



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Roslyn Palmer  
**Respondent:** London Grace Limited  
**Heard at:** East London Hearing (by CVP)  
**On:** 27 – 31 July 2020  
**Before:** Employment Judge Housego  
**Members:** Mr T Burrows  
Mr M Wood

## Representation

**Claimant:** In person  
**Respondent:** Ms N Gyane, of Counsel

# JUDGMENT

**By unanimous decision the Claim is dismissed.**

# REASONS

## The claim

1. The claim is of direct discrimination, contrary to S13 of the Equality Act 2010. The protected characteristic in this case is race. The Claimant describes herself as black British. Everyone involved in her management at the Respondent is white. They are of varying nationalities. This is of no consequence. S.13 states:

*“13 Direct discrimination*

*(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”*

2. The Claimant does not say that anyone with whom she dealt was overtly racist. Rather, she asserts that the way she was treated was unconscious bias, based on stereotypical assumptions. She was, she says, treated as being less competent than others by reason of assumption, not based on any objective assessment, and without any feedback, no setting of targets, and no opportunity to improve, if improvement was

needed. She says that the positive things she did were not given any weight. She attributes this to a difference in race.

3. The Respondent denies this. They say that their decisions were based on objective assessment of the Claimant by a variety of people, and that while they did not think the Claimant had the attributes necessary for the role of assistant manager they were keen to keep her within the business. They say that their only criterion for decisions is assessment of ability. They acknowledge that they could have managed the Claimant's employment better, but did not do so for reasons nothing to do with race, but as a young expanding company still seeking to embed best practice, and relying on an external human resources provider.

4. The Claimant must provide evidence from which this Tribunal might find race discrimination. If she does so, it is for the Respondent to show that the reason was not, even in part, to do with race.

5. The Claimant compares herself with Ms OV and with Ms JL. The Tribunal raised a hypothetical comparator, as Ms OV was a trainee manager not an assistant manager, and Ms JL, although at the same level, had 5 years' experience running her own salon, and this was the Claimant's first management post. The Respondent had no objection.

6. Findings of fact may show unfairness, but however unfair the treatment of Ms Palmer that is not race discrimination without some causal connection with race to taint that unfairness with race discrimination. The facts may be such that discrimination will be inferred – it is then up to the Respondent to seek to rebut that presumption.

7. The Tribunal paid very careful attention to the issue of unconscious discrimination. Since this is by definition unintentional, careful examination of the facts is necessary, and the Tribunal had this in mind throughout its deliberations.

## **Evidence**

8. Oral evidence was given by the Claimant, and by GM (store manager at Canary Wharf), BD (area manager) and by PX, director. A witness statement was tendered for HY, but she did not give oral evidence, being scheduled for an operation on the second day of the hearing. At a case management hearing the possibility of taking her evidence out of sequence was considered, but declined by the Respondent (which felt that Ms HY would have other things on her mind). Ms BD left the employment of the Respondent on 31 January 2020. A bundle of documents of 493 pages was considered, page 493 being added on day 2 at the request of the Respondent, which request Ms Palmer did not oppose.

## **People**

9. The following people feature:

9.1. Roslyn Palmer, claimant.

9.2. GM: manager at Canary Wharf until end January 2019 who interviewed the Claimant on 16 November 2018 and recommended her appointment.

9.3. BD: area manager for several branches, including Canary Wharf.

9.4. JL, another assistant manager at Canary Wharf, who started 2 weeks before the Claimant.

9.5. OV: trainee store manager at Canary Wharf, who started work in the same day as the Claimant (trainee store manager is above assistant

manager in the hierarchy).

- 9.6. HY: manager at the Clapham Junction branch where the Claimant spent her induction day on 01 December 2018.
- 9.7. PX, founder of the company and a director of it.
- 9.8. MQ, operations executive, head office based but who worked at Canary Wharf prior to Christmas 2018.
- 9.9. EI, at head office, in management.
- 9.10. CH, external HR consultant.

