant applied for a casual working opportunity with the respondent, Thurso Hotels Limited and, following a successful interview conducted by Mr Andy Woodcock, the respondent's hotel's General Manager on 1 May 2024, thereafter worked for the respondent on a casual basis between 1 May and 26 June 2024.
17. On 26 June 2024, the respondent terminated the contractual relationship between the parties in terms of its letter dated 30 June 2024 and sent to the claimant's Mother with whom the respondent was corresponding in her capacity as the claimant's representative.
18. The material time for the claimant's complaints of discrimination because of the protected characteristic of disability, was the period from 1 May to 26 June 2024 inclusive.
19. At the material time for the purposes of her complaints, the claimant was a person possessing the protected characteristic of disability in terms of section 6 of the Equality Act 2010 by reason of her diagnosed mental impairment of "severe dyslexia" which is a lifelong condition. The claimant was so diagnosed with severe dyslexia when 10 years of age.
20. In terms of the interview conducted by the respondent's General Manager Andy Woodcock with the claimant on 1 May 2024, the parties agreed that the claimant would carry out work for the respondent on the following terms;

- a. The claimant would be engaged on a “zero hours” contract in which there was no mutuality of obligation to provide or to perform work.
 - b. Rather, the respondent undertook only to offer the claimant shifts of work from time to time and the claimant, for her part undertook only to consider accepting and working shifts offered.
 - c. The agreed rate of pay at which the claimant was to be remunerated for work done was £7 per hour.
 - d. The claimant told Andy Woodcock that she was dyslexic which Andy Woodcock acknowledged.
21. In May of 2024 the National Minimum Wage for persons aged 16 and 17 was £8 per hour. There was no national minimum wage prescribed for persons under the age of 16 and thus the parties were free to agree and did agree an hourly rate of £7 per hour.
22. The respondent for it's part did not guarantee to offer the claimant any particular number of shifts or indeed any shifts at all, and the claimant, for her part, did not undertake to always work shifts which were offered.
23. In the event, the claimant did not refuse any of the shifts offered.
24. The claimant worked her first shifts on the day of her interview 1 May 2024 and thereafter, the respondent's managers told the claimant on each day that she worked of the next set of shifts that were being offered to her.
25. The claimant worked substantially more shifts in the month of May than she did in the month of June. By doing so in the month of May the claimant missed a substantial amount of her full-time college course and she advised the respondents that she did not wish to continue the work shifts at that level and thus was offered fewer shifts in the month of June.
26. No tax or national insurance contributions fell to be deducted from the claimant's pay which was paid to her gross at the rate of £7 per hour.
27. In the eight weeks of her employment the claimant's average weekly wage was £172 net.
28. Other than it's Managers and the Chef, the respondent employed a total of 14 individuals in the Thurso Hotel during the period of the claimant's employment.
29. The 14 individuals possessed the following protected characteristics.
 - a. Four, including the claimant were women and ten were men,

- b. Two, one man and one woman were of Nepalese origin,
 - c. The claimant was a black British Caribbean and one of the men was a Black South African,
 - d. The balance of the employees were White Scots or English,
 - e. The claimant possessed the protected characteristic of disability. She did not know whether other employees also possessed the protected characteristic.
30. In the course of her interview with Andy Woodcock, on 1 May 2024, the claimant informed Andy Woodcock that she suffered from severe dyslexia.
31. Andy Woodcock, on behalf of the respondent, acknowledged that communication by stating that the respondent already employed, onsite, other persons who had learning disabilities.
32. The respondent knew of the claimant's diagnosed mental impairment of severe dyslexia at the material time for the purposes of her complaints.
33. Throughout the material time period, the respondent knew or ought reasonably to have known that the claimant was disabled by reason of her mental impairment of severe dyslexia and knew, or ought reasonably to have known of its adverse impact upon the claimant's ability to carry out normal daily activities, including her ability to carry out her work duties.
34. The claimant was the youngest worker in the Thurso Hotel at the material time. All of the other workers and/or employees were in their early twenties or older.
35. One of the respondent's female employees a Duty Manager whose name was Carol-Anne, was a female in her late thirties/early forties who sympathised with and was supportive of, the claimant.
36. On a number of occasions the claimant was present when the Chef and the respondent's General Manager, Andy Woodcock, shouted and swore (using the F word ("fuck and/or fucking"), at their workers in addition to herself.
37. The claimant observed the Chef and the respondent shouting and swearing at the female Nepalese member of staff and the female Duty Manager Carol-Anne.
38. The claimant observed the respondent's Chef and Duty Manager Andy Woodcock swearing and shouting at the Black South African and the male Nepalese members of staff both of whom were in their early twenties.

