



EMPLOYMENT TRIBUNALS

Claimant

Mr J Mozafaridana

- V -

Respondents

(1) Mr F Ghazi
(2) Boots Management
Services Ltd
(3) Mr S Ghazi

Heard at: London Central

On: 27-30 January 2020

Before: Employment Judge Baty
Ms K Dent
Mr D Clay

Representation:

For the Claimant: In person
For the Respondents: Ms C Lody (counsel)

JUDGMENT

1. The claimant's complaints of direct race and religious discrimination at paragraphs 10-20 of the amended claim (which relate to his time at the Paddington Store) were presented out of time. It was not just and equitable to extend time. The tribunal does not therefore have jurisdiction to hear these complaints and they are struck out. Even if the tribunal had had jurisdiction to hear these complaints, they would have failed.

2. The claimant's complaints of direct race and religious discrimination at paragraph 21 of the amended claim (which relate to his dismissal when at the Queensway Store) were presented in time. These complaints all fail.

REASONS

The Complaints

1. By a claim form presented to the employment tribunal on 6 August 2018, the claimant brought complaints of direct race and religious discrimination

against the above three named respondents. The claimant had ticked various other boxes on the claim form, including those for age discrimination, sex discrimination, discrimination because of sexual orientation, holiday pay and arrears of pay; however, it was established at a preliminary hearing held on 21 December 2018 before Employment Judge Pearl that the complaints were of direct discrimination on the basis of race and/or religion or belief only. The respondents defended the complaints.

2. In these reasons, references to “the respondent” are to the second respondent, Boots Management Services Ltd; references to “Mr Ghazi” are to the first respondent, Mr Forhad Ghazi; references to “Mr S Ghazi” are to the third respondent, Mr Shabbir Ghazi; and references to “the respondents” are to all three respondents.

3. The original claim form was unparticularised and the claimant applied to amend his claim. The amendment was allowed. The actual complaints were set out at paragraphs 10-21 of the attachment to the amended claim form; essentially, those at paragraphs 10-20 relate to events alleged to have happened whilst the claimant worked at the respondent’s store at Paddington Station; those at paragraph 21 relate to the claimant’s dismissal, by which time he had moved to the respondent’s Queensway Store.

4. The respondents submitted an amended response defending the complaints.

The Issues

5. At the start of the hearing the judge sought to agree the issues with the parties.

6. The claimant confirmed that he relied on his Iranian national origin as the basis of his race discrimination complaints and his Zoroastrian religion as the basis of his religious discrimination complaints.

7. It was acknowledged that paragraphs 10-21 of the amended claim contained background and context as well as the specific complaints but that to try and distil a list of the specific complaints only was likely to take a long time and would not be a proportionate use of time. It was therefore agreed simply that the complaints for the tribunal to determine were those contained within paragraphs 10-21. These paragraphs are as follows:

“10. When Mr Ghazi realised I was not a Muslim he started calling me “kafar” which means non-Muslim and an enemy of Islam. I took this to be an insult and something he meant and intended to make me feel excluded and insulted. Mr Ghazi called me “Kafar” 3 to 5 times a day. He would call me a “kafar” in front of his Bangladeshi colleagues in the stock room or in his office, but not in front of customers.

11. When I was at work Mr Ghazi talked to his fellow Bangladeshi colleagues in Bangladeshi He also called me “Fucking Jewish”. I am not Jewish. There is no doubt in my mind that he intended this as an insult. He would describe me as “fucking Jewish” occasionally and again, in the stock room and in his office but not in front of customers.

12. I feel that Mr Ghazi gave me more and harder work than he have to his Bangladeshi colleagues. For example, heavier lifting, heavier unloading and I spent more time in the stock room than my Bangladeshi colleagues. If I tried to protest he called me “fucking asylum seeker”, and told me that I had to do what he asked or leave. These comments really upset me. Mr Ghazi would say this to me once or twice a day when I was working in the stock room and he made these comments in front of Abdullah who now works at the Piccadilly branch of Boots. I felt shunned and isolated.

13 On March 2017 Mr Kevin Alovini the CEO of Boots offered me a job of managing Paddington Station to replace Mr Ghazi. I rejected the offer because I did not want to stay at Paddington Branch. I told him I wanted to move to Marble Arch. Mr Ghazi found out I have rejected the offer and he called me a “fucking Arab” and told me that he was going to get me sacked.

14. In about March 2017 Mr Ghazi told me to stay with him at the Paddington branch. I was so unhappy I was constantly apply internally for jobs at different Boots stores. When I rejected Mr Alovini,s offer, Mr Ghazi changed by shifts. I protested and he called me “Fucking fire worshiper Zoroastrian,” and asked me to take the job or leave Boots.

15. In April 2017 Mr Ghazi found out that I was applying internally for other Boots positions. He would block me every single time and I found out that he told other branches that I was a poor worker and that I did not get on with colleagues. He told me that the only option I had was to work for him or his brother's branch of Boots at Queensway. When I asked him why he was being so difficult, mr Ghazi told me that this was the Paddington Branch position was the only one available and this was more than enough for an “asylum-seeker”. Again, I felt deeply wounded by this as there is no doubt that he meant this term as an insult. I felt I was stuck and that I had no choice but to stay.

16. When I complained to my area manager, Mr Valender, about him, he called me “fucking Iranian immigrant” and that I should not contact my area manager, and I that I was “ going to pay for this”. I did not know exactly what he meant but it frightened me and I felt unable to take things forward. I decided to continue to keep trying to apply for positions at other branches of Boots.

