



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms K Holland**

**v**

**(1)**

**Angel Supermarket Ltd  
(2) Mr Tarloch Singh**

**Heard at: Watford**

**On: 23 July 2013**

**Before:** Employment Judge George  
Mrs G Bhatt  
Mr M Bhatti MBE

## **Representation**

**For the Claimant:** Miss F Martin, Counsel

**For the First Respondent:** Mr Gurnam Singh, manager

**For the Second Respondent:** In person

## **Reserved Judgment**

1. It is accepted by the claimant that there is no company by the name of Londis (Angel Supermarket) Ltd in existence and the claim will therefore be dismissed as against that company. The proper respondents to the claim are Angel Supermarket Ltd (her former employer) and Mr Tarloch Singh, its director and owner who will hereafter be referred to as the first and second respondents respectively.

### **The Issues**

2. The claim came before EJ Ryan at a case management discussion where it was recorded that the issues to be determined by the tribunal at final hearing were:
  - 2.1. Unfair dismissal
    - 2.1.1. What was the reason for the claimant's dismissal?
    - 2.1.2. Was the claimant dismissed for a potentially fair reason?

- 2.1.3. If so, was the dismissal fair or unfair?
- 2.1.4. If the claimant was unfairly dismissed what remedy should be awarded to her?
- 2.2. Sex discrimination
  - 2.2.1. Did the respondents discriminate against the claimant by treating her less favourably than it treated or would have treated a person of a different gender:
    - 2.2.1.1. By subjecting her to a derogatory comment namely when the claimant asked why the respondent had kept Wahid on and not her Mr Singh replied, "Because he brings stock up. With the stairs we thought it would be too difficult because you're a woman."
    - 2.2.1.2. By dismissing her.
  - 2.2.2. If so, what remedy should be awarded to the claimant?
- 2.3. Religion of belief discrimination
  - 2.3.1. Did the respondents discriminate against the claimant by treating her less favourably than it treated or would have treated a person of a different religion:
    - 2.3.1.1. By subjecting her to a derogatory comment namely when the claimant changed her shift so as not to work on Hallowe'en (because she is a Wiccan) the second respondent said, "What ... you are not a Christian! You have got to be a Christian, surely."
    - 2.3.1.2. By dismissing her. It is the claimant's case that the proximity in time of that comment and her dismissal is something from which the tribunal should infer that the reason for dismissal was based in part upon her beliefs.
  - 2.3.2. If so, what remedy should be awarded to the claimant?
3. In addition the respondents confirmed at the beginning of the hearing that they wanted to argue that any compensation awarded to the claimant for unfair dismissal should be reduced to take account of conduct contributing to that dismissal and the percentage likelihood that, had a fair procedure been followed, the claimant would have been dismissed fairly in any event.

## **The Law**

4. Unfair dismissal
  - 4.1. In the present case the respondents' case is that the claimant was dismissed primarily because of conduct, they assert that they had caught her effectively red handed in the act of stealing. A number of other allegations of misconduct and poor performance are set out in the ET 3 response.
  - 4.2. The relevant statutory provisions in complaints of unfair dismissal where the respondent alleges that dismissal was because of the claimant's conduct are s.98(1), (2)(b) and (4) of ERA 1996. In general terms it is for

the respondent to show the reason for the dismissal and that it is a reason falling within s.98(2). Conduct is a potentially fair reason within s.98(2).

- 4.3. If the tribunal is satisfied that the respondent has proved a potentially fair reason for dismissal then they must go on to consider whether the decision is fair or unfair. That depends on whether in all the circumstances the respondent acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the employee and the burden of showing that is neutral as between claimant and respondent.
- 4.4. When the employee's conduct is said to be the reason for dismissal then the tribunal is particularly guided by the authority of British Homes Stores v Burchall [1980] ICR 303 EAT and other subsequent cases. Essentially the respondent should have formed a genuine belief in the employee's guilt but, in order for it to be reasonable for the employer to treat the conduct as sufficient reason to dismiss, the employer must have had in mind reasonable grounds for that belief and it is necessary that at the stage that the belief was formed the employer had carried as much investigation as was reasonable in the circumstances.
- 4.5. The tribunal must then consider whether the dismissal is fair or unfair in all the circumstances. In making that judgment, the tribunal must keep firmly in mind that it must consider whether the employer's actions fell within the range of responses open to the reasonable employer. As the tribunal considering an unfair dismissal claim, it is not whether we would have reached the same conclusion as the employer in question, but whether their conclusion or decision was one within the range of reasonable responses to the employee's conduct.
- 4.6. We are directed by reason of s.207 of the Trade Unions and Labour Relations (Consolidation) Act 1992 to have regard to any provision of the ACAS Code of Conduct 2009 which seems to us to be relevant to any question in the proceedings. In the light of the allegations made against the claimant the paragraphs of the ACAS Code dealing with the basic elements of fairness (paragraph 4), establishing the facts of the case, informing the employee of the allegations against them and holding a meeting with the employee to discuss the problem after which the employee should be told what action is being taken in writing are potentially relevant.
- 4.7. If the tribunal finds that the dismissal was unfair and has to go on to consider whether there should be deductions from compensation then, on the authority of Polkey v A E Dayton Services Limited [1987] IRLR 503, compensation may be reduced on the basis that had the employer taken the appropriate procedural steps which they did not take then that would not have affected the outcome. The Respondents invite us to reduce compensation for this reason, in the event that we find the dismissal was procedurally unfair.