39. In the course of her employment the claimant did not observe the Chef or the respondent's General Manager Andy Woodcock shouting and/or swearing at any of the white male members of staff.
40. From the outset of her working in the Thurso Hotel, the respondent's Chef showed his contempt for the claimant, as a young female person of non-white race, by continuously referring to her in the third person as "that" and "it", and by frequently shouting and swearing at her.
41. Apart from the intimidating and hostile atmosphere which was created by the Chef and the General Manager's conduct towards, and by their interaction with the claimant, the claimant enjoyed the work that she was carrying out and was keen to continue in it. She did not wish to jeopardise the continuation of her contract by complaining or protesting and thus, she tholed the insults and treatment, suffering in silence and doing her best to discharge her duties properly, despite being subjected to the unwanted conduct and abusive treatment at the hands of the respondent's two employees for whose conduct in the course of their employment the respondent is vicariously liable.

Particular instances of conduct

42. During her first week, on an occasion on which the claimant was having difficulty holding an extremely hot plate without adequate hand protection, the Chef shouted and swore at her. The claimant was shocked and felt intimidated, afraid and nervous when the Chef so shouted and swore at her.
43. The claimant's severe dyslexia results in her having difficulty with spelling and writing.
44. In or about the third week of the month of May 2024, the claimant having taken a breakfast order from one of the guests which included porridge had misspelt the word porridge in the order slip which she passed to the Chef.
45. When the Chef read the order slip he shouted at the claimant "*that's not how you fucking spell porridge.*" The claimant who was a 15 year old girl found the Chef's conduct to be aggressive, intimidating and most upsetting. She also felt humiliated and embarrassed by the fact that the Chef was sharing with all the fellow workers present her inability to spell the word porridge.
46. On 26 June 2026, the claimant was engaged in serving the last table of a large coach party with dessert (pudding). When she passed through the kitchen swing doors, one of the doors swung back and knocked the plate from her hand.

47. The claimant re-entered the kitchen and explained to the Chef that she had dropped a plate of apple crumble intending then to ask the Chef for a replacement plate of crumble to take to the guest.
48. The Chef cut the claimant off by shouting at her "off course you did". Immediately thereafter, both the Chef and the respondent's General Manager Andy Woodcock, who was also in the kitchen at that time, to use the claimant's words of description "were in my face shouting and swearing at me".
49. In the tirade of abuse directed against the claimant by both the Chef and the respondent's General Manager, they used the expletives "Fuck" and "Fucking" on a number of occasions.
50. The claimant perceived the Chef's and the General Manager's conduct as conduct which was unwanted and related to her protected characteristics of sex, age and race she being a vulnerable 15 year old British Caribbean female.
51. The conduct had the effect of violating the claimant's dignity and of creating an intimidating, hostile, degrading and humiliating and offensive environment for her.
52. Objectively viewed, it was reasonable in the circumstances that the claimant perceived the conduct as having that effect.
53. Although the claimant had tholed in silence previous outbursts of the same type, on this occasion she was so overwhelmed by the abuse which she received that she broke down crying and shouted back at her abusers to stop treating her in that way.
54. The General Manager and the Chef joined in shouting at the claimant that she should "Get Out".
55. As the claimant left the kitchen to comply with that direction someone began to pull her apron from behind.
56. The claimant went to reception where the receptionist tried to calm her down but had great difficulty in doing so.
57. The claimant immediately telephoned her Mother from the Hotel.
58. In that first of two telephone conversations the claimant was incoherent but clearly very upset.
59. Her Mother advised her to take a few moments and to phone back once she had collected herself. The claimant did so within no more than a further five minutes.