17. In November 2017 I had had enough and I decided to complain to Caroline Needham in HR. This was an email and an informal complaint. Caroline told me that he would raise it with my area manager and that he would deal with, Mr Valender. Mr Valender advised me that it should be dealt with as a formal grievance and I agreed. Mr Valender. Mr Ghazi found out about this and the called me a “fucking fire worshiper” and he told me that he would soon get rid of me. This was just awful and things were going from bad to worse. I felt as though I could trust no one and that I had no one I could talk to internally about what has happening. Eventually this grievance was dealt with by Mr Valender on 26th January 2018 and it was not upheld.

18. On 9th November 2017 Boots initiated a disciplinary process against me for allegedly calling a customer “a thief”. It is alleged that the same customer complained two weeks running. I believe that she was a friend of Mr Ghazi and that is why she was in the store and that she was put up to it. I vehemently deny this. I was however given a written warning on 27/11/2017. On 28th November 2017 Mr Ghazi he came to me on shop floor and shouted at me and called me a “fucking asylum seeker” and told me to leave my shop. I didn't leave work. This incident should have been recorded on the CCTV camera. I felt worse than ever. I was not respected at work.

19. On 16th January 2018 I moved to the Queensway Branch of Boots. The manager was Mr S Ghazi, the brother of Mr F Ghazi who had been my manager at the Paddington Branch.

20 I decided that I had had enough and I raised written grievance against Mr F Ghazi at Paddington, and I did this on 15/12/2017 and 17/01/2018. Even though I had moved from Paddington to Queensway, I felt strongly that Boots should investigate the awful matters

that I had been subject to at Paddington. Boots investigated and I received the outcome on the same day as the other grievance on 26th January 2018 and my grievances were not upheld. I was furious and on 26/01/2018 I made an appeal against the outcome of both grievances. I never received an outcome to this appeal and this made me feel excluded. I was told my Mr Valender that if I did not drop my appeal I would be disciplined for making the appeal.

21. I never got on well with Mr S Ghazi. I felt he was the same as his brother at the Paddington branch. MR S Ghazi with help of his colleague MR Sanjeev architect a customer complain against me, But when they could not make enough excuse for sacking me, MR S Ghazi set up a accusation which lead to disciplinary, and On 26th April 2018 I was disciplined again for inappropriate behaviour towards female colleagues. I maintain that my behaviour was never inappropriate. The investigation took place and on 14th May 2018 I was dismissed for gross misconduct. I appealed on 17/05/2018 and the appeal meeting was on 1st June and I have the statement I made to this meeting. My appeal was however unsuccessful and my dismissal stood as at 14th may 2018. I believe that the evidence used against me was completely untrue and that the real reason for my dismissal was a continuing act of race discrimination in that Mr F Ghazi and Mr S Ghazi and his predominantly Bangladeshi work force did not want to work with me because of my ethnic background. The detriment I suffered because of this continuing act of race discrimination is my dismissal.”

8. It was also agreed that there were jurisdictional issues as to whether all of these complaints had been brought in time. The tribunal would need to determine which of the complaints were prima facie brought in time; if any appeared to have been brought out of time, whether or not they amounted to conduct extending over a period with any successful in time complaints such that they were deemed to be in time; and, if not, whether it was just and equitable for the tribunal to extend time in relation to these complaints so that it did have jurisdiction to hear them.

9. The parties and the tribunal agreed that these were the issues to be determined by the tribunal. The judge made clear that the tribunal would determine these issues and no others.

The Evidence

10. Witness evidence was heard from the following:

For the claimant:

The claimant himself

For the respondent:

Mr Forhad Ghazi, who is employed by the respondent as the Store Manager of its Paddington Station Store;

Mr Shabbir Ghazi, who is employed by the respondent as an assistant manager in its Queensway Store and who is the brother of Mr Forhad Ghazi;

Mr Akhtar Hussain, the Store Manager of the respondent's Ilford Store, who chaired the disciplinary hearing which resulted in the claimant's dismissal with effect from 14 May 2018; and

Ms Eileen Monks, the respondent's Area Manager for North London, who heard the respondent's appeal against his dismissal.

11. In addition, a witness statement was produced from Mr Valendar Ubhi, who at the times material to this claim was employed by the respondent as an Area Manager and who investigated certain complaints made by the claimant in December 2017. Ms Lody explained that Mr Ubhi would not, however, be attending the tribunal. The tribunal explained that it would read his witness statement but that, as he was not going to be present at the tribunal to be subject to cross-examination, it may give less weight to that statement.

12. An agreed bundle numbered pages 1-397 was produced to the tribunal. Ms Lody also produced a chronology (which the claimant subsequently confirmed was agreed) and a cast list.

13. The tribunal read in advance the witness statements and any documents in the bundle to which they referred.

14. A timetable for cross-examination and submissions was agreed between the tribunal and the parties at the beginning of the hearing. This was largely adhered to.

15. At the start of the hearing, Ms Lody said that she wanted to make an application to have Mr S Ghazi dismissed as a respondent. The tribunal suggested that it would make sense for it to do its reading first and for the application to be made after that; that way, the tribunal would be in a better position to judge the merits of the application. After the tribunal had done its reading on the first day, Ms Lody began making that application; however, part way through doing so, she decided to withdraw it.

16. After the evidence on liability was completed, Ms Lody produced a set of draft "skeleton submissions" together with a two-page schedule of complaints/incidents/grievances involving the claimant. The hearing was adjourned to enable the tribunal and the claimant to read these documents and, when the parties returned, the claimant confirmed that he had had the chance to read them and did not need any more time to do so. Both parties then made oral submissions.

17. The tribunal then adjourned towards the end of the third day of the hearing to consider its decision on liability. The hearing reconvened on the afternoon of the fourth and final day of the hearing and the tribunal gave its decision on liability with reasons.

The Law

Direct discrimination because of race/religion or belief

18. Under section 13(1) of the Equality Act 2010 (the Act), a person (A) discriminates against another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. This is known as direct discrimination. Race and religion/belief are protected characteristics for the purposes of direct discrimination.