## Background

10. The Respondent runs a chain of beauty salons, with nail bars, and coffee shops included. It is a new company, which has grown fast, to 8 branches at the time.

11. The Claimant was a nail technician, who had become a supervisor at her last place of work. On 05 November 2018 she applied (209) for the role of Assistant Manager at the Respondent's biggest, busiest and most profitable shop, in Canary Wharf.

12. On 16 November 2018 (60) she was interviewed by GM, who was impressed by her. Ms GM was the manager at the Canary Wharf store.

13. On 26 November 2018 PX, the founder, and a director, of the Respondent offered Ms Palmer the job as Assistant Manager of the Canary Wharf store (60 and 62). Ms PX never worked with Ms Palmer, and probably met her in person only once, at the Christmas party on 08 December 2018 (257).

14. The offer was set out in an email from Ms PX to Ms Palmer on 19 November 2018 (215). It set out that the job had already been filled, but that the company was growing and so there was opportunity to develop from Assistant Manager to Trainee Manager and thence to Store Manager. So the offer was of Assistant Manager at Canary Wharf, together with the other person already appointed, and once they had each learned about the brand, should they wish to progress then they could discuss other positions, either at Canary Wharf or elsewhere (215).

15. On 27 November Ms Palmer responded to an email sending her a contract of employment by email (226), asking how it was that her remuneration was stated in her offer but not in her contract. Ms PX emailed the operations executive, MQ, "*Do you think we should be concerned at this behaviour?*" BD, Area Manager, thought Ms Palmer was just trying to be formal.

16. On 01 December 2018 Ms Palmer had her induction day at Clapham Junction branch. On 03 December 2018 Ms HY gave feedback to Ms BD (235). Ms HY said "*She seems quite shy and doesn't take initiative*" and "*I do think she needs extra training on a few other days*". Ms BD asked her to expand on these comments. On 05 December 2018 Ms HY did so (232) and ended her email "*She may be in the future but right now is definitely (sic) not ready to be in a management position.*"

17. On 03 December 2018 was Ms Palmer's next day at work, at Canary Wharf. Ms BD took her, and Ms OV, through some accounts training and a management overview (C's ws para 7). Ms GM was not in work that day.

18. On 04 December 2018 Ms Palmer attended an induction day for all new staff, nail technicians, supervisors and managers.

19. On 05 December 2018 Ms Palmer attended work at Canary Wharf. Ms JL was manager in charge.
20. Ms Palmer and Ms GM first worked together at Canary Wharf on 10 December 2018. It was one of only two days they worked together, the other being 08 January 2019.
21. Before 11 December 2018 it had been decided that Ms GM would leave her post as manager at Canary Wharf, and become a floater supervisor, because she was also to undertake a beauty course at college. No decision was made about replacement.
22. Throughout early December 2018 Ms GM was preoccupied with a family matter abroad and was frequently not at work, and on 11 December 2018 she left work to travel abroad. Her next day back at work at Canary Wharf was 31 December 2018.
23. On that day (11 December 2018), in reply to an enquiry from Ms PX, Ms BD emailed Ms PX (256) to state that it was really her and Ms JL who were managing. Ms JL was good but stretched and still new. Ms OV and Ms Palmer *"haven't had enough training to do a huge amount"*. Ms OV *"can deffo oversee store but doing so many treatments"*. Ms Palmer was *"slow at treatments and not really managing anything but good for blue column"*. The blue column is where a manager is rota'd for booking for treatments and to manage while doing so, rather than just managing.
24. Ms BD also emailed all staff on 11 December 2018 (257) saying that she would be present *"alongside our wonderful new Assistant Managers"*.
25. On 13 December 2018 Ms BD rostered Ms Palmer for the whole day of 15 December 2018, opening and closing the store. She emailed (260) and gave some contact numbers in case help was needed but said that *"I'm sure you won't need to though!"*. Ms Palmer replied that she would check anything she was unsure of with Ms JL the next day 14 December 2018.
26. 15 December 2018 Ms Palmer was sole manager in charge of the Canary Wharf. Nothing untoward happened. Ms BD emailed Ms Palmer (replying to another message) and asked *"How was today?"*. Ms Palmer replied *"Yeah it was good."* She said that she had to throw away two items in the fridge but had not been shown the log book, but would do so on Monday.
27. On 22 December 2018 Ms BD WhatsApp'd the team to thank everyone *"for being absolute superstars during this MENTAL period"*.
28. On 27 December 2018 Ms JL was due to open the store, but suffered an accident: Ms PX had been told, and she had let Ms OV, who was due at work at 11 am, know. Ms Palmer was also due at work at 11: she got there first and found the store closed and opened it.
29. On 31 December 2018 (on her first day back) Ms GM emailed the three managers with training plans – all at Leicester Square branch on 04 January 2019 (at various times), fire marshal training organised by the facilities manager of the building on 08 January for the other two and 22 January 2019 for Ms Palmer, and coffee training for Ms OV and Ms Palmer on 10 January 2019 and Ms JL on 15 January.
30. Also on 31 December 2018 EI (at head office) emailed Ms BD (276) to ask if it was thought that Ms Palmer would be assistant manager or supervisor *"if she impresses in the next few weeks"*. Ms BD replied the same day saying that Ms Palmer was already assistant manager *"but she isn't showing any signs of management at the moment"*. She stated that she had not copied in the office at Canary Wharf to make sure that Ms

