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EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Degirgen

AND

Pizza Express (Restaurants) Limited

FINAL HEARING

HELD AT: London Central **ON:** 25 & 26 March 2019
& 23 April 2019 (in Chambers)

Before: Employment Judge Brown

Members: Ms K Dent
Ms N Foster

Representation:

For Claimant: Mr C Decker, Representative
For Respondent: Mr M Foster, Solicitor

JUDGMENT

The unanimous Judgment of the Employment Tribunal is that:

1. The Respondent did not discriminate against the Claimant because of his religion or belief.
2. The Respondent did not unfairly constructively dismiss the Claimant.
3. A remedy hearing will not take place.

REASONS

Preliminary

1. The Claimant brings complaints of constructive unfair dismissal and direct religion and belief discrimination against the Respondent, his former employer.

2. The issues in the claims were set out in paragraphs 4-6 of the Case Management Discussion at the Preliminary Hearing on 11 October 2016 in front of Employment Judge Professor Neil.

(4) It was agreed that the claim alleging unfair dismissal involves the issues of (1) whether there was a “dismissal” within the meaning of section 95(1)(c) of the **Employment Rights Act 1996**; (2) If so, what was the reason or principal reason for the dismissal; and (3) (in the light of that reason) the application of the section 98(4) “test of reasonableness”.

(5) For the purposes of the issue as to whether there was a “dismissal”, the Tribunal records that the Claimant is alleging the following breaches of contract by the Respondent: (1) failure to provide adequate training on the Claimant’s return to his career [4 September 2017 onwards]; (2) Failure to provide an assistant manager when requested [28 September 2017]; (3) Failure of the Claimant’s managers to provide support and resources as required [between 28 September and 25 November 2017]; (4) Refusal to communicate complaints allegedly received [28 September 2017]L (5) Failure to undertake a business review [between 8 October and 25 November 2017]; (6) Disclosure to a work colleague that the Claimant was to be suspended before the Claimant was himself informed of this [25 November 2017]; and (7) Conduct of the investigation undertaken with Ms Nina Rosetti [28 November 2017].

(6) In relation to the claim alleging unlawful discrimination by reference to the protected characteristics of religion or belief, the Claimant describes himself as being “of the Islamic Faith”. The Tribunal records that the acts complained of are (1) an alleged comment concerning “terrorist activity” [28 September 2017] and (2) an alleged statement concerning “guns” [4 October 2017]. The Chairman relies upon a hypothetical comparator for the purposes of this claim.

3. The Employment Tribunal heard evidence from the Claimant and from Lucinei Batista, a former colleague of the Claimant. For the Respondent, the Employment Tribunal heard evidence from: Graeme Barnes, the Respondent’s Operations Manager for Scotland North West and the Claimant’s Line Manager at the relevant time; and Jemma Marshall, the predecessor Restaurant Manager of the Stirling Pizza Express Restaurant.

4. There was a bundle of documents. Both parties made submissions. The Tribunal reserved its Judgment.

Findings of Fact

5. The Respondent is a chain of pizza restaurants. The Claimant started employment with the Respondent on 4 September 2006 as a junior member of staff working part time while he was a student in London. The Claimant later changed to working full time hours. He became a Manager on Duty on 4

May 2009 and an Assistant Manager on 20 December 2010. On 5 May 2016 he was appointed as Manager of the Respondent's Kennington Branch in London. The Claimant was not subject to any complaints or disciplinary action during this time.

6. The Respondent operates a Career Break Policy, which applies to all employees who have at least 5 years' service. The break is for a fixed period of 6 months. If an employee makes a request and it is approved, the Respondent does not guarantee that the employee can return to the same role they held before the career break.

7. The Claimant took a career break from 1 March 2017 to 4 September 2017. After his career break, the Claimant wished to relocate to Scotland and the Respondent offered him a Manager vacancy at its Stirling restaurant. Jemma Marshall, the then current restaurant manager in Stirling was due to leave her post in September 2018 because she wanted to work nearer her home. In the event, she later returned to a Manager role at the Respondent's Livingstone restaurant, near to Ms Marshall's home. Ms Marshall's effective date of termination allowed the Claimant to have a two-week hand over period while Ms Marshall was still in post. From the rotas in the Tribunal bundle, it was apparent that Ms Marshall and the Claimant worked together for 7 full shifts and 2 part shifts during that period.