60. The claimant hereafter had a telephone conversation with her Mother in which she recounted to her Mother the incident including the fact that both the Chef and the respondent's General Manager Andy Woodcock, were the individuals shouting and swearing at her and that each used the F word in the course of their doing so.
61. The claimant interpreted the instructed that she should "get out" to mean that she should not only leave the kitchen but also leave the Hotel.
62. When she had sufficiently recovered to do so she accordingly left the Hotel and went home never to return.
63. The claimant's Mother thereafter entered into correspondence on the claimant's behalf with the respondent including the General Manager Andy Woodcock and others.
64. The claimant's Mother formally complained about the treatment to which her daughter had been subjected to.
65. In email correspondence of 30 June 2024, sent to the claimant's Mother, the respondent's General Manager Andy Woodcock stated amongst other things:-

"I have thought about the situation long and hard and possible ways to solve the issue,

But had we been aware of Daniesha's anxieties and depressions before her employment we would not have put her into this style of environment.

I would not like to subject Daniesha to any situation that would be detrimental to her health.

So I feel; the only option is for the Hotel to finish her employment at this current time.

Any monies owing will be deposited into her account within the next payrun.

Sincerely

Andy Woodcock

General Manager."

66. Applying to the terms of Mr Woodcock's correspondence of 30 June 2024 the normal rules of construction, and according to the words used their normal English language meaning, the correspondence falls to be construed as communicating that the respondent perceived the claimant to be someone who, at the time of commencing her employment with the respondent suffered

from mental impairments of anxiety and depression such as to have a material and substantiated adverse impact on her ability to carry out day-to-day activities, including working in a kitchen and/or waiting environment.

67. On the same basis, the terms of the correspondence fall to be construed as communicating that the respondent had decided to terminate and had terminated their contractual relationship with the claimant and thus excluding her from the possibility of being offered further shifts of work, because what they perceived to be the claimant's protected characteristic of disability of anxiety and depression and because they perceived the claimant to be disabled.
68. Although the claimant subsequently suffered periods of anxiety in consequence of the treatment to which she had been subjected at the hands of the respondent, at the time of entry into her contractual relationship with them the claimant was not so suffering from anxiety and depression and was not disabled by reason of such medical conditions.
69. In so terminating her contract with the respondent for the reasons given in their correspondence of 30 June 2024, the respondent treated the claimant less favourably because of the disability which they perceived she had, than they treated or would treat a person whose circumstances were substantially the same as the claimant but for the fact that they were not perceived to be so disabled.
70. Following the termination by the respondent of the respondent's contractual relationship with the claimant, the claimant was upset and felt so intimidated that despite having enjoyed the type of work which she had been undertaking with the respondent, she felt unable to look for any replacement work for an initial period of two weeks and thereafter, although looking for work felt unable to consider working in a Hotel or kitchen environment because of the associations which doing so had for her with the abusive treatment to which she had been subjected by the respondent's Chef and General Manager Andy Woodcock. She accordingly looked only for non-kitchen or Hotel work with the exception of applying for a job in Inverness McDonalds which was located some 100 miles from her home.
71. The claimant had enjoyed the nature of the work which she performed for the respondent and had not wanted to stop her casual working with them but rather, had wished to continue it during the then current academic year of her college course.
72. After a period of about ten months following the termination of the contract, the claimant stopped looking for work deciding rather, to concentrate fully on the next stage, the level two stage, of her college course.

73. Following the incident of 26 June 2024 the claimant consulted her G.P. and received prescribed treatment for her anxiety.
74. She was noted by her G.P. as attributing her mental state of health to the treatment to which she had been subjected at the hands of the respondent's Manager Andy Woodcock and the respondent's Chef.
75. The claimant accessed available mental health services on a number of occasions following the 26 June 2024 incident.
76. At no point in the course of her engagement with the respondents did the respondent provide the claimant, who was a worker, with written particulars of employment as required by section 1 of the Employment Rights Act 1996.

Summary of the respondent's position as available to and considered by the Tribunal in terms of Rule 47

77. In their response form ET3 at section 6.1 the respondent stated at follows:-

"The claimant states that there was raised voices and an altercation in the kitchen in part as a result of the claimant dropping a plate of food. The Chef at the time did indeed raise his voice inappropriately at a high pressure point during service (he was later spoken to about this and given a written warning) however the claimant cursed and swore at the Chef during this altercation. The claimant states that this was discrimination in the workplace which we strongly object to the Hotel is a multicultural workplace and we have written statements from various employees confirming it is a good Hotel to work in.