19. For the purposes of the comparison required in relation to direct discrimination between B and an actual or hypothetical comparator, there must be no material difference between the circumstances relating to B and the comparator.

20. The burden of proof rests initially on the employee to prove on the balance of probabilities facts from which the tribunal could decide, in the absence of any other explanation, that the employer did contravene one of these provisions. To do so the employee must show more than merely that he was subjected to detrimental treatment by the employer and that the relevant protected characteristic applied; there must be something more. If the employee can establish this, the burden of proof shifts to the employer to show that on the balance of probabilities it did not contravene that provision and, in doing so, the employer must prove that the treatment was “in no sense whatsoever” because of the relevant characteristic. If the employer is unable to do so, we must hold that discrimination did occur.

21. Having said that, the relevant case law is clear that, where the tribunal can make clear positive findings one way or another, it is not required to apply the burden of proof provisions set out in the paragraph above. In particular, the provisions “will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in position to make positive findings on the evidence one way or the other” (Hewage v Grampian Health Board [2012] IRLR 870, endorsing Martin v Devonshires Solicitors [2011] ICR 352).

22. We should also add that the burden of proof provisions referred to above (which are about whether a particular act was or was not done for a discriminatory reason) are distinct from the ordinary burden of proof provisions in terms of proving primary facts as a matter of evidence. In respect of the latter, the burden is on the person asserting those primary facts to prove those primary facts on the balance of probabilities. So, for example, in relation to the comments alleged to have been made by Mr Ghazi, it is for the claimant to prove that these comments were actually made; the tribunal will look at the relevant evidence to consider whether or not, on the balance of probabilities, those comments were actually made.

Time extensions and continuing acts

23. The Act provides that a complaint under the Act may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the employment tribunal thinks just and equitable. (This period is extended by time spent in ACAS early conciliation.)

24. It further provides that conduct extending over a period is to be treated as done at the end of the period and that a failure to do something is to be treated as occurring when the person in question decided on it.

25. In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 CA, the Court of Appeal stated that, in determining whether there was “an act extending over a period”, as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed, the focus should be on the substance of the complaints that the employer was responsible for an ongoing situation or a continuing state of affairs. The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as the indicia of “an act extending over a period”. The burden is on the claimant to prove, either by direct evidence or by inference from primary facts, that alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs covered by the concept of “an act extending over a period”.

26. As to whether it is just and equitable to extend time, it is for the claimant to persuade the tribunal that it is just and equitable to do so and the exercise of the discretion is thus the exception rather than the rule. There is no presumption that time will be extended, see Robertson v Bexley Community Centre [2003] IRLR 434 CA.

27. The judge summarised the law for the benefit of the claimant.

Findings of Fact

28. We make the following findings of fact. In doing so, we do not repeat all of the evidence, even where it is disputed, but confine our findings to those necessary to determine the agreed issues.

29. The claimant commenced employment with the respondent on 14 November 2016 as a customer assistant. During his time working for the respondent, he worked in a variety of the respondent’s stores.

The Claimant’s time at the Paddington Store

30. He started doing work at the Paddington Station Store in early 2017 to do extra duty shifts on a zero hours contract. The Store Manager of the Paddington Store was Mr Ghazi. The claimant asked Mr Ghazi if he could have a 20 hour contract and Mr Ghazi agreed to this. Mr Ghazi also told the claimant

that once he had worked in the business for 6 to 8 months, he could increase his contract to 30 hours. His hours were indeed in due course increased to 30 hours.

31. Mr Ghazi's initial relationship with the claimant was good.

32. However, there were complaints about the claimant from a number of female staff who felt uncomfortable through the questions the claimant asked them and through his body language. An assistant store manager, Mr "SM", had an informal chat with the claimant about this; no disciplinary action was taken at that time but the claimant was warned that he could not keep carrying on like that and that the next time such a concern was raised, this was potentially a gross misconduct matter and further action would be taken.

33. In April 2017, Mr Ghazi had to speak with the claimant about his interactions with staff members.

34. On 15 August 2017, there was a customer complaint about the claimant being rude. The claimant was spoken to by Mr "KJ", an assistant manager at the Paddington Store.

35. Mr Ghazi spoke to the claimant about a customer complaint in which the customer had alleged that she felt that the claimant was watching her and that it had made her feel uncomfortable. Mr Ghazi explained to the claimant that they were there to give the customer a great experience and told him that they could not judge the customers; however, the claimant denied that he had been watching the customer and said he was trying to stop her from stealing. Mr Ghazi confirmed that if it happened again it would be treated as misconduct and attempted to coach the claimant to support him in understanding great customer service; for example, he asked the claimant to approach customers and ask them if they required any help or if they were looking for something specific.

36. Around this time, the claimant did not turn up to a rostered shift. When Mr Ghazi enquired about this, the claimant told him that he had had to go to the police station as a woman had made an allegation of sexual harassment against him.

37. Mr Ghazi's assistant managers tried to manage the claimant's behaviour as he often acted inappropriately on the shop floor; for example he often acted unprofessionally towards customers and spoke to them in a rude manner, always of the belief that he was right and more knowledgeable than his colleagues and managers. The assistant managers tried to guide the claimant and have informal conversations regarding how he needed to develop.

38. The claimant met Mr Ghazi on 19 October 2017 because he was unhappy with his shift rota. The claimant was offered a different shift. Around this time, the claimant had sought to have his hours changed back to his original 20 hours. However, for operational reasons, Mr Ghazi did not have the ability to change the claimant's hours back as another employee had since been engaged to do the hours which the claimant had previously been doing. Despite the fact

that there was nothing Mr Ghazi could do about it, the claimant was very unhappy about this (and this unhappiness is reflected in various documents we have seen evidencing what the claimant was thinking over the subsequent months).