8. Before the Claimant started in the Manager role in Stirling, the Stirling restaurant had undergone a financial risk audit and a quality standards audit. The restaurant had done badly in both. Ms Marshall told the Tribunal that the restaurant's poor financial risk audit score related to one week when she was away from the restaurant for a wedding and the cover manager had not processed invoices in a timely manner. She told the Tribunal that there was an investigation and matters were quickly rectified. She also told the Tribunal that the quality standard issues identified had been rectified before the Claimant started. Both Mr Barnes and Ms Marshall told the Tribunal that the Stirling restaurant was otherwise well performing. Mr Barnes told the Tribunal that the restaurant was in the top 20% performing restaurants in the Respondent company. Ms Marshall told the Tribunal that she received a bonus shortly before she left the Stirling Branch, in recognition of its good performance.

9. Health check records for the Respondents Stirling restaurants were in the bundle at pages 196a-196h. The Claimant contended that the Stirling restaurant had been poorly performing and that he improved it. The Claimant did not back up his contention by reference to the health check record data and the Respondents witnesses were not challenged on their evidence, whether by reference to the data, or otherwise, in cross examination.

10. The Tribunal found Ms Marshall's evidence to be detailed and credible and accepted the Respondent's evidence that the Stirling restaurant was not poorly performing by the time that the Claimant arrived.

11. During his employment the Claimant undertook training with the Respondent. Some was mandatory and had to be repeated every two years, for example food safety and knife skills training. In 2015 he had undertaken training in coaching and dignity at work, page 118a. In 2016 he had undertaken training in waste management, managing capability and controlling the kitchen, amongst other training courses.

12. During the Claimant's career break, the Respondent's stock system had changed and there had also been changes to its cashing up system. Ms Marshall told the Tribunal that she showed the Claimant how to undertake cashing up and that she offered to shadow the Claimant cashing up on the next shift, but that the Claimant declined her offer. She also told the Tribunal that she showed the Claimant how to undertake all duties and offered to shadow the Claimant on all duties, but, again, the Claimant declined these suggestions. She said that the Claimant stated that he wanted to watch Ms Marshall and would take over when she left. Ms Marshall told the Tribunal that it did not take her long to learn the new cashing up system and that the Respondent's intranet provided step-by-step guide provided answers to any questions she might have had.

13. The Claimant denied all this and told the Tribunal that he would have accepted any offer of help, or training. He told the Tribunal that he was not adequately trained and spent many hours while a manager at the Stirling restaurant, phoning the Respondents Aztec IT support service, when undertaking cashing up.

14. The Tribunal accepted Ms Marshall's evidence that she did show the Claimant how to operate all the Respondent's systems and had offered to shadow him, but that he declined. Again, Ms Marshall's account of the two week hand over period was detailed. It was clear from the rotas that she did have sufficient opportunity, given the shifts they worked together, to show the Claimant how to undertake all the relevant managerial duties. The Claimant's evidence, by contrast, was vague.

15. From the Claimant's training record, the Claimant undertook the following training in 2017:

The Pizza Express Story	completed on 10 November 2017
Pizza Express and You	completed on 13 November 2017
Essentials of Health & Safety	completed on 13 November 2017
Food Handler Fitness to Work	completed on 13 November 2017
Take a Tour	completed on 10 November 2017
Delivering a World Class Service	completed on 13 November 2017
An Introduction to Dough	completed on 13 November 2017
Our People Policies	completed on 1 November 2017
Chemical Training	completed on 11 October 2017
Food Safety Pizza Express	completed on 22 September 2017

From the Respondents training records, training on Aztec Till Training for Managers was also in progress, page 118a.

16. There was no evidence from the available emails or texts at the relevant times, or from the Claimant's business plan dated 9 October 2017, page 218, that the Claimant asked to be provided with any additional training. In his business plan, he said that his waiters were not trained and that he would go through the Respondents "service journey" with them in one-to-one meetings. He said that everyone would be trained in a couple of months and that a few things had changed since he was away from the business and "I need to train myself too". The Tribunal found that this indicated that the Claimant was aware of his own training needs and that he was going to undertake the relevant training. The Claimant's business plan did not suggest that others needed to provide training for him. The Tribunal also noted that the Claimant was only away from the business for 6 months. It accepted the Respondent's contention that it was reasonable for the Respondent to consider that the Claimant was likely to have retained basic managerial skills during that relevant period.