When the claimant was employed she did not declare that she suffered from any illness whatsoever indeed as part of the email trails that we have the claimant confirms in one email that she doesn't have any health issues and then in another email that she did have health issues.

There is no doubt that the Chef spoke out of turn however was suitably punished for that outburst, the claimant equally should have been punished but when offered further shifts she failed to attend, her contract was a zero hour contract so the Hotel had no obligation to continue her employment.

Background information, our operating company runs seven Hotels we hold a Government sponsored license to bring international workers to Scotland and currently have twenty Nepalese workers within the company, six of which work at the Royal Thurso Hotel, we also have a further six employees from India and a further eight Europeans working in the company."

78. At paragraph 25 of his Case Management Orders and Note of output of 25 March 2025, issued following the closed preliminary hearing which proceeded between parties on 24 March, Judge Whitcombe records the position of the respondents, as confirmed at that hearing by their attending representative Mr Steve Ireland, Area Manager, as being:-

“25. The respondent admits shouting and swearing on the part of the Chef and Andy but denies all of the claims arising from that shouting and swearing.”

Discussion and Determination of the Issues

Applicable Law

79. The claims (complaints) before the Tribunal for determination, comprise one claim for compensation arising from alleged breach of the respondent's statutory duty, enshrined in section 1 of the Employment Rights Act 1996 (“ERA”), to give, amongst others, a worker, written statements of particulars of their employment in respect of which the claimant submits by reason of her being a young and vulnerable person, that the respondent's breach should be regarded as the most serious type of breach resulting in a compensatory award a maximum compensatory award of four week's pay.
80. The right to receive written particulars which is enshrined in section 1 of the 1995 Act is a right which is enjoyed not only by employees but which extends to casual workers engaged upon zero hour contract terms.
81. The Tribunal's jurisdiction to make such an award arises from section 38 of the Employment Act 2002 which provides, at subsection 38(1), that the section applies to proceedings before an Employment Tribunal relating to a claim by a worker under any of the jurisdictions listed in schedule 5; and at 38(2) *“If in the case of proceedings to which this section applies:-*

(a) The Employment Tribunal finds in favour of the worker, but makes no award to him in respect of the claim to which the proceedings relate, and when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 (c.18) (duty to give a written statement of initial employment particulars or particulars of change or (in the case of a claim by a worker under section 41B or 41C of that Act (duty to give a written statement in relation to a right not to work on Sunday),

The Tribunal must, subject to sub-section (5) make an award of the minimum amount to be paid by the employer to the worker and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

In terms of sub-section (4) references to minimum amount mean equal to two week's pay and references to the higher amount mean equal to four week's pay."

82. Schedule 5 of the Employment Act 2002 includes the Tribunal's contractual jurisdiction established in terms of the Employment Tribunal Extension of Jurisdiction (Scotland) Order 1994 (S.I. 1994/1624) (corresponding provision for Scotland).
83. Section 1 of the Employment Rights Act 1996 and Section 38 of and Schedule 5 to the Employment Act 2002 are referred to for their whole terms which, for reasons of brevity are held incorporated here by reference.
84. In the instant case the claimant invokes the Tribunal's contractual jurisdiction asserting that the respondent, in dismissing her, did so, in terms of it's correspondence of 30 June 2024 for a discriminatory reason relating to the perceived protected characteristic of perceived disability thus wrongfully dismissed her in breach of contract.
85. While the Tribunal has so found in fact, in the event that it makes no award of compensation (the measure of damages in contract for wrongful dismissal being limited the sum equivalent to the pay which would have been earned during a notice period, and there being no right to notice arising from the parties' contractual relationship, the Tribunal has power to make an award of the type sought in terms of section 38(2)(a) and (b) of the Employment Act 2002.
86. As a young person under the age of 16, the Tribunal is satisfied that the claimant's vulnerability due to lack of employment experience and age was such as to make it just and equitable to award three weeks pay to the claimant in terms of section 1 of the ERA 1996; that is an award of (3) x (£172 = £516).
87. The claimant otherwise advances complaints under the Equality Act 2010 in reliance variously and cumulatively upon the protected characteristics of:-
 - a. Age;
 - b. Disability;
 - c. Race;
 - d. Perceived disability and
 - e. sex;

offering to prove instances of direct discrimination (section 13) of the Equality Act 2010 ("EqA") and of harassment and sex related harassment in terms of sections 26(1) and 26(2) of the EqA.