39. On 21 October 2017, the claimant emailed Mr “NB”, a senior individual at the respondent, seeking a transfer to one of a number of other stores. He stated that he would “like an opportunity to work within one of the stores I have listed above permanently and transfer from Paddington Station 2083, as I find it very difficult to work with my current store manager there, as well as my store location”. We consider that this was a direct response to his unhappiness at Mr Ghazi not being able to accommodate his request for a change of hours at the Paddington store.

40. NB involved an HR partner, Ms “CN”. Ultimately, this resulted in the meeting of 15 December 2017 with Mr Ubhi referred to below.

41. A further customer complaint was received on 7 November 2018. The claimant had accused a customer of stealing. The customer worked for Great Western Rail (“GWR”) (a source of many customers at the Paddington Station Store given it was one of the two major employers at Paddington Station). Without permission, the claimant had then left the Store and approached the customer’s manager to complain about the customer, whilst also claiming that he was the manager of the Paddington Store. This account was corroborated by one of the assistant managers at the Paddington Store.

42. An investigatory meeting was held by SM with the claimant on 9 November 2017. A statement was taken from the GWR manager which also corroborated what the claimant had done.

43. This resulted in the claimant being invited to attend a disciplinary hearing which took place on 27 November 2017. The hearing was held by Mr “JW”, an assistant manager from the High Street Kensington Store. He held that the misconduct was proven inasmuch as the claimant had: misrepresented himself as a member of the management team; breached health and safety rules by leaving the company premises without informing the duty manager; made a customer feel unwelcome to shop in the Store; and not followed his role profile as a customer service assistant. In the light of the evidence which we have seen, these were reasonable findings to make. JW accordingly decided to issue the claimant with a written warning to remain live for nine months; his outcome letter made clear that any further occasions of misconduct may lead to further disciplinary action.

44. The claimant appealed. His right of appeal was to Mr Ghazi. However, he requested that a different manager hear his appeal and this request was acceded to. The appeal hearing took place on 13 December 2017 before Mr “GP”, a store manager from the Holborn Circus Store. At the claimant’s request, GP carried out further investigations. However, he turned down his appeal by letter of 15 December 2017.

45. We have seen the relevant documentation from this disciplinary/appeal process. The process appears to have been carried out thoroughly and fairly.

46. In the meantime, on 14 December 2017, a complaint was raised about the claimant's behaviour by Mr "MK", a customer assistant at the Paddington store. Essentially, the claimant had been very rude to MK whilst they were dealing with a customer.

47. Also on 14 December 2017, Mr "MR", an assistant manager at the Paddington Store, took a statement from Ms "MB" as the claimant had allegedly been discussing confidential disciplinary matters with colleagues. The statement revealed that the claimant had also been loudly criticising managers, including Mr Ghazi. MR then emailed Mr Ghazi the following day to confirm what had happened. In his email to Mr Ghazi, MR set out that he had himself witnessed the claimant openly criticising managers and that the claimant had been using his mobile phone on the shop floor in breach of policy.

48. On 15 December 2017, the claimant met Mr Ubhi, an area manager. Mr Ubhi asked the claimant how he wanted his concerns dealt with and the claimant told him informally. At the start of the meeting, the claimant said to Mr Ubhi "you see me as a joke"; there was no reason for him to say this as Mr Ubhi had rarely even met the claimant previously and this was just another example of the claimant's unusual behaviour.

49. The claimant started by saying that he was not happy with his shift patterns. He then went on to raise a number of baseless allegations, in particular that: that Mr Ghazi had committed fraudulent acts; that Mr Ghazi was encouraging colleagues to raise sexual harassment claims against him; and that KJ had punched him. Given the seriousness of these allegations, Mr Ubhi decided to conduct an investigation. The claimant did not raise with Mr Ubhi any of the allegations that are now set out in the amended claim form and certainly did not suggest that Mr Ghazi had made any of the many alleged discriminatory comments which are set out in the amended claim form.

50. On 29 December 2017, KJ took a statement from Ms "EV", a customer assistant at the Paddington Store. EV alleged that the claimant had made her feel uncomfortable as he had asked her to live with him. She also stated that the claimant made her feel that he thought he was superior to women because if there was a spill on the floor, he would say that it was her job to clean it and not his.

51. On 9 January 2018, MK complained that he had, in front of customers, been physically pushed by the claimant. Mr "LR", an assistant manager at the Paddington Store, confirmed that he had witnessed the claimant do so.

52. On 17 January 2018, Mr Ubhi met the claimant again to investigate his complaints further. He first discussed the allegation that the claimant had been punched by KJ. The claimant told him that he did not want the matter investigated and instead wanted Mr Ghazi investigated for "ordering it" (the suggestion that Mr Ghazi ordered it was not raised at the earlier meeting of 15

December 2017). Mr Ubhi asked the claimant when this allegedly happened and the claimant told him that it was in May/August 2017 (in other words, several months before the claimant raised it on 15 December 2017). The claimant then told him that he had asked KJ a question and that KJ had responded by punching his right cheek. The claimant said that he did not sustain an injury and that he felt that KJ was looking for a reaction and that he did not report it as he counted it as an accident. They then discussed some of the other allegations.

53. At this meeting, the claimant also stated that Mr Ghazi “takes advantage of his position. Discrimination. He’s insulted my nationality”. Mr Ubhi asked him what Mr Ghazi had said and how he said it. The claimant replied: “you come from bad country/sad country asylum seeker, refugee and physically he touched me”. Mr Ubhi asked him how Mr Ghazi touched him and the claimant said that he “continually touched my back”. Mr Ubhi investigated these complaints too. Again, although the claimant raised the alleged comments set out in this paragraph above, he did not say anything about the vast number of far more serious alleged discriminatory comments which are now set out in the amended claim.