4.8. Finally the provisions of s.122(2) and 123(6) of the Employment Rights Act 1996 set out the powers of the tribunal to reduce any basic and compensatory awards because of conduct or contributory fault respectively which we are asked to use in the event that we conclude that the dismissal was unfair.

5. Discrimination

5.1. Applicants and employees have the right not to suffer discrimination because of ss.39(2)(c) and (d) Equality Act 2010 which provide as follows:

"An employer (A) must not discriminate against an employee of A's (B)—

...

(c) by dismissing B;

(d) by subjecting B to any other detriment."

5.2. Direct sex discrimination, for these purposes, is where the employer treats the female employee less favourably than they treat, or would treat, a male employee in comparable circumstances because of the female employee's sex. Direct discrimination because of religion or belief, by contrast, is where the reason for less favourable treatment is the employee's religion; in this case was the claimant treated less favourably because she is a Wiccan?

5.3. All claims under the Equality Act 2010 are subject to the statutory burden of proof which is set out in s.136 and has been explained in a number of cases, most notably in the well known guidelines annexed to the judgment of the CA in Igen Ltd v Wong [2005] ICR 931 CA.

5.4. When deciding whether or not the claimant has been the victim of sex discrimination or of religious discrimination, the employment tribunal must consider whether we are satisfied that the claimant has shown facts from which we could infer, in the absence of any other explanation, that the respondent has discriminated against her in the way alleged. If we are so satisfied, we must find that discrimination has occurred unless the employer shows that the reason for their action was not that of sex (or religion as the case may be). We bear in mind that there is rarely evidence of overt or deliberate discrimination. We may need to look at the context to the events to see whether there are appropriate inferences that can be made. We also bear in mind that discrimination can be unconscious. Although the law anticipates a two stage test, it is not necessary artificially to separate the evidence when considering those two stages. We should consider the whole of the evidence and decide whether or not the claimant has satisfied us to the required standard, not only that there is a difference in sex (or a difference in religion) and a difference in treatment, but that there is sufficient material from which we might conclude, on the balance of probability, that the respondent has committed an unlawful act of discrimination.

5.5. Although the structure of the Equality Act 2010 invites us to consider whether there was less favourable treatment than a man in comparable circumstances, and also what the reason for that treatment was, those

two issues are often factually and evidentially linked. If we find that the reason for the treatment complained of was not that of sex (or was not that or religion) but some other reason, then that is likely to be a strong indicator as to whether or not that treatment was less favourable than an appropriate comparator would have been subjected to.

- 5.6. If we reach the stage of considering what the appropriate remedy for injury to feelings caused by unlawful discrimination should be there are a number of authorities to guide us. The objective of an award for unlawful discrimination, as with any other awards of damages, is restitution rather than to punish the wrongdoer. On the other hand, compensatory damages may, and in some instances should, include an element of aggravated damages where, for example, the respondent may have behaved in a high-handed, malicious, insulting or oppressive manner. Awards should not be minimal, because this would tend to trivialise or diminish respect for the public policy to which the Act gives effect. On the other hand, just because it is impossible to assess the monetary value of injured feelings, awards should be restrained. To award sums which are generally felt to be excessive does almost as much harm to the policy and the results which it seeks to achieve as do nominal awards. We are also advised to bear in mind the value in everyday life of the sum to be awarded.