88. The claimant's rights to be protected against such discrimination and to advance complaints in relation to the same together with the Tribunal's jurisdiction to consider such complaints, are set out variously and cumulatively in sections 5, 6, 9, 11, 13, 26, 39, and 40 of the Equality Act 2010, which sections are referred to for their whole terms and, for reasons of brevity, are held here incorporated by reference.
89. Proof of the occurrence of discrimination of the type complained of in the instant case, is subject to the provisions of section 136 (burden of proof) of the Equality Act 2010, which is in the following terms:-

"136 Burden of Proof

(1) This section applies to any proceedings relating to a contravention of this act.

(2) If there are facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravened the provisions concerned, the Court must hold that the contravention occurred.

(3) But sub-section (2) does not apply if A shows that A did not contravene the provision....."

90. Thus, while in relation to complaints of discrimination the burden of proof sits in the first instance with the claimant to prove the causal connection between the relied upon protected characteristic on the one hand and the occurrence of the less favourable treatment, harassing conduct or other detrimental act on the other, if the terms of section 136 of the 2010 Act are engaged, it's effect is to switch the burden of proof to the respondent, who must thereafter establish, on the balance of probabilities, the absence of such causal connection.
91. In the case of *Madarassy v. Nomura International Plc* [2006] EWCA Civ 371, the English Court of Appeal, whose judgment was subsequently applied in the Employment Appeal Tribunal and is thus binding upon Employment Tribunals at first instance in Scotland, Mummery LJ, as he then was, made clear that to identify the existence of the relevant protected characteristic on the one hand and the occurrence of less favourable treatment/other detrimental act on the other, is to establish only the possibility of discrimination and, that in order to engage the terms of section 136 of the 2010 Act and thus switch the burden of proof to the respondent, there must be "*something more*", that is to say, the claimant must establish or the Tribunal must be otherwise satisfied that there exists, primary facts from which the court can draw a discriminatory inference in the absence of another explanation.

92. In the instant case. The respondents, beyond a bald denial of liability, have provided no other explanation for the treatment to which they admit the claimant was subjected and thus, in the event the Tribunal holds established primary facts such as to engage section 136 of the 2010 Act and to switch the burden of proof to the respondent, the claims of discrimination will succeed (in respect of any particular specified instance of conduct the occurrence of which the Tribunal holds to be established).

Discussion

93. The Tribunal found the claimant to be a credible and generally reliable witness and accepted her evidence, which was unchallenged in cross-examination. On that basis it has found in fact to the extent only that it considered the claimant's evidence sufficiently specific to sustain the same.
94. The evidence of the claimant's Mother was not direct evidence of the events but rather, was evidence of a de recenti telephone conversation with the claimant on the day of the 26 June 2024 event. It otherwise related to post event correspondence.
95. As set out above, the Tribunal has found in fact that the respondent terminated it's contract with the claimant for a discriminatory reason and thus did so in breach of contract. While making no award of damages for breach of contract per se, the Tribunal's jurisdiction being thereby awakened in respect of the respondent's failure to comply with the requirements of section 1 of the Employment Rights Act, and for reason of the claimant's young age and inexperience it considers it just and equitable, in the circumstances, to make an award to the claimant of three week's pay under section 38(1) of the Employment Act 2002 that is, an award in the sum of £516.
96. The Tribunal has otherwise found in fact that both the respondent's Chef and the respondent's Manager Andy Woodcock engaged in the conduct of shouting and swearing at female members of staff, young members of staff including the claimant who was the youngest, members of staff of non-white British origin, including the claimant, and at the claimant who was disabled by reason of her severe dyslexia. The Tribunal has also found in fact that the respondent's Chef and Manager Andy Woodcock did not shout and swear at any of the male members of staff of white British origin and who were older than the Nepalese and Black South African male members of staff and were older than the claimant when they did shout and swear at.
97. The Tribunal determines that those facts are primary facts which constitute the "something more" identified by the English Court of Appeal in *Madarassy v. Nomura* and are such as to engage the terms of section 136 and switch the burden of proof in respect of the complaints of discrimination to the

respondents to show the real and a non-discriminatory reason for the treatment.