54. Mr Ubhi conducted a thorough investigation. He looked into the claimant’s concerns extensively and found that there was no evidence to substantiate his allegations. We have seen the details of the actions which Mr Ubhi carried out in this investigation; it is not necessary to reiterate them all here but we are satisfied that the investigation was thorough and that his conclusion that there was no substance to the claimant allegations was entirely justified.

55. Mr Ubhi set out his conclusions following this investigation in a letter of 26 January 2018 to the claimant. In addition, following the claimant’s request, Mr Ubhi confirmed that he was moving the claimant to the Queensway store.

56. On 19 January 2018, Mr Ghazi carried out an investigation with MK regarding the complaint raised on 9 January 2018.

57. On 12 February 2018, the claimant provided a fit note from his GP stating that he needed amended duties. On 15 February 2018, Mr Ghazi had a meeting with the claimant to discuss his health. The claimant told Mr Ghazi that he had been treated fairly. We have seen the notes of this meeting; in them, Mr Ghazi is sympathetic and fair to the claimant and is clearly concerned to do what he can to assist the claimant in the light of the issues he raised. Mr Ghazi offered a referral to occupational health and details of the benevolence fund.

58. It was around this time that the claimant moved from the Paddington Store to the Queensway Store on a temporary basis (although he never returned to work at the Paddington Store after that).

59. Whilst at the Paddington Store, the claimant only worked on the self-service checkout and on the delivery cages; all of his colleagues would do this as well. The amount of time which the claimant spent on the cages would be limited as he would be overseeing the self-service checkouts. There is no evidence other than the claimant’s assertion that the claimant was required to do more

work or harder work than his colleagues and certainly no evidence that Mr Ghazi instructed him to do so.

60. During the claimant's time at the Paddington Store, Mr Ghazi was conscious that the claimant was not a man of great financial means. Consequently, he often spent a lot of time with him, particularly at the end of the week and sometimes for up to an hour and a half, going through his pay details to ensure that he was paid promptly. This often resulted in Mr Ghazi staying late himself in order to assist the claimant.

Mr S Ghazi

61. Mr S Ghazi is an assistant manager at the Queensway Store. He works only two days a week (Thursdays and Fridays) from 8 PM until midnight.

62. When the claimant transferred to the Queensway Store in January/February 2018, he worked a shift which finished at 8 PM. Consequently, Mr S Ghazi did not have many interactions with him. When he did, they were always short due to the timings of their starting and finishing work.

The Claimant's time at the Queensway Store

63. On 25 March 2018, a complaint was raised by Ms "AK", the pharmacist at the Queensway Store, regarding an incident on 18 March 2018 when the claimant requested Viagra from her and regarding his behaviour towards her and other female staff. Further complaints of sexual harassment arose during subsequent interviews from other female colleagues at the Queensway Store, specifically Ms "NB" and Ms "JD", and the relevant incidents were witnessed by Ms "SB".

64. On 4 April 2018, an investigation meeting with the claimant regarding these sexual harassment allegations took place. It was conducted by Mr "DB", the Store Manager from the Gloucester Road Store.

65. On 12 April 2018, there was a customer complaint about the claimant's behaviour when the customer was trying to purchase some nappies. There was then a further altercation involving the claimant and Mr "SH", an assistant manager at the Queensway Store, in which the claimant raised his voice at SH. Mr S Ghazi witnessed the end of this incident.

66. In addition, and in connection with the purchase of the nappies by the customer, the claimant telephoned the respondent's accident line that day to report, without any basis, a breach of the respondent's bulk buying policy.

67. On 16 April 2018, Mr "MJ", a step up assistant manager, reported that the claimant had approached him and informed him that he had been accused of sexual harassment (in other words, a breach of confidentiality) and that customers were complaining about the claimant's recent behaviour.

68. On 16 April 2018, an investigation meeting was conducted with the claimant regarding the nappy buying incident. It was conducted by Mr "SS".

69. On 17 April 2018, SS interviewed SH and NB regarding the nappy buying incident.

70. On 18 April 2018, SS interviewed Mr S Ghazi and a further employee regarding the nappy buying incident.

71. On 18 April 2018, the claimant was suspended pending further investigation into these matters.

72. On 23 April 2018, DB conducted an investigation with the claimant regarding the sexual harassment allegations.

73. We have seen the notes of the various investigatory interviews and other documents referred to above. They are thorough and they corroborate the allegations made against the claimant.

74. The claimant was invited to a disciplinary meeting on 8 May 2018, chaired by Mr Hussain. He was given a full opportunity to answer the charges against him. The claimant's position was that he believed that he had done nothing wrong.

75. In addition, the claimant provided Mr Hussain with the names of managers at other stores of the respondent at which he had worked by way of references as to his good behaviour. Accordingly, Mr Hussain contacted these managers. Of those managers: one said that there were two customer complaints made about the claimant whilst he had worked in that manager's store and that, if he had a vacancy, he would not offer it to the claimant due to the customer complaints; the second was unaware that the claimant had worked in his store; the third told him that he had had both customer and colleague complaints about the claimant and had therefore personally stopped the claimant from working in his store; and the fourth told him that he would not want the claimant to work in his store as he had received customer complaints about him.

76. The claimant did not at any point raise with Mr Hussain that he felt that he was being discriminated against.

77. Mr Hussain considered all of the evidence and decided to dismiss the claimant summarily. The allegations were proven, were extremely serious (including of sexual harassment in relation to various colleagues), and he already had a live written warning on his record. He considered whether the claimant could be moved to a different store, but he felt that the business had already done a lot of work with him and that, if the claimant was moved elsewhere, Mr Hussain would be putting other colleagues at risk. He also felt that the claimant was fabricating stories. He said that this feeling was supported by the negative feedback that he had received from the claimant's previous managers despite the claimant's suggestion that it would be positive.

78. We have seen the documentation in relation to the disciplinary process and heard Mr Hussain's evidence. We consider that the process was a thorough and fair one.