#### **Background to the dispute**

6. The claimant started working at the convenience store presently run by the first respondent when it was still under the ownership of Martin McColl Ltd, on 24 June 2010. The business transferred to the ownership of the first respondent on 8 October 2012, a transaction which it is accepted was a relevant transfer within the Transfer of Undertakings (Protection of Employment) Regulations 2006 (see the letter at page 36). It therefore had the effect of transferring to the first respondent the rights and obligations of her employment contract (a copy of which is at pages 34 – 35). In this case all of the relevant disputed events postdate the transfer. The consequence of the transfer to these proceedings is that, at the time of her dismissal in early November 2012, the claimant had more than two years' continuous service. The claimant gave evidence when she was cross-examined on her witness statement which was taken as read.
7. The first respondent company is owned by the second respondent, Tarloch Singh who gave evidence for the company and on his own account with reference to a witness statement which was taken as read. The other witness of fact for the respondents was Gurnam Singh, the brother of Tarloch Singh, who is described as a manager in the company and who was also cross-examined on his witness statement. Mr Tarloch Singh gave evidence to the tribunal but described himself as less confident in spoken English than his brother who spoke for both the company and Mr Tarloch Singh in cross examination and submissions.

8. Documents bearing the names of Waleed Anwar and Barbara Collett, two other employees of the first respondent, were also put before the tribunal but they were unsigned and Mr Anwar and Ms Collett did not attend the tribunal to give evidence. In those circumstances we unable to give any weight to the statements bearing their names which were, in any event, expressions of opinion about how they themselves had been treated and about the character of the second respondent rather than information directly relevant to the issues which we had to decide.

### **The conflicting accounts**

9. This case is distinguished by the starkly different accounts of the important events given by the three witnesses from whom we have heard.

10. The claimant's account is as follows:

- 10.1. On a day between the transfer on 8 October 2012 (when she started working alongside Gurnam Singh and Waleed Anwar) and 31 October 2012 there was a conversation between the three of them about religion. Mr Singh is a Sikh, Mr Anwar a Muslim and Ms Holland a Wiccan. The claimant's account was that when she explained that the two men might have come across references to a religion where the female members were called witches and that that was the Wiccan religion that led to jokes poking fun at a stereotypical view of witches which she found offensive. This is not one of the allegations of discrimination relied upon by the claimant but part of the background.

- 10.2. She agreed with Gurnam Singh, who was effectively her manager, that she would work a later shift in order that she might celebrate the start of what, in the population at large, is generally referred to as All Hallows' Eve. She was therefore working on 1 November 2012 at the same time as Mr Tarloch Singh, who did not normally work at the store at the same time as his brother. According to the claimant, Mr Tarloch Singh asked her why she was working a later shift. She explained that she had agreed the switch in order that she could celebrate All Hallows' Eve because she was Wiccan. She said that his reaction was as she describes in paragraph 9 of her witness statement. She described him as seeming revolted by the idea that she was Wiccan, or not Christian and was made to feel that there was something wrong with her. "There was a look of disgust. It was scary" were the words she used.

- 10.3. She worked on 2 November 2012 but was not rostered to work on the Saturday, Sunday or Monday. On the 6 November she wasn't scheduled to work but attended at the shop at the request of Gurnam Singh. She told us she was going anyway, as was her habit, to confirm her shifts for that week but he telephoned her to say that Tarloch Singh wanted to see her.

- 10.4. She describes their meeting in paragraph 10 of her statement and says that the reason she was given orally for her dismissal was lack of

funds. She was paid 2 weeks' wages in lieu of notice but not paid a redundancy payment.

10.5. Over the next 2 weeks she visited the shop and, having no other job, accepted Tarloch Singh's offer that she carry out the newspaper round which she did for, on her account, no more than 2 weeks. She accepted that this detail was not mentioned in her witness statement.

10.6. She said that she noticed that Mr Anwar was working her old shift on top of the hours he had previously done and, when she challenged Tarloch Singh on this, he told her that the reason for Mr Anwar being retained rather than her was that he was able to carry heavy stock up and down the stairs.

10.7. She was given the letter dated 1 November 2012 (page 37) on about the 16 or 17 November 2012 which states,

"I write to confirm that your position has been eliminated and your employment with Angel Supermarket Limited has terminated effective at close of business November 2, 2012. As you have been informed, the Company is reducing its workforce due to the need to reduce operating costs."

10.8. Although not directly relevant to the reason that, on her account, she was given for dismissal, the claimant recalled an occasion (paragraph 15 of her statement) after her dismissal when she offered a note in payment of shopping at the first respondent's shop which, unknown to her, was counterfeit. Her evidence was that this was a one off event and she was innocent of dishonest intent. Chronologically this even occurred after she had stopped doing the newspaper round but at a time when she still visited the store (which contains a post office) in order to do shopping. Following this event she was barred from the shop and prevented from visiting the post office.