Palmer did not see, or be told of, this. Ms BD also said that Ms GM would be giving Ms Palmer some tasks over the next week or so to see how she responded. Ms EI responded that the decision as to management at Canary Wharf had to be made in the next week or so. Ms PX was copied in and observed by email on 01 January 2019 *"Thanks both – what a shame about Roslyn"*.

31. On 08 January 2019 Ms Palmer and Ms GM were both on duty, but for most of the time Ms GM was with the other two, training them.

32. On 08 January 2019 at 2:58 am (291-292) Miss PX emailed Ms EI and Ms BD, excluding the Canary Wharf email so that Ms Palmer could not see it. She suggested another person might like to stay at Canary Wharf and be part of the management team and Ms Palmer move to another store such as Leicester Square.

33. At 10:19 am that day, 08 January 2019, Ms BD emailed Ms PX and Ms EI about various people, including Ms Palmer. She stated *"We decided to give her a couple of weeks from last week with [GM] starting to try to do some training/give her some responsibility and see how she goes with it. I have booked a meeting with Roslyn Thursday 5:30 p.m. so I can catch up with her and kind of give her an idea that we are not seeing what we would expect at the moment and see what her thoughts are."*

34. On 10 January 2019 Ms BD emailed Ms PX (293-4) *"has been told by [GM] that she needs to show more initiative. Apparently is trying and she has been very hard-working, drama free good employee so far. I need to speak to [GM] properly tomorrow but we were thinking that perhaps we could give the option to be a trainee supervisor at CW? On three months and make it clear that this is a trial as we have not seen the management skills we need for the AM or full supervisor role. Within the three months we may find it is just not for her or it may be she shows enough potential to supervise a smaller store (I can also give the option to be just nail tech if she would prefer). Again, do need to speak to [GM] I as if she has not shown much improvement can just scrap the trainee supervisor idea and offer her NT"*. There is then reference to pay rates.

35. By 11 January 2019 it had been decided that Ms OV and Ms JL would co-manage the Canary Wharf store (emails that day (293)).

36. On 14 January 2019 Ms GM sent a WhatsApp to the team at Canary Wharf. It told them that she would cease to be manager at the end of the month. It asked that any issues be raised with Ms OV or Ms JL. This was news to Ms Palmer (who was not at work that day), and no one explained it to her.

37. On 17 January 2019 Ms BD met Ms Palmer. There were no minutes and no follow up email. We accept Ms Palmer's account of this meeting. Miss Palmer was offered the role of assistant supervisor, with some training, at the end of which, if satisfactory she would be retained as supervisor, and if not dismissed, or alternatively she could be a nail technician. We find as a fact that Ms BD communicated to Miss Palmer that her role as an assistant manager was at an end, with immediate effect. She was asked to think about it.