98. The Tribunal further finds that the respondent has failed to discharge its transferred burden of proof and that, with the exception of the complaint of alleged Harassment related to perceived disability, which the Tribunal has not found in fact occurred, the claimant's complaints of discrimination otherwise succeed.

Remedy

99. In respect of the respondent's established breach of the terms of section 1 of the Employment Rights Act 1996, the Tribunal has determined that it is just and equitable to and has made an award of £516 being three weeks' pay (see paragraph 95 above).

Patrimonial Loss

100. In cases of zero hour contract casual workers, the Tribunal has jurisdiction to include in an award of damages an element of patrimonial loss (future loss of earnings) where it is satisfied on the balance of probabilities but for the discriminatory act, in this case the act of termination of the claimant's contract, that the claimant would not have sustained that loss.
101. In balancing the claimant's evidence on the one hand that she was very distressed and upset by the treatment which she received on 26 June 2024 with her evidence that post the event she actively enquired about her already contracted for but yet to be worked allocated shifts, and her evidence that she really enjoyed the type of work and had not wanted her contract to be brought to an end and was and would have been prepared to continue to work with the respondents had they put in place suitable adjustments and measures to avoid a repeat of such discriminatory conduct going forward, but in circumstances where the respondent unilaterally terminated her contract she felt, for a period of time, unable to apply for or to work in other Hotel/kitchen employment which none was available. The Tribunal determines that but for the respondent's discriminatory acts the claimant would not have sustained future loss of wages. The Tribunal determines that a reasonable measure of consequential damages in respect of patrimonial loss in the circumstances, is represented by six weeks loss of earnings in the sum of £1032.

Compensation for hurt to feelings

102. It is the function of the Tribunal to assess and award (compensation) in a measure which compensate a person who has been subjected to some of discriminatory conduct, for the injury to the feelings caused by that conduct.
103. In so doing the Tribunal may only award compensation for actual instances of conduct which it has found in fact occurred, which were discriminatory and which were the cause of injury to feelings.
104. Although the above is an exercise which falls to be carried out in every individual case, the higher courts have for some time made available to parties in litigation an indicative scale of damages, divided into three bands, which is of assistance in and represents one method of approaching the quantification of such damages. That scale, updated for inflation and applicable at the material time, is also incorporated within the Tribunal's Presidential Guidance.

The "Vento Scale"

105. The applicable **Vento** scale for claims presented on or after 6 April 2024 and prior to 6 April 2025 is as follows:-
 - **Lower Band: £1,200 to £11,700** (less severe cases);
 - **Middle Band: £11,700 to £35,200** (cases that do not merit an award in the upper band);
 - **Upper Band: £35,200 to £58,700** (the most serious cases), with exceptional cases capable of exceeding £58,700.
106. These bands are designed to determine compensation for emotional distress and psychiatric injury in employment related cases.
107. Before turning to consideration of the **Vento** scale as applicable to the facts of the present case, the Tribunal notes that latterly, in terms of her submissions and evidence the claimant and to a lesser extent her Mother in the post incident correspondence, appeared to making reference to a potential freestanding claim for damages for personal injury potentially arising out of the discriminatory conduct of the respondents. The Tribunal makes clear that no such complaint was formally given notice of and was not a complaint which was before the Tribunal for determination at hearing.
108. The Tribunal separately observes that while it is competent to seek to pursue such complaints in parallel with claims for compensation for hurt to feelings arising from discrimination, such medical evidence as was presented and

relied upon by the claimant fell far short of what would have been required for the success of such a freestanding claim for damages for personal injury had the same been a claim before the Tribunal.