11. By contrast the respondents' account of the significant events was as follows:

11.1. The conversation described about the employees' religions is accepted to have taken place but Gurnam Singh said that the claimant had made an assumption that he was a Muslim. The point he made was that she made an uninformed assumption about his faith and he confessed ignorance about her faith. He insisted that any stereotypical comments about witches came following the claimant's reference to films to explain what the Wicca religion is and that she had said something to the effect that followers of the Wicca religion used to fly but did not now (something denied by the claimant). He denied that there was offensive teasing or joking.

11.2. Tarloch Singh denied that the conversation alleged by the claimant to have occurred on 1 November 2012 took place. He denied knowing that she was Wiccan or knowing the faith of any of his employees before

the tribunal proceedings. When asked about the claimant changing shifts he said that she was always coming in late for work.

- 11.3. Tarloch Singh and Gurnam Singh's evidence about the circumstances of dismissal (putting together their evidence on this point) was that they cannot now recall the date of dismissal but the claimant was dismissed orally on a day when she was working and had been at work the previous day. On the day before her dismissal, according to Gurnam Singh, he was present during her shift but Tarloch Singh was not. Gurnam Singh said that he had served claimant when she made grocery purchases from the store at the start of her shift and permitted her to leave her purchases behind the counter. He told us (para 4 of his statement) that he heard the lottery machine working (but saw no customer) and when he returned to the counter saw a lottery ticket near her groceries and children's magazines in the bag which, having served her earlier, he believed she had not paid for. He did not challenge her about it at the time but told his brother. The evidence before us was that no attempt had been made to see whether the lottery ticket was paid for.
- 11.4. Tarloch Singh told us that that the next day, having been told by Gurnam Singh about his observations, he watched the CCTV camera footage and saw that the claimant had put stuff into her bag. He then took the claimant downstairs into the store room and told her she was being dismissed for stealing. It is fair to say that his witness statement contains no information about this conversation and neither it nor the ET3 refer to CCTV footage. Tarloch Singh's account is that the claimant was very upset and in tears.
- 11.5. Tarloch Singh accepted that he did not ask for the claimant's account nor investigate beyond himself viewing the CCTV footage which he didn't show to her and didn't keep. We have not seen it nor have we heard a detailed account of what it is said to have shown.
- 11.6. Tarloch Singh says that the reason given orally for the claimant's dismissal was dishonesty. The claimant says that the allegation about theft was not made at the time.
- 11.7. Tarloch Singh did re-engage her as a newspaper delivery person despite these events and what he tells us were strong suspicions that she was passing off fake £10 notes through his shop (see his paragraph 7). This ended, on his account, because of the claimant's unreliability. He denied that the conversation about Mr Anwar's hours and the reason for his retention ever took place.
- 11.8. Tarloch Singh's evidence about the letter on page 37 dated 1 November 2012 was that it contained an entirely false reason for the claimant's dismissal written out of pity on the claimant's request to ensure that she would get Job Seeker's Allowance.
- 11.9. The accounts about the date on which the letter was supplied were broadly similar, about 10 days after dismissal, but the accounts of the



context were polarised. On the claimant's account it was written confirmation of an account she had already been given. On the respondents' account it was entirely fictitious. Both Tarloch Singh and Gurnam Singh said that it had been written by Gurnam Singh on the direction of Tarloch Singh. Gurnam Singh said that he knew when he wrote it that the contents were entirely false but did it under direction without questioning it.

11.10. On the respondents' account, the passing of fake notes happened periodically until the claimant stopped shopping at their shop.