38. The rotas for the weeks starting 21 and 28 January 2019, prepared before 17 January 2019 showed Ms Palmer available for booking for treatments. Ms OV and Ms JL were not.

39. It is not credible that Ms OV, Ms JL and Ms GM were not informed by Ms BD of this orally at some point between 11<sup>th</sup> and 17<sup>th</sup> January 2019 and we so find. No one spoke to Ms Palmer about this prior to a second meeting between Ms BD and Ms

Palmer on 21 January 2020, at a Costa Coffee shop. It was made clear that Ms Palmer had to choose one of these two options, resign or be dismissed. (Claimant's witness statement paragraph 39, Ms BD's at 36). It is not credible that these were merely "proposals" and that Ms Palmer could end the discussion at any time. There was a change in management at Canary Wharf at the end of January 2019, and in the new structure there was no place for Ms Palmer. Therefore it is clear that it had been decided (before 14 January 2019 when the meeting of 17<sup>th</sup> was arranged) that she would cease that role. That is why she was on the rota as available to undertake nail technician work (in the blue column as before) but the others were not.

40. On 22 January 2019 Ms Palmer wrote stating that her contract as Assistant Manager had been terminated by the Respondent, and that the alternative offers were unsuitable (80). This the Respondent took as a resignation. In technical terms, the Tribunal finds that as the contract of employment was not terminated by the Respondent that is what it was, but as Ms Palmer's job had been removed from her and she was offered a position in its place two or three steps below this was a constructive dismissal, the unilateral reduction in status being a fundamental breach of contract. Had there been two years' service there would then have followed the usual considerations as to whether it was fair or not, and a Polkey argument about whether the result would have been the same had a fair procedure been followed. There could not have been any contributory conduct argument for the Respondent's case is that Ms Palmer was a hardworking and conscientious employee.

41. There then followed a grievance procedure in which Ms Palmer set out her position and raised the issue of race discrimination. The Respondent's external HR adviser CH dealt with this, and wrote an unfortunate letter on 11 April 2019 (105-6) stating that she considered much of the complaint "*irrelevant and unsupported*". She wrongly stated that the Respondent had 73% of its workforce that described itself as non Caucasian and that the grievance about race discrimination was "*disregarded due to lack of evidence presented*". This is an inaccurate use of the term "*Caucasian*". The 73% figure in fact refers to those calling themselves other than white British – many of the workforce are white European. The percentage of the workforce identifying as black in the ethnic monitoring data from June 2019 is only about 11% (392).

42. Ms Palmer was also accused of being motivated by money and of bringing a frivolous and vexatious claim (ET3, para 6 page 28).

43. On 13 November 2019 the Respondent submitted a counter schedule of loss (113-116) in which it claimed costs from the Claimant of £11,100.

### **The Claimant's claims**

44. First, demotion. Secondly a series of matters before that occurred on 17 and 21 January 2019. Ms Palmer prepared a schedule of these (41). Put shortly;

- 44.1. 24-30 December: left uninformed of the store not being open on 27 December, as only Ms OV was informed by senior management.
- 44.2. 24-30 December: messaged Ms BD about closing early on 27 December, but only Ms OV was notified with instructions.
- 44.3. 07-13 January: Not informed of a member of staff exiting the company, but Ms OV was.
- 44.4. 07- 13 January: Ms OV and Ms JL were scheduled for in store training

with Ms GM and the Claimant was not.

- 44.5. 07-13 January: Ms OV and Ms JL were informed of their future positions in management and Ms Palmer was not.
- 44.6. 14-20 January: Ms OV was scheduled for meetings with Ms GM and with Ms BD in store and off site. The Claimant received no such training.
- 44.7. 14-20 January: on 15 January new rotas were sent out (for weeks starting 21 and 28 January) and the Claimant was the only member of management listed alongside nail technicians.
- 44.8. Ms GM did not tell her of the change of code to the safe, but had told Ms OV and Ms JL.