17. There was no Assistant Manager in post at the Stirling restaurant throughout the Claimant's management tenure there. In the Claimant's business plan in October 2017, the Claimant said that he urgently needed an Assistant Manager.

18. There was a dispute of fact between the parties about how many Managers on Duty were employed at the Stirling restaurant when the Claimant was there. Managers on Duty are employees who can run a shift in place of a Manager or Assistant Manager. The Claimant contended that there were 4 Managers on Duty at the relevant time: Neil, Helen and Mr Batista. He said that Neil however, only worked 3 or 4 days during the Claimant's management tenure, because of Neil's health issues. The Claimant said that Helen also left very quickly after the Claimant started.

19. The Respondent contended that there were 5 Managers on Duty during the Claimant's employment at Stirling: Neil, Helen, Stephanie, Robyn and Mr Batista. It was not in dispute that Helen left the business within a couple of weeks of the Claimant starting. The Respondent's witnesses told the Tribunal that Managers on Duty had to be recorded on the Respondents HR systems as Managers on Duty so that they would be paid at a higher hourly rate.

20. Rotas in the Tribunal bundle showed that, during the handover period from Ms Marshall to the Claimant, the Claimant was working when both Robyn and Stephanie were working as Managers on Duty, page 439. The rotas also showed that, in the first week after Ms Marshall left, Neil, Helen and Stephanie all worked as Managers on Duty, page 441 and 442.

21. The rotas further showed that Neil worked with the Claimant 3 days a week in the week commencing 25 September 2017. He worked 3 days when the Claimant was off in the week commencing 2 October 2017, 5 days when the Claimant was off in the week commencing 16 October 2017, pages 442k-l. The rotas therefore showed that Neil worked on considerably more than 3 or 4 occasions during the Claimant's tenure as Manager at the Stirling restaurant.

22. On 30 September 2017, Robyn sent an informal email of concern to Mr Barnes. In it, she said, amongst other things, that despite being employed as a Manager on Duty, the Claimant had not given her any Manager on Duty shifts since he started doing the rota.

23. Mr Barnes told the Tribunal that he tried to recruit an Assistant Manager for the Stirling restaurant while the Claimant was Manager there, but that the candidates were not of sufficient quality and that he considered that, in any event, 4 or 5 Managers on Duty provided sufficient managerial cover.

24. The Tribunal found, on all the evidence, that there were at least 4 Managers on Duty available to the Claimant at all times during his employment at the Stirling restaurant: Robyn, Stephanie, Neil and Mr Batista. Helen was also available initially. Insofar as these people were not used as Managers on Duty, this was because the Claimant did not roster them as Managers on duty. He chose not to do so, even though they were available to him.

25. The Tribunal therefore accepted the Respondent's evidence that there was a comparatively high number of Managers on Duty available to the Claimant and that they would have provided sufficient managerial cover to compensate for the lack of an Assistant Manager.

26. As stated above, on 30 September 2017, Robyn, a waitress and Manager on Duty at the Stirling restaurant, emailed Mr Barnes, setting out what she described as concerns about the Claimant. These included that the Claimant was accusatory about mistakes which staff may have made, that when staff offered to help him he would interrupt and be dismissive, that the Claimant was rude to customers and attracted unwanted attention to their tables, that the Claimant had not allocated Robyn Manager on Duty shifts, and that there was a lot of conflict in the restaurant, page 204.

27. Robyn said that she had raised the same concerns orally with Mr Barnes the previous week. Mr Barnes met with the Claimant on 28 September 2017. There was a dispute about who requested that meeting, but it seems that both the Claimant and Mr Barnes wanted to meet, from their text exchange at pages 431-434 of the bundle.

28. Mr Barnes did not treat Robyn's email as a formal complaint at the time. At the 28 September meeting, Mr Barnes told the Claimant that a member of staff had raised concerns about him. Mr Barnes told the Claimant that the Claimant had not "landed well" in the team and that the Claimant needed to work on his engagement with the team. The Claimant asked who had complained and Mr Barnes told him that he would not disclose that information. Mr Barnes told the Tribunal that he wanted to ensure that the Claimant could improve his relationship with the team. He said that he felt that disclosing the identity of the person who had raised concerns might be counterproductive and damaging to the relationship and could discourage employees from raising concerns in the future. The Claimant contended, at

the Tribunal, that it would be difficult for him to address the concerns unless he knew what had been said and who had said it. The Tribunal found that, objectively, the Respondent disclosed sufficient detail of the concerns to the Claimant to enable him to try to improve the relationship with his team. It also decided that Mr Barnes had logical and reasonable grounds for not disclosing the name of the individual. It would, indeed, be potentially damaging to a new relationship to disclose who had complained about the Claimant and could well discourage employees from informally raising concerns in the future.