### **Discussion and fact finding**

12. In our experience a respondent responding to a claim, even an inexperienced respondent acting in person, is likely to do their best to set out the most important elements of their defence in their response form. We do not read the ET 3 in this case as a technical document written by a legally trained professional but, even on a broad reading, it reads as though the primary reason put forward for dismissal was economic and a number of reasons for choosing the claimant over her colleagues are put forward. These include dishonesty, but dishonesty is not described as the first or main reason for her selection. As with the letter on page 37, the ET 3 contains the words of Tarloch Singh as scribed by Gurnam Singh with no input to the content by the latter.
13. This contrasts with the respondents' witness statements and oral evidence to us and we conclude that the respondents are now giving far more importance to reasons of dishonesty than they did at the time. After all they paid her for her notice period. We think it probable that none of the reasons put forward in the ET 3 were articulated to the claimant at the time.
14. Procedurally, the dismissal was indefensible. If the respondents' evidence of what they observed is accepted, she was dismissed with no investigation, no notice of allegations before the decision to dismiss her was made, no opportunity to give her side of the story and no consideration of alternative sanctions such as a warning. Even in a small family business with inexperienced employers the basics of natural justice require an employee suspected of theft to have the opportunity to answer the allegations before a decision is made on whether or not to dismiss them.
15. However that presupposes that the reason that the second respondent had in mind when he took action to dismiss the claimant was misconduct. In order to decide the issues we need to decide which version of events we prefer about key factual questions.
  - 15.1. Did the claimant take a children's magazine and lottery ticket without paying for them?
  - 15.2. Did the second respondent believe that the claimant had committed those thefts?

- 15.3. What were the date and circumstances of the claimant's dismissal?
- 15.4. Did the conversation of 1 November 2012 take place as alleged by the claimant?
- 15.5. Did the second respondent say that the reason for choosing the claimant to be made redundant over Waheed Anwar was that, as a man, he was able to carry stock up and down the stairs from the stockroom.
16. Although the claimant's account has not been entirely consistent, in that her written statement omits some significant details about the newspaper round and the telephone call from Gurnam Singh which called her to the shop on 6 November 2012, overall we find her account to be generally more plausible in its essentials than those of Tarloch Singh and Gurnam Singh. We find that the claimant was told that she was dismissed on Tuesday 6 November 2012. In broad terms we accept her account that she was dismissed in the street, outside the shop by Tarloch Singh and was told only that it was due to a downturn in business. We note that she was offended by the casual circumstances of her dismissal which took place "by the bins", as she put it - with justifiable incredulity.
17. Our reasons for preferring the claimant's account to that of the respondents include:
- 17.1. The respondents' written account of the reason for dismissal on page 37, written within 2 to 3 weeks of it, was that it was for financial reasons. Either that was true or it was a deliberate attempt to mislead the Job Centre.
- 17.2. The respondents' written account in their ET 3 reads as if redundancy was the primary reason and dishonesty one of several reasons for selection for redundancy.
- 17.3. The date given in the letter of 1 November (page 37) as the last date of paid employment is 2 November and that is entirely consistent with the claimant's account that 2 November 2012 was her last working day (a Friday) and that she did not work between then and the date on which she was told that she was to be dismissed.
- 17.4. It was clear to us from Tarloch Singh's evidence that he understood that if you dismiss an employee for gross misconduct you do not need to pay them anything but if you dismiss them because you don't need them anymore you do. Therefore the fact that he paid the claimant 2 weeks' notice pay is consistent with the statement he made to her at the time that she was redundant (in fact she would have additionally been entitled to a redundancy payment).
- 17.5. From this we conclude that at the time of dismissal the second respondent did not think that the claimant was guilty of theft and we reject the two brothers' evidence that is inconsistent with that. Neither did they have this in mind when Tarloch Singh offered her the newspaper round or

dictated the letter on page 37. We do not believe that an employer, believing an employer guilty of theft, having dismissed them for theft and suspecting them of passing counterfeit notes would have had anything further to do with them and yet this employer claims to have re-engaged the claimant out of pity. We reject that explanation.

18. The respondents claim to have had CCTV footage showing that the claimant committed the theft. The first reference to this footage was at the hearing itself. We think it implausible that had Gurnam Singh seen what he described to us he would not have challenged the claimant then and there. Our impression is that, although Tarloch Singh is the director and owner, the brothers manage the shop on a day to day basis as a team. We also find it implausible that they would have re-employed the claimant if they believed her to be a thief. For these reasons we reject the brothers' evidence about what they claim to have seen that on their account led to the claimant's dismissal and are not prepared to find that the claimant did steal the magazine or the lottery ticket as alleged.
19. We have considered the explanation given by the respondents to the claimant of a downturn in sales, even though that is not now relied upon by them as a reason for their actions. In spite of the fact that that was the reason put forward at the time, the respondents have adduced no evidence of the financial state of the company and positively disavowed that as a reason for dismissal.
20. Despite the account in the ET 3 of having let go other members of inherited staff, the evidence of Tarloch Singh was that all except Barbara Collett and the claimant had chosen not to be transferred with the business so the statement "As soon as I bought the business, I let go about 6 staff including males and females, I only kept three female staff for this new business" (page 17) was flatly contradicted by Tarloch Singh in his testimony. Ms Collett still works for the first respondent. We conclude that there was no redundancy situation, a finding supported by the first respondent's employment of Waheed Anwar, who started work in early October 2012.
21. We contrast the claimant's account of the earlier conversation between herself, Waheed Anwar and Gurnam Singh with Mr G Singh's own account. On Gurnam Singh's account the claimant pointed to films about witches and wizards in order to explain the Wicca religion saying "it used to be" to do with flying and broomsticks but wasn't now – something she denies. We find it totally implausible that a person would reference a stereotypical mass media view insulting to their faith as a way of explaining it. The context of this conversation was, we find, more as described by the claimant than by Gurnam Singh. However we note that there is not separate allegation of harassment or discrimination relating to those words and make no specific findings about what was said. It is more likely than not that whatever was said it crossed the line from polite if uninformed and possibly crass enquiry to insulting mockery.
22. We think it likely that when the claimant attended for a different shift on 01 November 2012 Tarloch Singh asked for her explanation and that the