### **The Claimant's case**

45. Ms Palmer put her case clearly, cogently, fairly and with skill in her evidence and in her cross examination, and in a short final address. She invited the Tribunal to look at the facts, established from the emails and the Respondent's witness statements, and to draw from those facts the conclusion that her treatment was tainted by race discrimination, of an unconscious sort, and a breach of the Equality Act. There was no choice in the matter – there had been a decision to demote her from assistant manager not just to supervisor but to trainee supervisor, or to become a nail technician with no management responsibility at all. No one said that she had been consulted, or informed, about either any unhappiness with anything she did, or that there were management changes at her branch. It was all a surprise to her, and when asked, she had performed well, running her branch, the busiest largest and most profitable on two days at its busiest time of year. In addition she had coped with the unexpected, opening the store on 27 December 2018 when Ms JL had been unable to work, even though she had not been told of the problem.

### **The Respondent's case**

46. I made a careful typed note of Counsel's clearly focused submissions which were of about 1½ hours in length, and no summary of them is set out here. While not accepting them all, their substance is mainly to be found in the Tribunal's findings.

### **Witnesses**

47. The Tribunal was very impressed by the cogency and sincerity of Ms Palmer's evidence. She was a witness of truth. Her ability in case presentation was a factor in considering whether her management ability was as lacking as the Respondent said. She presented her case as well as many legally qualified representatives.

48. The Tribunal also considered the Respondent's witnesses reliable, save that it found the evidence about the possibility that the Claimant could have discontinued discussion (and by necessary implication continue as assistant manager) disingenuous. They had decided to remove her from her role. Ms HY did not give oral evidence, and the Tribunal accorded her witness statement little weight: but it added little to the email exchange she had with Ms BD in early December 2018.

### **Findings of fact, discussion and conclusions**

49. There are few findings of fact necessary, as the narration of events above is not

contentious. It is necessary to deal with the demotion (for such the Tribunal finds it was), and the 8 other matters raised by Ms Palmer.

50. This was not fair treatment of Ms Palmer, in a large variety of ways, and it is entirely understandable that she, a black person, should feel that her race was at the bottom of it, every one else being white.

51. The Tribunal noted that:

- 51.1. After Ms Palmer's first day at work Ms HY fed back in unflattering terms to Ms BD about her performance. She was not told of this, and saw the emails only after a subject access report.
- 51.2. At no time before early January did anyone say that she might need to step up her performance, and that was a conversation, maybe a couple of conversations, with Ms GM. They were not minuted, nor followed up with any email.
- 51.3. Ms Palmer was given no guidance as to what was expected of her. She was expected to know, without being told, because she was appointed as a manager. Her CV made it clear that this was a step up for her, and yet throughout she was almost completely unsupported and unguided.
- 51.4. When Ms Palmer ran the store on her own for a whole shift in one of the busiest times of the year, Ms BD criticised her for a short response to an enquiry as to how it went, saying it all went well. She was not told what was expected, and as Ms BD had access to all the financial figures no reason to set them out to inform Ms BD. Ms BD did not tell Ms Palmer as to what more was expected. There was no evidence that Ms OV or Ms JL had told Ms Palmer what should . Ms BD found fault with the one thing Ms Palmer did say, that she had not been able to find the log of wasted food so would have to do that on Monday, saying that she should have known where it was, or asked. Ms Palmer pointed out to the Tribunal that this was her first management shift alone, that she worked on nails not the coffee bar, and that she had asked the barista but he was a stand-in and did not know: that it was not a big issue, but she thought she ought to mention it, and that she would deal with it. Ms BD did not say she was unhappy, so Ms Palmer never knew that a fuller explanation might help.
- 51.5. Early in January Ms BD said to Ms PX that Ms GM would give Ms Palmer some tasks and see how she got on: but Ms GM only worked with Ms Palmer once after that, and then was busy training Ms OV and Ms JL for the new roles they had (unknown to Ms Palmer) already been allocated. There was not assessment by Ms GM, and there was no report to Ms BD.
- 51.6. It having been decided that Ms Palmer would cease to be assistant manager, Ms OV and Ms JL were to manage Canary Wharf together: but no one told Ms Palmer until a message to all on 14 January 2019 from Ms GM informing everyone that she was leaving her role, and that management enquiries should be directed to Ms OV or Ms JL: Ms Palmer being conspicuous by her absence. Ms Palmer was left in limbo until 17 January 2019 when she was told to choose between becoming a trainee for a lower post, or just being a nail technician, repeated on 21 January 2019, this being a total surprise to her, neither meeting being followed by any email, and no minutes being taken.
- 51.7. Ms Palmer had run two uneventful shifts at the busiest store in the chain, at its busiest time of year, and without fuss opened up the store on the