29. Following the meeting on 28 September 2017, Mr Barnes emailed the Claimant, asking him to send a quarterly business plan which was due on the second week in October in any event. He said that he was interested to know the Claimant's plans for team engagement and team building, including how to get the team on board for the Claimant's vision, as well as learning points for the Claimant himself. Mr Barnes asked the Claimant to provide as much information as possible, page 205.

30. The Claimant sent Mr Barnes his business plan on 9 October 2017. Mr Barnes did not meet with the Claimant to discuss the business plan. It was not in dispute that Mr Barnes' car was not working for about 3 weeks in October 2017 and that Mr Barnes also had one week's holiday in October 2017. Mr Barnes did see the Claimant at an area team-building day on 3 October. Mr Barnes told the Tribunal that the Claimant's business plan was overtaken by events when Stephanie and Robyn both submitted written complaints about the Claimant on 30 October and 23 October 2017 respectively, and he was required to investigate those. Mr Barnes also told the Tribunal that he dealt with a very large geographical region. This appeared to be borne out by his job title.

31. The Tribunal found that the Claimant's plan did not intimate that the Claimant needed training from others, or any support, other than the provision of an Assistant Manager. It accepted Mr Barnes' evidence that he could not come to the restaurant for a review meeting during October 2017 because of his holiday plans and lack of transport. The Tribunal also accepted Mr Barnes' evidence that, in reality, the issue of the business plan was overtaken by formal complaints which were then investigated in November 2017. The Tribunal found that all these matters explained why Mr Barnes did not hold a business plan review meeting; the Claimant was not communicating a need for a meeting or support, Mr Barnes was unable to allocate time to meet given practical issues with his car, and the staff complaints diverted Mr Barnes' resources to an investigation.

32. The Claimant contended that Mr Barnes made a comment concerning the Claimant and terrorist activity in their meeting at 28 September 2018. He also said that Mr Barnes commented that the Claimant knew about guns at a team-building event on 3 October 2017.

33. In his witness statement the Claimant said at paragraph 26, "When I attend meeting, Mr Barnes will seek to scapegoat me with racially charged comments aimed at my religious beliefs".

34. He also said, at paragraph 27, "If there ever was a mentioned (sic) of guns or terrorism, he will make comments to the effect that "ask Mehmet he will know about it, he is the only foreigner here", I felt so marginalised and ostracised in a way I never felt in my 10 years of services. I was troubled by the fact that people I expected to be working with as part of a team were turning against me. This made the management meeting a terrifying ordeal for him."(sic)

35. The evidence in paragraphs 26 and 27 was vague and did not include any dates or particulars.

36. In oral evidence at the Tribunal, the Claimant said that, in the meeting on 28 September 2017, Mr Barnes had asked if the Claimant wanted to organise a terrorist attack in response to the Claimant asking who had complained about him. The Claimant also said, on 3 October 2017, Mr Barnes had made comments about how easy would be for the Claimant to get a gun in the Claimant's country.

37. In the Claimant's letter of resignation on 18 December 2017 page 426-427, the Claimant said, "When I asked for support he asked whether I wished to arrange a terrorist mission for which I need support".

38. Mr Barnes completely denied saying any of these things. He said that, at the Managers' away day activity on 2 October 2017, an activity involved shooting air rifles, which was the only context in which Mr Barnes had ever talked about guns.

39. The Tribunal found that the Claimant's evidence was so vague as not to be credible. Even in his letter of resignation, which was written closer to the relevant events, the Claimant was very vague about his description and allegations. He did not give dates for what he alleged, or any details of the words used by Mr Barnes.

40. The Claimant had undergone training on dignity at work in 2014 and had attended a dignity at work workshop on 19 February 2015, page 118. He ought, therefore, to have been aware of the Respondents' policies and what was appropriate in the work place. He raised no issue or complaint about Mr Barnes' alleged behaviour at the time, but he now alleges Mr Barnes made inappropriate comments to him. On the balance of probabilities, the Tribunal does not find that Mr Barnes made any remark about the Claimant in relation, either, to terrorist activity, or to guns.