conversation involved the claimant explaining to him that she was a Wiccan, a fact of which he was previously unaware. We therefore reject his evidence that the conversation did not occur. The claimant's oral evidence was that offensive comments had been made by Gurnam Singh and Waleed Anwar on the earlier occasion but that on 01 November Tarloch Singh did not make any specific jokes directed to perceptions about her religious practices. Rather he exclaimed "What... you are not a Christian! You have got to be a Christian surely." She told us that the tone was consistent with shocked surprise that made her feel as though there was something wrong with her.

23. Finding, as we have, that the claimant was a reliable witness and that it is probable that, despite his denial, Mr T Singh asked for an explanation of her change of shift which led to a conversation along the lines she described, we think it more likely than not that the comment was made. We think that the claimant's perception was probably influenced by the more offensive remarks made on an earlier occasion by Gurnam Singh and Waleed Anwar. Nonetheless, in particular given Tarloch Singh's denial that the conversation ever took place, we conclude that it is more likely than not that the tone and manner in which the comment was made betrayed some antipathy towards the claimant because she was not an adherent of one of the more well-known world religions. The comment was probably made and made in a tone which she reasonably interpreted as being rejection of her as a Wiccan.
24. In relation to the later alleged conversation Tarloch Singh accepted that the claimant had asked why Mr Anwar was working those hours but asserted firmly that Mr Anwar was not working more hours, merely different hours. He denied saying that he had chosen to make the claimant redundant because, as a man, Mr Anwar was more capable of carrying heavy stock.
25. For the same reasons as before we prefer the account of the claimant. On the balance of probabilities the conversation took place broadly as she alleges and she was told that the reason for choosing Mr Anwar to stay rather than her was that he could carry heavy stock. However we have also found that there was not, in fact, any financial imperative to cut cost and therefore, although these words may have been used we do not find them a useful indicator of the second respondent's motivation.

### **Decision**

26. The dismissal was clearly unfair if only on procedural grounds and therefore the unfair dismissal claim is made out. In any event the first respondent has failed to prove the reason why they dismissed the claimant and the dismissal was substantially unfair.
27. The occasion on which the claimant attempted to pay for shopping with a note which turned out to be counterfeit postdated not only her dismissal but also the termination of the newspaper round and therefore cannot be relevant for any deduction from compensation for contributory conduct.
28. We have concluded that the reason for dismissal is not made out and that the claimant was not guilty of conduct prior to her dismissal which contributed to it

and therefore it is not appropriate to make any deductions in relation to conduct of in accordance with ss. 122 or 123 ERA 1996 or the principles set out in Polkey v A E Dayton Services Ltd.