79. The claimant appealed his dismissal on 17 May 2018. He appealed on a number of points; however, he did not raise that he felt that he had been discriminated against, either in his appeal letter or in the subsequent appeal process.

80. The appeal was heard by Ms Monks on 1 June 2018. The claimant was given every opportunity to make his case. At the hearing, the claimant added further allegations, specifically that AK had touched him with her breast (he had not mentioned this at any stage of the disciplinary process) and he suggested that another individual, whom he described as "very beautiful" had "touched" him. The claimant also told Ms Monks to check the CCTV; she confirmed to him that there would unlikely be CCTV footage, because CCTV (in accordance with the respondent's policy) is kept for a maximum of 30 days and this time period had expired; nonetheless, Ms Monks did check and, as she anticipated, there was no CCTV footage.

81. Of her own volition, Ms Monks decided to conduct further telephone interviews with AK; SS; NB; DB; and a further employee, Mr "IC", for further clarification of some points.

82. Ms Monks turned down the claimant's appeal by letter of 6 June 2018.

83. Again, we have seen the documentation in relation to the appeal and heard from Ms Monks. It appears to us that the appeal was carried out thoroughly and fairly.

84. After the claimant's employment ended, he had a pay query and so he came to the Paddington Store. Mr Ghazi sat with the claimant and went through his pay query and explained why he had been paid what he had. At the end of the conversation, the claimant shook his hand and apologised for his behaviour when working in the Store. He also thanked Mr Ghazi for giving him a job.

85. In the light of various of the facts found above, we find that Mr Ghazi in fact took a lot of time to help and support the claimant.

Conclusions on the issues

86. We make the following conclusions, applying the law to the facts found in relation to the agreed issues.

The alleged discriminatory comments

87. The first category of allegations concerns the alleged discriminatory comments made allegedly by Mr Ghazi.

88. Essentially here, there is a dispute of evidence: the claimant says that these comments were made; Mr Ghazi says they were not made. In deciding whose evidence we prefer, we take into account the following.

89. The alleged comments are extremely serious and, if made, are clearly discriminatory by reason of race and religion. The alleged comments are set out in the claimant's amended claim form. According to the claimant, there were lots of them made, with individual comments cited often allegedly being made on repeated occasions.

90. However, the claimant alleged that these were said frequently and openly in the workplace. We consider that, if they were made, it is highly surprising that nobody appears to have noticed them and nobody appears to have reported them. The claimant claimed that "Abdullah" witnessed him being called a "fucking asylum seeker", but he has not sought to call any evidence from Abdullah. It is very surprising that there is no contemporaneous documentary evidence of the comments being made and that there are no witnesses to them if indeed they were made.

91. It is equally surprising that none of these comments were raised by the claimant at any stage during his employment or indeed in his claim; they were not raised until they were set out in his amended claim form. It is very unlikely that, if they had been made, the claimant would not have raised them earlier, particularly as he is clearly someone who has no problem with raising issues when he wishes to (for example he raised several serious allegations about Mr Ghazi in his complaints to Mr Ubhi).

92. The claimant had plenty of opportunities to raise these allegations previously and did not. Ms Lody has set these out at paragraph 18 of her submissions. Those were:

1. During his correspondence with NB and CN in October 2017 when the claimant expressed a desire to move stores and said he found it "very difficult to work with my current store manager as well as my location";
2. During the investigation, disciplinary and appeals meetings for the incident involving the GWR customer;
3. During his grievance meetings with Mr Ubhi on 15 December 2017 and 17 January 2018;
4. During the investigation, disciplinary and appeal meetings in relation to the matters leading to his dismissal; and
5. During any other meeting and in any of the correspondence he had with members of the respondent's management team.

It is extraordinary that he did not mention them at any stage if indeed they occurred.

93. Furthermore, as noted, the claimant was clearly someone who was able to and did take action to protect perceived breaches of his rights and we have seen lots of examples of this in the bundle.

94. It is only at the very end of the second grievance meeting with Mr Ubhi on 17 January 2018 that the claimant mentioned discrimination by Mr Ghazi at all and said that he had insulted his nationality. However, what he says is “you come from bad country/sad country asylum seeker, refugee and physically he touch me”. That is, in terms of the nature of the alleged comments, significantly less serious than the extensive allegations which he set out in his amended claim form in January 2019. Again, given he was prepared to make this allegation at the time, it is extraordinary that he didn’t say something at the time about the far more serious comments which he now alleges were made.

95. As noted, these allegations were not even in the original claim form, even though the claimant ticked virtually every box of discrimination there. They appear for the first time in the amended claim. Again, that is very surprising if they had indeed been made.

96. In addition, we have a number of concerns about the reliability of the evidence given by the claimant in general. There are many examples. Ms Lody has set out several at paragraph 32 of her submissions:

1. During cross-examination, the claimant claimed vehemently that he was in possession of a document in which NB had retracted her allegations of sexual harassment. When he presented it, it was not that at all but, instead, a letter from the claimant to the respondent seeking to appeal the disciplinary appeal outcome;

2. The claimant claimed that Mr S Ghazi offered him £50,000 to leave the respondent; Mr S Ghazi barely knew him by then and the idea of an assistant manager having authority to offer that sort of sum of money in order to encourage an employee to leave is farcical;

3. The claimant also claimed that the respondent has offered to settle the case by giving him £50,000 and reinstating him. Not only was Ms Lody clear that no settlement offer had been made at all; it is implausible that the respondent would be offering such a large sum of money, disproportionate to the sort of salary the claimant was on, and at the same time seeking to reinstate him;

4. In his cross-examination, the claimant came out with entirely new allegations that someone called “Alfie” had punched him in the workplace in mid-December 2017 (in other words over and above the allegation made in the 15 December 2017 meeting with Mr Ubhi that KJ had punched him); this was never raised previously;

5. When the claimant was cross-examined about his being questioned by the police in relation to an alleged assault by him on a woman on a

bus, the claimant said that at the conclusion of that questioning the police apologised and said that they would pay him compensation; again, this is entirely implausible. On further questioning, the claimant changed his evidence and said that it was his solicitor who was going to make a claim for him against the police for compensation; he then changed his evidence again and said that in fact the claim would be against the woman who accused him.