41. On 23 October 2017, the Claimant's colleague, Robyn, made a further complaint about the Claimant. She complained about the Claimant's running of the restaurant and resultant low staff morale, page 230. On 31 October 2017, the Claimant's colleague Stephanie submitted a written complaint about the Claimant, page 238. She said that the Claimant was not treating the staff equally or fairly and was not planning the rota appropriately. She said that the Claimant was calling a new employee Nina, "beautiful" and had done so several times. She also said that he had said to a 17 year old employee,

Melanie, “Your smile is the reason I am keeping you for a long time” and had repeatedly touched her face, which Melanie had then said had made her feel uncomfortable. Stephanie also said that customers had been complaining about the restaurant.

42. An investigation manager, Ray Lydon, met with Stephanie and Robyn and Melanie on 14 November 2017, pages 258-269 and 277. On 24 November, Mr Lydon met with the Claimant and held an investigation meeting, page 317. Mr Lydon decided, having met the Claimant, Stephanie, Robyn and Melanie, that the Claimant should be suspended pending a formal investigation into allegations regarding his professional conduct page 340. Mr Barnes wrote to the Claimant suspending him on 25 November 2017.

43. The Claimant told the Tribunal that, on his way to the meeting with Mr Lydon on 24 November 2017, he bumped into a colleague, Nina, who told him that she had been asked to work later that evening, because the Claimant might not be working himself. The Claimant did not tell the Tribunal that Nina reported to him that the Respondent had told her that it would be suspending the Claimant. On the Claimant’s own evidence, therefore, the Respondent asked Nina to work later that day because the Claimant might himself not be working.

44. Following the Claimant’s suspension, the Respondent conducted formal investigatory interviews with the Claimant and colleagues.

45. In her original investigation interview on 14 November 2017, Robyn had complained that, when Nina was making coffee, the Claimant had stood behind her, looping his hands around her and touching her hand to show her how to make coffee, which Robyn felt to be inappropriate. In her previous investigatory meeting on 14 November 2017, page 274, Melanie said that the Claimant had touched her and had made her feel uncomfortable.

46. In a formal investigation meeting held by Mr Barnes with Nina on 28 November 2017, Mr Barnes asked Nina whether she had seen the Claimant coming into physical contact with team members, page 371. Nina responded that she had, that when the Claimant had been training Nina to make coffee, he had leaned around her from behind and touched the milk jug and had touched Nina’s arm and the machine. Mr Barnes asked, “But he was behind you leaning over you and was close to you?” Nina replied, “Yes he was leaning over me and was close to me”. Mr Barnes continued, “How did this make you feel?” Nina replied, “Surprised, I think as a manager it is your responsibility to not behave like that and other team members don’t behave like that. As I said it doesn’t particularly bother me but I could see how some people may seem uncomfortable ...” page 371.

47. The Claimant complained at the Employment Tribunal that Mr Barnes had asked leading questions and that Mr Barnes’ investigation was therefore inappropriate. The Tribunal noted, from reading the record of the formal interview with Nina, that some of Mr Barnes’ questions were open questions such as, “How did this make you feel?” “Any other examples?” “How is the

general atmosphere in the restaurant?" The Tribunal also found that Mr Barnes was putting to Nina matters which other people had complained about, he was asking Nina to comment on the truth of specific allegations other staff had made. The Tribunal concluded that his questions did not go beyond that. Mr Barnes asked about particular allegations and during the investigation. He gave the Claimant the opportunity to answer questions about the same allegations.

48. Mr Barnes met with the Claimant on 5 December 2017, page 396. He asked the Claimant about touching Melanie's hand and leaning over her while training her to make coffee, page 397. He put to the Claimant all the other allegations that employees had raised.

49. On 6 December 2017, the Respondent invited the Claimant to a disciplinary hearing, page 402. The invitation said that the purpose of the disciplinary hearing would be to discuss allegations of gross misconduct specifically:

"(1) Inappropriate and unprofessional conduct in regards to unwanted physical contact with team members at the Stirling branch of Pizza Express. This may be considered as a breach of the company's Bullying and Harassment Policy (Dignity at Work) and also a breach of the company's General Company Rules and Standards Policy.