29. In respect of the claims of discrimination, the claimant has to show facts from which the employment tribunal might infer, in the absence of any other explanation, that, by dismissing her the respondents treated her less favourably than they would have treated another because of, on the one hand, her sex, and on the other hand, her religious belief.
30. Dealing first with the claim of sex discrimination, she has proved that she was treated differently to another comparable employee in that she was dismissed ostensibly because of a downturn in sales when that applied equally to Waheed Anwar, a man, who was not dismissed. She has proved that comments were made to her about the reason that Mr Anwar was retained from which we might infer that the reason for her dismissal was that she is a woman. The burden of disproving discrimination therefore transfers to the respondents. We have rejected the reason they put forward for her dismissal, namely gross misconduct and therefor conclude that they have failed to prove the absence of discrimination. The claim of sex discrimination is well founded both in relation to the derogatory comment and the dismissal itself.
31. In relation to the claim of direct discrimination on grounds of religion and belief there are two separate allegations, the language used on 1 November 2012 and the dismissal. In its context the language used on 1 November 2012 was a detriment within the meaning of s.39(2)(d) of the Equality Act 2010. The hypothetical Christian who had changed shifts to be able to celebrate a feast day which was not a public holiday would not have been subjected to that comment because their explanation for requiring the change of shift would not have involved disclosing that they were not a Christian.
32. The claimant has also demonstrated less favourable treatment in relation to her dismissal in that Mr Anwar (a Muslim) and Ms Collett (a Christian) were not dismissed.
33. Bearing in mind Mr Tarloch Singh's shocked reaction on 1 November 2012 and then the juxtaposition of that conversation with the decision to dismiss, together with the lack of a genuine redundancy situation and the untruthful statements about the reason for dismissal made to the Job Centre and in the ET 3 we find that the claimant has satisfied the burden of proof placed upon her by s.136 Equality Act 2010 and the respondent must prove the absence of discrimination.
34. As before we have rejected the respondents' explanations for their treatment of the claimant and we therefore find that the claim of direct discrimination on grounds of religion and belief is made out.

#### **Findings and Decision on Remedy**

35. The claimant attested to losses in accordance with the schedule at page 32. She says in paragraph 16 of her witness statement that she needs to seek

work locally and her ability to travel for work is limited because she has reactive hypoglycaemia and tires easily. Her health issues are not disputed by the respondents.

36. The figures set out in the claimant's Schedule of Loss are not challenged by the respondents and we accept them. Her weekly pay was £102.38 which was not subject to deductions because her earnings were below the tax threshold. Her date of birth is 22 June 1968. She was employed for just over two years during all of which time she was over the age of 41 years. In the face of the tribunal her counsel suggested the sum of £250 as appropriate compensation for loss of statutory rights and right to long notice which we accept.
37. Her attempts to find work are documented in pages 38 – 44. She has been and is still in receipt of Job Seekers Allowance and therefore the recoupment provisions apply. No evidence of failure to mitigate has been adduced by the respondents and there is no evidence of the wages she may have earned during the short period she carried out the newspaper round. The respondents challenged the claimant as to why she had not been able to find work at Sainsburys nearby and she explained that the only available work there had been temporary in nature, for one week or two weeks.
38. There is no evidence of her applications for work between 16 November and 11 January but she did the newspaper round for some of that period and there may have been a delay in her being able to satisfy the Job Centre of the reason for her dismissal. She is waiting to hear whether she has obtained funding for a part-time 12 week course which will increase her skills and she hopes that it will lead to work in the future. We find that her losses to the date of hearing are proved and consider that, taking into account her reasonable desire to retrain, which will limit the hours available for work in the immediate future, and the fact that she seeks part-time work but balancing those factors with the likely availability of equivalent permanent role in the area 5 months' future loss of earnings are attributable to her unfair dismissal.
39. No other financial loss is claimed to stem from the discriminatory acts which are not co-existent with the loss flowing from the unfair dismissal.
40. It is our view that inexperience and ignorance of an employer's responsibilities influence these respondents' actions and that they are in need of information and advice on their responsibilities towards employees under the equality legislation and also when disciplinary and grievance matters arise. This sort of information is readily available from ACAS and the respondents may wish to seek their guidance. However we cannot be satisfied that there is a recommendation that we can make which would obviate or reduce the adverse effect of their conduct on the claimant and, furthermore, have heard no submissions on any appropriate recommendations, therefore make no specific recommendation.
41. We make declarations in relation to the proven allegations of discrimination which are set out below. Paragraphs 17 and 18 of her witness statement outline the facts relied upon by the claimant as evidencing her injury to

feelings. The claimant says and we accept that the first she knew about the allegation of theft made against her was when she was barred from using the first respondent's shop or the post office within it. Other than that, the respondents first raised the allegations of theft, counterfeiting notes, lack of punctuality and leaving early, poor performance during employment with her earlier employer, failure to perform her job, her complaints about her health and the alleged failure to carry out the newspaper round competently in the body of the ET3.