109. The claimant, in her schedule of loss, quantified her claim for compensation for hurt to feelings in the sum of £58,700, that is at the upper limit of the upper band reserved for the most serious cases.
110. The Tribunal had no hesitation in finding, on the evidence presented and on the findings in fact made, that the claim was one which did not sit in the upper band of the **Vento** scale.
111. While in no sense minimising the impact upon the claimant of the three instances of discriminatory conduct at the hands of the respondent's Chef and Manager which it has specifically found the claimant has established she was subjected, to the Tribunal considered that each of these in their turn albeit involving similar types of behaviour on the part of the respondent's Chef and Manager fell to be regarded as "one off" incidents. In relation to the first and second of these, that is the hotplate and the spelling of Porridge incidents it was evidently the case that although distressed and upset by the incidents at the time, the effect of neither incident was such as to prevent the claimant from continuing both with her contract and continuing to enjoy the work generally, absent such conduct.
112. The Tribunal considered that the last incident namely that of 26 June 2024 had a greater impact upon the claimant at the time in comparison to the other two, she being much more visibly upset and distressed but, that notwithstanding, it remained her evidence that she did not wish to leave/to cease working in the Hotel but rather, would have returned to her already contracted for but yet to be worked shifts and for further shifts had the respondents not told her to leave and, and had they been prepared to put in place arrangements/adjustments with a view to ensuring that there would be no recurrence of the offensive behaviour.
113. Standing back and looking at the evidence as a whole, the Tribunal determines that appropriate awards sits within the lower band of the **Vento** scale.
114. In placing the award within the band the Tribunal takes account of the fact that although the claimant's evidence was insufficiently specific to identify any further particular instances of discriminatory conduct, the Tribunal did accept her evidence relative to the environment within which she was required to work as being one which included, on a not infrequent basis, the respondent's Chef and Manager shouting and swearing at other female, non-British White, younger persons.

115. Against this background, the Tribunal, having found the same established in fact, places the award towards the top of the lower band of the scale in the sum of £11,500; and the Tribunal:

Finds in Fact and in Law

(First) That the respondent breached its obligations owed to the claimant in terms of section 1 of the Employment Rights Act 1996 and shall pay to the claimant compensation in the sum of £516.

(Second) In discriminating against the claimant by determining her contract with them because of perceived disability the respondent caused the claimant consequential patrimonial loss to the extent of loss of six weeks' pay and shall pay to the claimant compensation in that regard in the sum of £1,032.

(Third) That in shouting and swearing at the claimant in the context of the "hotplate" incident the respondent and in addition and in particular the respondent's Chef personally and directly discriminated against the claimant because of her protected characteristic of age, sex, and race in terms of section 13 of the Equality Act 2010.

(Fourth) That in shouting and swearing at the claimant in respect of the "hotplate" incident the respondent and in addition and in particular and personally the respondent's Chef subjected the claimant to unwanted conduct related to her protected characteristics of age, and of sex and thus subjected the claimant to harassment in terms of section 26 of the Equality Act 2010.

(Fifth) That in shouting and swearing at the claimant in relation to the misspelling of the word "porridge" incident, the respondent and in addition and in particular and personally, the respondent's Chef directly discriminated against the claimant because of her protected characteristics of age, sex, race, and disability, in terms of section 13 of the Equality Act 2010.

(Sixth) That in shouting and swearing at the claimant in respect of the misspelling of the word "porridge" incident, the respondent and in addition and in particular and personally the respondent's Chef subjected the claimant to unwanted conduct relating to her protected characteristics of age, sex, race, and disability and thus harassed the claimant in terms of section 26 of the Equality Act 2010.

(Seventh) That in shouting and swearing at the claimant in respect of the "dropped apple crumble incident" the respondent and in addition and in particular and personally, the respondent's Chef and the respondent's Manager Andy Woodcock directly discriminated against the claimant because of her protected characteristics of age, sex, and race in terms of section 13 of the Equality Act 2010.

(Eighth) That in shouting and swearing at the claimant in respect of the "dropped apple crumble incident" the respondent and in addition and in particular and

personally, the respondent's Chef and the respondent's Manager Andy Woodcock subjected the claimant to unwanted conduct because of her protected characteristics of age, sex, and race and thus harassed the claimant in terms of section 26 of the Equality Act 2010.

(Ninth) That the respondent shall pay to the claimant the sum of £11,500 in compensation for hurt to the claimant's feelings caused by the discriminatory conduct of the respondent and in particular of the respondent's Chef and the respondent's Manager Andy Woodcock.

Date sent to Parties

15 September 2026