(2) Failure to engage your team at the Stirling branch of Pizza Express despite feedback from your line manager on 28/9/17, resulting in subsequent grievances being raised by members of your team regarding your disrespectful, unprofessional conduct and dismissive communications. This may be considered as a breach of the General Company Rules and Standards Policy and unprofessional conduct".

The letter included an investigation report, emails from employees raising concerns and notes of all the interviews that had been carried out with the Claimant's colleagues and the Claimant himself, as well as relevant company procedures and policies.

50. On 11 December 2017, Lorna Crawford, the Respondent's Operations Manager, Greater Manchester, Lancashire and Cheshire, wrote to the Claimant, inviting him to a rescheduled disciplinary hearing on 18 December 2017. Ms Crawford said that she would be hearing the disciplinary meeting and that the investigating officer, Mr Barnes, might also be present for part of the hearing, p409.

51. The disciplinary hearing commenced on 18 December 2017, but, at the start of the hearing, the Claimant said that he was resigning and was bringing a grievance, page 411. He submitted a detailed written grievance to Ms Crawford. In the grievance, he said that he had suffered from a lack of support from Senior Management and that the team at the Stirling branch had refused to accept him as one of its members. He said that he had expressed deep concerns about the level training of the Stirling staff and had suggested

that training be arranged for them in order to increase productivity, but that nothing had been done to present. He said that, when he commenced his employment, there was only one Manager on Duty and the other staff had limited experience, page 411.

52. The Respondent provided the Claimant with a detailed, 3 page response to the grievance on 8 January 2018, page 428.

Relevant Law

Constructive Dismissal

53. s 94 *Employment Rights Act 1996* states that an employee has the right not to be unfairly dismissed by his employer. In order to bring a claim of unfair dismissal, the employee must have been dismissed.

54. By s95(1)(c) *ERA 1996*, an employee is dismissed by his employer if the employee terminates the contract under which he is employed, in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This form of dismissal is known as constructive dismissal.

55. In order to be entitled to terminate his contract and claim constructive dismissal, the employee must show the following:

- a. The employer has committed a repudiatory breach of contract.
- b. The employee has left because of the breach, *Walker v Josiah Wedgwood & Sons Ltd* [1978] ICR 744;
- c. The employee has not waived the breach- in other words; the employee must not delay his resignation too long, or indicate acceptance of the changed nature of the employment.

56. The evidential burden is on the Claimant. Guidance in the *Western Excavating (ECC Limited) v Sharp* [1978] ICR 221 case requires the Claimant to demonstrate that, first the Respondent has committed a repudiatory breach of his contract, second that he had left because of that breach and third, that he has not waived that breach.

57. Every breach of the implied term of trust and confidence is a repudiatory breach, *Morrow v Safeway Stores* [2002] IRLR 9.

58. In order to establish constructive dismissal based on a repudiatory breach of the implied term of trust and confidence, the employee must show that the employer has, without reasonable and proper cause, conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between them, *Mahmud v Bank of Credit and Commerce International SA* [1997] ICR 606, *Baldwin v Brighton and Hove City Council* [2007] ICR 680 and *Bournemouth University Higher Education Corporation v Buckland* [2009] IRLR 606.

59. The question of whether the employer has committed a fundamental breach of the contract of employment is not to be judged by the range of

reasonable responses test. The test is an objective one, a breach occurs when the proscribed conduct takes place.

60. To reach a finding that the employer has breached the implied term of trust and confidence requires a significant breach of contract, demonstrating that the employer's intention is to abandon or refuse to perform the employment contract, Maurice Kay LJ in *Tullett Prebon v BGC* [2011] IRLR 420, CA, para 20.

Direct Religion and Belief Discrimination

61. By s39(2)(d) *Equality Act 2010*, an employer must not discriminate against an employee by subjecting him to a detriment.

62. Direct discrimination is defined in s13(1) *EqA 2010*: "(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."

63. Religion and belief are protected characteristics, s4 *EqA 2010*.

Discussion and Decision

Religion and Belief Discrimination

64. On the Tribunal's findings of fact, Mr Barnes did not use any words on 28 September 2017 to associate the Claimant with terrorism, nor did he use any words associating the Claimant with guns on 3 October 2017. These allegations fail on their facts.