42. The respondents challenge the claimant's evidence that she couldn't visit shops in the locality because of the embarrassment of being asked about the allegations of theft but we accept the claimant's evidence that the upset caused to her by the respondents' false allegations means that she only shops when she is unlikely to meet anyone she knows. She has been barred from her local post office so has to go further afield.
43. The Schedule of Loss at page 33 suggests that an appropriate award would be in the middle bracket of those set out in the case of Vento v Chief Constable of West Yorkshire Police (No 2) [2003] IRLR 102 CA (the range of which has been adjusted in subsequent cases to take account of inflation). It does not set out a claim for aggravated damages. The claimant's representative urged us to make separate awards for sex discrimination and religious discrimination, each in the lower bracket but argued that the religious discrimination involved rejection of the claimant personally, the claimant being made to feel that there was something wrong with her.
44. The claimant referred to suffering from depression, although we have seen no medical evidence and therefore take that word to mean depression in the non-clinical sense. There is no evidence before us that she has been prescribed medication but she told us that she has sought help using alternative and complementary therapies. She blames the dismissal and the manner of them for the breakdown in her relationship.
45. On the other hand we note that the claimant did seek and accept the newspaper round and after that came to an end continued to visit the store for shopping. We therefore conclude that, prior to her hearing the allegations of theft, the impact upon her in terms of injury to feelings was not as severe as now being argued.
46. We think that it is wrong in principle to award different sums for sex discrimination and religious discrimination because all unlawful acts were, in this case, bound up with the loss of the claimant's job. The conversations on 01 November 2012 and on the later occasion about Mr Anwar's hours do not, on the evidence, add appreciably to her injury to feelings compared with the insult of being dismissed in the street, dismissed with no justifiable reason (which we have found to be an act of discrimination) and the subsequent conduct which has lengthened and deepened the distress caused by the respondents' actions. There are clear aggravated features about the manner of the principal act of discrimination. They are dismissing her with no privacy, warning or explanation. There are also aggravating features about this case relating to the respondents' subsequent conduct and conduct in these

proceedings namely the false accusations of serious misconduct and criminal acts made not only within the tribunal proceedings but also in the community.

47. We have concluded that this case merits an award of damages in the middle bracket established in Vento. But for the aggravating features an award right at the bottom of the middle bracket would be appropriate but we conclude that because of the aggravating features an award of £9,000 plus interest is appropriate compensation for the injury to feelings suffered by this claimant.

**Orders**

48. It being accepted that there is no company by the name of Londis (Angel Supermarket) Ltd, the claims are dismissed as against them.

49. The claimant's complaint of unfair dismissal is well founded. The first respondent is to pay to the claimant the sum of **£6,145.44** calculated as follows:

<b>Basic award</b>			<b>£307.14</b>
Compensatory award calculated as follows:			
EDT, 16.11.12 to hearing, 23.07.12 35 weeks @ £102.38	£3,548.30		
<b>Prescribed element</b>	<b>£3,548.30</b>	£3,548.30	
Loss of statutory rights		£ 250.00	
Future loss of earnings: 5 months (20 weeks) @£102.38 p.w.		£2,005.00	
<b>Total compensatory award</b>		<b>£5,838.3</b>	<b>£5,838.30</b>
<b>Total Compensation Payable</b>			<b>£6,145.44</b>

50. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply. The prescribed element is £3,548.30.


The period of the prescribed element is 16 November 2012 to 23 July 2012. The excess of the total award over the prescribed element is £2,597.14.

51. The first respondent discriminated against the claimant because of her sex through the acts of the second respondent, for which he is jointly and severally liable by reason of s.110(1) Equality Act 2010 by:

51.1. Subjecting her to the detriment of saying that the first respondent had dismissed her and retained Wahlid Anwar "Because he brings stock up. With the stairs we thought it would be too difficult because you're a woman."



- 51.2. Dismissing her on 6 November 2012 to take effect from 16 November 2012.
52. The first respondent discriminated against the claimant because of her religion through the acts of the second respondent, for which he is jointly and severally liable by reason of s.110(1) Equality Act 2010 by:
- 52.1. Subjecting her to the detriment of saying "What ... you are not a Christian! You have got to be a Christian surely."
- 52.2. Dismissing her.
53. The respondents are to pay to the claimant the sum of £9,000 plus interest at the rate of 0.5% from 6 November 2012 to 23 July 2013 being £95.84. That makes a total of **£9,095.84** as compensation for direct discrimination. The first and second respondents are jointly and severally liable for this sum.
54. The claimant's total compensation is £15,241.28, some of which is subject to recoupment as set out in paragraph 50 above.

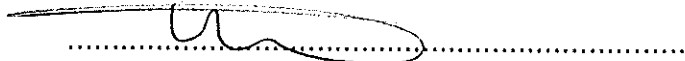


Employment Judge George

20<sup>th</sup> September 2013

Sent to the parties on:

24 September 2013



For the Secretary to the Tribunals