97. The claimant also appears to add to and embellish his evidence, whether consciously or otherwise. Again, there are many examples, and some are given at paragraph 31 of Ms Lody's submissions:

1. At the meeting with Mr Ubhi on 15 December 2017, the claimant said that KJ had punched him, some 4 to 5 months previously; it is inherently unlikely that he would not have said anything earlier if something like that had really happened;

2. In his second meeting with Mr Ubhi on 17 January 2018, he came out with the allegation that Mr Ghazi had touched him (and, when asked by Mr Ubhi, said that this was on his back). Then, in his cross-examination before this tribunal, he alleged that Mr Ghazi had touched him on his bottom; again, an embellishment;

3. Midway through his appeal against dismissal, he came out with the allegation that AK had touched him with her breast;

4. In his witness statement for the tribunal, he added new allegations that were not in any of the earlier documents, including his extensive amended claim; for example, that other Bangladeshi employees had said discriminatory insults to him;

5. He suggested to the tribunal in cross-examination that he had written to Mr Ubhi to raise a grievance about the discriminatory insults as far back as March 2017 and had been chasing but there was no response; there was no documentation to support this allegation and it was made for the first time in cross-examination at this tribunal.

98. The claimant also has a habit of making up baseless allegations, for which there is no evidence and which are often inherently unlikely in any event. These include:

1. His allegations about a breach of the bulk buying policy;

2. His allegations in his grievance about fraudulent/criminal behaviour by Mr Ghazi;

3. His allegation in his grievance of being punched by KJ which he reported 4 to 5 months after the alleged event and which he subsequently also baselessly suggested was ordered by Mr Ghazi.

(The three baseless allegations above were all investigated and were indeed found to be baseless);

4. In cross-examination before the tribunal he suggested that SM had punched him and that someone else had poured a drink on his foot; this was never suggested or raised before in any way.

99. For all these reasons we have serious concerns about the reliability of the claimant's evidence.

100. By contrast, we consider that Mr Ghazi's evidence, like that of the other witnesses of the respondents, was reliable. He gave straightforward answers to the questions asked, was thorough in those answers and consistent, both with his own witness statement, the other witnesses and with the contemporaneous documents. We have no reason to doubt the credibility of his evidence.

101. We would go even further. Mr Ghazi appeared to us to be an extremely conscientious and thoughtful manager who cares about the welfare of his employees and customers and takes his responsibilities very seriously. Particularly striking is the amount of time he spent assisting the claimant; the fact that, conscious of, as he put it, the claimant needing the money, he spent around an hour and a half on many Fridays helping the claimant reconcile his payments so that he got paid quickly, sometimes with the result that he didn't get away on time himself, is an example of this.

102. In short, therefore, we prefer Mr Ghazi's evidence over that of the claimant and we find that on the balance of probabilities none of the alleged discriminatory comments were in fact made.

103. As the relevant facts have not therefore been established, these allegations all fail.

Allegation that Mr Ghazi made the claimant work hard because of his race or religion

104. It is clear on the evidence that Mr Ghazi treated the claimant fairly. Essentially, we accept Mr Ghazi's evidence that the real problem was that the claimant was annoyed because Mr Ghazi was unable to change his working hours so that he could have the hours that he wanted. This was not Mr Ghazi's fault; he just didn't have those hours available for the claimant.

105. The claimant has alleged he had health problems. However, we have seen the notes of the meeting which Mr Ghazi had with the claimant about his health; these show that he had real concern and offered a referral to occupational health and details of the benevolence fund. These are not the actions of manager who was uncaring. Furthermore, in drawing these conclusions we take into account our findings above regarding the respective reliability of the evidence of the claimant and Mr Ghazi. We do not, therefore, accept that Mr Ghazi made the claimant work too hard. This allegation is not proven and therefore fails.

106. Even if it was made out factually, there is absolutely no shred of evidence that any decisions about how hard the claimant should work made by Mr Ghazi were anything to do with his race or religion. The burden of proof would not therefore have shifted. The allegation would therefore also have failed for that reason.

The claimant's grievance

107. As to the claimant's "grievance" (in the form of his complaints to Mr Ubhi), the claimant made a series of extraordinary allegations to Mr Ubhi. Mr Ubhi investigated them thoroughly and, quite reasonably, found them not to be upheld. We have seen the documents of the investigation which evidence this. There is no evidence to suggest that turning down the grievance was anything to do with the claimant's race or religion. This allegation therefore fails.

Dismissal

108. What was the reason for the claimant's dismissal: was it conduct or was it in any way to do with the claimant's race or religion?

109. We have seen reams of evidence about the long history of complaints raised against the claimant by a variety of employees and customers, across two stores. Furthermore, whilst we have not set out the individual races of those making the complaints and those investigating the complaints, the evidence before us was that this large number of individuals encompassed people of different races. Furthermore, they had no obvious axe to grind. Complaints were investigated by independent employees of the respondent, working in different stores, not involved in the matters being investigated, and by people of different ethnicities. When the claimant provided in the disciplinary hearing the names of managers from other stores to provide positive references from him, three out of four of those managers also said that the claimant had customer and/or employee complaints against him and that they would not want him working in their store.