Constructive Dismissal

65. The Tribunal has found, in relation to each of the Claimant's allegations, that the Respondent had reasonable and proper cause for acting as it did. The Respondent, through Ms Marshall, provided training in all aspects of the Manager job at the Stirling restaurant and offered to shadow the Claimant while he undertook those relevant tasks, but the Claimant declined this offer. The Respondent provided online training which the Claimant undertook, including training in its Aztec till system. The Claimant did not suggest that he needed other people to provide him with additional training. In his own business plan, he suggested that he would address his own training needs. The Claimant had only been away for 6 months from the Managerial job and was an experienced Manager. On the facts, there was nothing to indicate to the Respondent that it needed to provide the Claimant with more training than it did.

66. The Respondent attempted to recruit an Assistant Manager but was unable to find a candidate of the appropriate calibre. Nevertheless, the Respondent provided at least four Managers on Duty for the Claimant throughout his tenure at the Stirling restaurant. These employees were capable of providing managerial cover. The Tribunal accepted the

Respondent's evidence that they provided adequate cover in the absence of an Assistant Manager. Indeed, the Claimant failed to roster the available managers on duty, leading to complaints from at least one of them. Insofar as the Claimant did not have managerial cover, this was because he chose not to avail himself of the resources which were provided.

67. Mr Barnes did not meet with the Claimant to review his business or to discuss support measures between 28 September and 25 November 2017. In the Claimant's business plan, he did not suggest that he needed any specific support. Mr Barnes, his Area Manager was unable to travel for three weeks in October and was away on leave. In November 2017, Mr Barnes' time was substantially taken up with investigating complaints made against the Claimant. Mr Barnes had met with the Claimant on 28 September 2017 and a two month period is not a particularly long period for the Claimant not to have a face to face meeting with his manager. Mr Barnes did see the Claimant at an away day on 3 October 2017, albeit this was a team building exercise rather, than specifically offering managerial support. The Tribunal decided that, in the circumstances that the Claimant was not asking for specific support, and when Mr Barnes was prevented from visiting his Managers by his lack of transport in October 2017, and that Mr Barnes' time at work was taken up with dealing with complaints about the Claimant in November 2017, Mr Barnes' failure to meet with the Claimant did not amount to a breach of the duty of trust and confidence. He had reasonable and proper cause for not meeting the Claimant during this time.

68. Mr Barnes declined to tell the Claimant the identity of the colleague who had complained about him on 28 September 2017 Mr Barnes had reasonable and proper cause for doing so. The Claimant had to build an ongoing relationship with team members and it was reasonable to assume that identifying complainants would have detrimentally affected the Claimant's relationship with those people. Further, it may well have discouraged colleagues from raising what were informal complaints at the time. The Respondent gave the Claimant an opportunity to improve and build the relationship. It did not treat the complaints as formal and there was no need therefore for the Claimant to know precisely the identity of the people who had complained. The Respondent provided enough information to allow the Claimant to seek to improve his relationship with the team.

69. Mr Barnes did not conduct a business review between 8 October 2017 and 25 November 2017. Again, the Claimant indicated in his Business Plan that he was addressing recruitment and retention activity, team engagement, sales performance, profit and standards as well as all other areas. He did say that he required an Assistant Manager. Mr Barnes did attempt to address that even if he did not meet with the Claimant directly to discuss it. As the Claimant indicated that he had all other matters in hand, the Tribunal concluded that Mr Barnes had reasonable and proper cause for not meeting with the Claimant in the circumstances set out above, which made it very difficult for him to do so.

70. The Tribunal has found that the Respondent did not disclose to a work colleague that the Claimant was to be suspended before the Claimant was himself informed of this on 25 November 2017.

71. The Tribunal has also decided that Mr Barnes conducted an investigatory interview with the Claimant's colleague appropriately: he asked open questions as well as questions which were directed to exploring specific allegations which had been made against the Claimant. The questions did not go beyond seeking evidence on those allegations. Mr Barnes' approach was measured and appropriately focused.

72. None of the matters about which the Claimant complains amounted either, individually, or together, to a breach of the duty of trust and confidence between employer and employee. That being so, the Claimant was not entitled to resign and claim constructive dismissal. His claims fail.

Employment Judge Brown

Dated: 14 May 2019

Judgment and Reasons sent to the parties on:

14 May 2019

For the Tribunal Office