day she arrived to find it closed. However, there was credibility in the evidence that Ms Palmer was asked to manage on only two occasions (and Ms BD, Ms OV and Ms JL all the others) precisely because Ms BD was concerned that Ms Palmer would not manage well. It is a pity that the fact that she did manage (both shifts were uneventful) passed unnoticed.

51.8. The Tribunal was unimpressed with Ms BD's evidence that this was unremarkable as that was her job: if her view was that Ms Palmer was not good at it, she might at the least have had an in-depth discussion about how those shifts had gone. This is one of the matters that the Tribunal considered might indicate unconscious bias.

52. In short Ms Palmer had no real idea that her performance was considered unsatisfactory for an assistant manager (and no real way that she could be expected to do so) until she was told of her double demotion. While noting that this is a new company, it had over 100 employees, and an external human resources firm to advise it. It does not need any employment law expertise to see that this was a very unfair way to go about matters.

53. It follows that, given a difference in race, the Claimant has succeeded in proving facts from which the Tribunal might find that her treatment was race discrimination, and looks to the Respondent's explanation that it was not tainted in any way by considerations of race.

54. The Tribunal finds that it has succeeded in doing so, for the following reasons. The Tribunal considered the 8 matters as well as the demotion when coming to its conclusion. The detail of the 8 matters follows more general matters relating to demotion.

54.1. The Claimant was taken on following interview by Ms GM, even though the post for which she had applied had already been filled by Ms JL. It would be somewhat remarkable for Ms GM to have discriminated against Ms Palmer after having given such a glowing assessment of her to senior management that she was taken on supernumerary.

54.2. Ms Palmer had been a supervisor before, but not a manager. Plainly she was not nurtured as she should have been, or given clear guidance as to what was expected, but it is likely that Ms JL had more experience and skill at management than she did.

54.3. This is not supposition, for on 13 December 2018, replying to Ms BD about her role managing the store for all of 15 December 2018, Ms Palmer had replied (260) that she would check anything she was unsure of with Ms JL the next day, 14 December 2018, before the shift started.

54.4. There was no prior connection between Ms HY and Ms Palmer, and no reason why Ms HY's report was biased. Plainly it influenced Ms BD.

54.5. Ms Kozak was there from head office in the pre-Christmas period and gave a report to Ms PX about a series of people. She had no prior connection with Ms Palmer, and her report was similar.

54.6. The internal emails are contemporaneous. There is force in Counsel's submission that this is not subject to the very close scrutiny required of "*back-filling*" evidence.

54.7. The emails say positive things about Ms Palmer, who was described as hard working and "*drama free*".

- 54.8. The imposition (for such it was) of the trainee supervisor position was accompanied by a structured 6 week programme of support (300) from a variety of different people (Ms BD, Ms OV, Ms JL, Ms Williams, and a group meeting), as well as time allocated for study of the Respondent's management "*bible*". This was not a sham.
- 54.9. Ms PX's email of 01 January 2019 was expressing regret that Ms Palmer was not considered to be up to managing at Canary Wharf, which is inconsistent with a wish to remove her, or demote her.
- 54.10. On 11 December 2018 Ms BD was faced with Ms GM's sudden absence. Her view was that Ms JL was able to contribute to management but that both Ms OV and Ms Palmer could not really be expected to do after so short a time in post (they started the same day). It follows that at that date Ms JL was regarded as having management ability and that Ms Palmer (at the same level) was not. (This was view supported by Ms Palmer's own thought that if she needed help when managing alone on 15 December she would look to Ms JL for help). This is unconnected with race.