110. The allegations that formed part of the disciplinary at Paddington and the disciplinary at Queensway which led to the claimant's dismissal were investigated very thoroughly, both at the investigation, disciplinary and appeal stages. We were impressed by the thoroughness of the individuals involved. Particularly noteworthy is the decision of Mr Hussain to seek evidence that might assist the claimant from previous store managers at his request and the decision of Ms Monks at the appeal stage post dismissal to re-interview several individuals. That is demonstrative of the thoroughness and evenhandedness of the investigators.

111. As to the evidence of misconduct, we note that the evidence of those who made allegations against the claimant appeared credible and consistent and was corroborated by other employees. It was entirely reasonable for the decision-makers to accept that evidence. Furthermore, the allegations against the claimant were serious ones.

112. The claimant's many assertions that, whenever anyone did something he didn't like, in terms of making a complaint about him or not giving him the decision he wanted, that person was somehow part of an overarching conspiracy with the Ghazi brothers to get him out, was simply incredible. We had almost lost count, by the end of the claimant's evidence, of the number of people he maintained were part of this conspiracy. The suggestion is utterly implausible in itself and there is no evidence for it beyond the claimant's own assertion. We would add the concerns raised above about the reliability of the claimant's evidence and find that there was no conspiracy and that the claimant was treated the way he was simply as a result of his own actions and conduct.

113. In addition, the claimant was inconsistent about the underlying motivation for this conspiracy: on the one hand, he said that Mr Ghazi was trying to get rid of him; on the other hand, that he was trying to force him stay in the Paddington Store. Both can't be right.

114. There is, therefore, no evidence at all to suggest that the decisions to discipline the claimant, dismiss him, and turn down his appeal were anything whatsoever to do with his race or religion and these allegations therefore fail. Had the burden of proof shifted, the respondent would easily have established that the reason for its actions was in no sense whatsoever to do with the claimant's race or religion and that, rather, it was entirely because of the claimant's own conduct.

115. In short, all of the allegations fail.

116. We consider that we have addressed all of the allegations set out in the list of issues. However, given that paragraphs 10-21 are lengthy and detailed, we would add that, just in case there is something which we have inadvertently not addressed, we do not consider that anything alleged to have been done in those paragraphs was done in any sense whatsoever because of the claimant's race or religion.

Jurisdiction

117. We turn to the issue of jurisdiction and time limits. Subject to the issues referred to below regarding a continuous course of conduct and whether it is just and equitable to extend time, the tribunal only has jurisdiction to hear complaints which were in relation to events which took place no earlier than three months prior to the presentation of the claim, with that period being extended by any period spent in ACAS early conciliation. ACAS early conciliation commenced on 5 July 2018 and ended on 5 August 2018, with the claim being presented on 6 August 2018. That means that any allegations about events which took place prior to 7 April 2018 were prima facie presented out of time. That basically includes all the complaints which related to Paddington (at paragraphs 10-20 of the amended claim), prior to the claimant's transfer, in January/February 2018, to Queensway. The allegations in paragraph 21 of the amended claim, which concern matters relating to the claimant's dismissal, with effect from 14 May 2018, were presented in time.

118. The claimant has not established that there was a continuing course of conduct between the Paddington allegations and the Queensway allegations (which would mean that the Paddington allegations were deemed to have been presented in time). They took place at different stores. The people who dealt with them were different. Mr Ghazi has no involvement in the Queensway store. Mr S Ghazi, although he worked at the Queensway store, was an assistant manager who worked two late night shifts and whose hours barely overlapped with those of the claimant; he had no part in the decision to dismiss the claimant. We have rejected the idea of any conspiracy either between the Ghazi brothers or otherwise. There is therefore no continuing course of conduct as between the Paddington allegations and the Queensway allegations. The Paddington allegations were therefore presented out of time.

119. We therefore have to ask whether it would be just and equitable to extend time in relation to the Paddington allegations. We remind ourselves that the burden of proof is on the claimant to show that it would be just and equitable to extend time. No evidence has been presented to suggest that it would be just and equitable to extend time such that we would have jurisdiction to hear the Paddington allegations. We see no reason why the claimant could not have brought a claim about those allegations earlier had he wanted to; he was perfectly capable of raising other matters of concern to him if it suited him to do so. We do not therefore consider that it would be just and equitable to extend time.

120. The tribunal therefore has no jurisdiction to hear the Paddington allegations (which are at paragraphs 10-20 of the amended claim) and they are therefore struck out for that reason. However, even if we did have jurisdiction to hear them, they would have failed for the reasons already given above.

Written Reasons

121. After the tribunal had given its decision with its reasons for that decision, the judge explained that in a moment he would ask the parties whether or not they wanted written reasons for the decision. However, he said he wanted to explain two things before doing so: first, if anyone was minded to appeal the decision, they would need the written reasons to do so; secondly, all tribunal decisions were published online and, if written reasons were requested, those reasons would be published online, with the result that the written reasons could be identified through searches made against the parties' names (including, potentially, by potential future employers). The judge then asked the parties whether they wanted written reasons, reminding them that they could either request them now or could apply for them to the tribunal in writing within the next 14 days.

122. The claimant said that he was satisfied with the decision and that he was not going to appeal and was not therefore requesting written reasons.

123. Ms Lody said that the respondents would like the written reasons and that they were considering whether or not to make a costs application in future.

124. As regards a costs application, the judge said that, as Ms Lody had already heard the reasons for the tribunal's decision and there was time left at the end of the hearing, now would be the time to make a costs application if that was what the respondents wished to do. He questioned whether it would be a proportionate use of tribunal time to have to reconvene the tribunal panel on a different date in the future (which meant they would not be available to hear other tribunal claims on that date) when they were all here now and there was time to hear a costs application. However, Ms Lody confirmed that she had no instructions to pursue a costs application at this point.

125. The judge confirmed that the written reasons would be produced and sent to the parties in due course.

Employment Judge Baty

Dated:13 Feb 2020

Judgment and Reasons sent to the parties on:

17/02/2020

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For the Tribunal Office