55. Once it is clear: and it is clear - that the Respondent had decided, however unfair the process was, that Ms Palmer had not got a future (at least at present) as a manager, the eight items become comprehensible. The Tribunal finds that the Respondent genuinely formed the view that Ms Palmer was not currently suitable for a substantive management post.

56. As to the eight matters:

- 56.1. On 27 December 2018 head office told only Ms OV that there was an issue about opening. Ms OV was trainee store manager, so in the absence of the store manager (who was abroad) she was the appropriate person to tell. If Ms OV should have told Ms Palmer it is not the fault of senior management that she did not. Ms OV was not able to make decisions about Ms Palmer: she was one of those about whom decisions were being made. It is not likely that Ms OV did not tell Ms Palmer for reasons connected with race.
- 56.2. The same applies – it would doubtless have been courtesy to copy in Ms Palmer (and a group message was possible), but Ms BD was giving instruction to the person responsible, Ms OV. This has also to be seen against the background of Ms BD's opinion that Ms Palmer was not showing any signs of management. While this might have been an opportunity to let her do so, Ms BD's view was formed fairly early on – right back to Ms HY email only a couple of days after Ms Palmer had started work.
- 56.3. This was clarified in the hearing: it was someone called Zeinab, who was summarily dismissed, and Ms OV was told of this. That she did not tell Ms Palmer is not less favourable treatment. It was not said that Ms JL was told either, and telling the manager and for her to cascade is not unusual.
- 56.4. By 7<sup>th</sup> January 2019 Ms BD and senior management had decided that Ms OV and Ms JL would be managing the Canary Wharf branch. Ms Palmer was sidelined for that reason.
- 56.5. Ms Palmer was indeed not told of her intended future and the others were. This was not an acceptable way to act. It must have been particularly

hurtful to read the message of 14 June 2019 which told everyone that Ms OV and Ms JL would be taking management queries, and to have to go to work until 17<sup>th</sup> before being told she had been relieved of her post. It is logically possible that the decision to do so was not race discrimination but this poor treatment was, but the Tribunal does not so find. It would be an inconsistent dichotomy of attitude. The reason was that the management issue loomed large, and that Ms Palmer was simply overlooked. She had always been supernumerary, and did not feature in senior management's plan for the future or where she worked. That was because they did not think her up to it, not because of race. She was overlooked, not discriminated against.

- 56.6. The same applies as to 4.
- 56.7. Ms Palmer was put on a rota which included being booked for nail treatments precisely because it had been decided to demote her.
- 56.8. The code to the safe: this is specific to Ms GM. Given the events in her own life, and the fact that it was Ms GM who gave such a report about Ms Palmer that she was appointed even though the job she went for had already been filled, the Tribunal finds that this was simply an error, for which Ms GM apologised. It was a failure to tell, not a concealment.

#### **Other**

57. That a fact, document or submission is not referred to in this decision does not mean that it was not considered carefully: the Tribunal spent a long time going through all the evidence, issues and documents before coming to its conclusions.

58.

59. Ms Palmer was accused by the Respondent of being motivated by money and of bringing a frivolous and vexatious claim (ET3, para 6 page 28). On 13 November 2019 the Respondent submitted a counter schedule of loss (113-116) in which it claimed costs from the Claimant of £11,100. The Tribunal observes that these were misplaced statements and actions. The Claimant placed her injury to feelings in the lowest Vento band, belying the first statement, and given the Tribunal's findings of fact had the claim succeeded the Tribunal would have been considering aggravated damages for such heavy handed treatment of a litigant in person: such costs warnings are used to try to frighten genuine claimants into withdrawing, and this was most certainly not a frivolous or unreasonable claim with no chance of success.

**Employment Judge Housego**  
**Date: 15 October 2020**