



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000417/2023**

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**Held in Glasgow on 5 & 6 February 2024**

**Employment Judge L Doherty  
Members Ms E Farrell and Ms M McAllister**

10 **Mr Talha Ghaffor**

**Claimant  
In Person**

15 **Alderforce SC Limited**

**Respondent  
Represented by:  
Mr G Mitchell -  
Solicitor**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The unanimous judgement of the Employment Tribunal is that:

- 20 (1) the claim of discrimination under Section 13 of the Equality Act 2010 is dismissed;
- (2) the claim of breach of contract is dismissed; and
- (3) the respondents failed to provide the claimant with a pay statement as required by Section 8 of the Employment Rights Act 1996 on one occasion in  
25 respect of a payment of £333.30.

### **REASONS**

1. In a claim presented on 16/08/23 the claimant brought various claims, including claims of direct race discrimination, breach of contract, and failure to provide itemised pay statements. This two day hearing was fixed to  
30 determine the merits of the claims only.
2. The claimant appeared on his own behalf, and Mr Mitchel, solicitor appeared on behalf of the respondents.

3. This claim has benefited from extensive case management. The claims of unfair dismissal and failure to pay a redundancy payment which were initially presented had been withdrawn and dismissed on the basis that the claimant does not have the requisite length of service to present such claims. At a Preliminary Hearing (PH) on 29 January EJ O' Donnell determined that the hearing on the merits of the claim and remedy should be split. He did so as because the claimant's schedule of loss contained a head of compensation labelled "psychological injury". He clarified with the claimant that he wished to seek damages for psychological injury. The EJ did not consider that there was sufficient time at the final hearing, which was listed for 2 days, for the relevant medical evidence to be obtained and therefore and directed that the hearing listed on 5 and 6 February 2024 deal with the issue of liability only. If the claimant succeeds in any of his claims, then the issue of remedy will be dealt with at a later hearing.
4. It was explained to the claimant at this hearing that if he wishes to produce medical evidence, including evidence of psychological injury, at that remedy hearing then it would be open to him to do so.
5. Following the PH on 29 January 2024, the claims before the Tribunal were identified to be the following:

***Claims of direct race discrimination under section 13 Equality Act 2010***

- (1) *The claimant alleges he experienced "spitefulness" by his seniors and had been looked down upon.*
- (2) *It is alleged the general manager had told him off after he had identified problems (and solutions) with the way in which the restaurant was being run and that these problems had been brushed off.*
- (3) *The claimant's concerns were ignored*
- (4) *The claimant had not been given proper training, had not been clocked in properly and that the general manager at Braehead had ignored his messages.*

- (5) *The claimant had been asked to move branch*
- (6) *Comments by the general manager at the Greenock branch were alleged to be acts of race discrimination. He had been 1 “snapped at and shouted at”.*
- 5 (7) *Dismissal*
- (8) *Alleged failure to pay wages on two occasions.*
- (9) *Alleged failure to provide pay slips.*

### ***Breach of Contract***

6. The noted from the PH of 29 January recorded were two elements to this as follows:

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(1) *‘An allegation of a failure to pay the claimant’s wages. In his schedule of loss, the claimant stated that he was seeking £1500 for “the remaining wages and compensation”. The claimant accepted at the PH that all wages due had now been paid to him. The EJ explained to him at the PH that the Tribunal can only award compensation in respect of any loss arising from a breach of contract (in order to put a claimant in the position they would have been if the breach had not occurred) and does not award punitive damages or fine an employer for a breach of contract. It was explained to him at the PH that if all the wages had been paid then this element of the claim will not result in any award to the claimant.*

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(2) *The second element of the breach of contract claim relates to various actions taken by the respondent during the claimant’s employment (for example, moving him to a different branch) which he alleges were a breach of contract. The claimant ‘s position is that the sum sought in his schedule of loss in respect of this element of the claim did not relate to any loss arising from these issues but was, again, punitive damages. The EJ reiterated the point set out above regarding the Tribunal’s power to award damages in a breach of contract claim’.*

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7. At the PH the EJ suggested to that the claimant may wish to reflect on whether he wished to pursue these claims and he directed that within 7 days of the date of this hearing, the claimant should confirm whether or not he wishes to proceed with the breach of contract claims.

5 8. The claimant did not comply with that direction but confirmed at the outset of this hearing that he wished to continue to pursue his breach of contract claim. The tribunal therefore treated the breach of contract claim as being a claim which was before it.

### ***Claim under section 8 of the ERA***

10 9. It is the claimant's position that the respondents failed to provide him with itemised pay statements as required. This is a claim before the Tribunal at this hearing.

15 10. The respondents accept that no pay slip was provided in respect of a payment made in August. Their position is that this should not be regarded as a failure on their part as it was caused by a deficiency of information provided by the claimant.

### ***The Hearing***

20 11. The claimant gave evidence on his own behalf. For the respondent's, evidence was given by Emma Kirkpatrick, the general manager at Braehead KFC, and Caitlin Collins, general manager at Greenock KFC. The parties produced a joint bundle of documents. Two documents were added to the bundle by the respondents on the first day of the hearing. There was no objection to the inclusion of these documents in the bundle by the claimant.

### **Findings in Fact**

25 12. The respondents are a large company involved in the business of operating restaurant chains, including KFC. There are a number of branches of KFC in Scotland, including branches at Braehead, Greenock and Linwood. The respondents have a Group Policy, which includes details of a grievance procedure. This policy is available to staff online. In the Greenock branch it  
30 can be accessed from the computer in the branch.

13. The claimant whose date of birth is 15 December 1989 is of Pakistani origin. He was offered the position of Assistant Restaurant Manager with the respondents following interview. The interview was conducted by Mr Hugh Stevenson, the Area Coach. Ms Kirkpatrick was also present at the interview. She formed a favourable impression of the claimant at that interview. It was intended that the claimant would work at the Braehead branch where she was the restaurant general manager. It was explained to the claimant at interview that he would undertake training at other branches, in particular Linwood, which was regarded as a busy and successful unit. Mr Stevenson considered it useful to rotate new front line management staff between branches for training purposes and this was a practise which was adopted with new management staff.
14. After the claimant was offered the position he attended a meeting with Ms Kirkpatrick, when she undertook the completion of paperwork in connection with the commencement of his employment. This included obtaining the claimant's bank details for the purposes of paying his wages. In addition to the claimant's bank account and sort code, the respondents also required confirmation either by way of written documentation, or production of a bank card, that the bank details provided where the employee's bank details. This was the standard practice for all employees. The claimant told Ms Kirkpatrick that there was an issue with his bank account. He provided her with the sort code and account number, but not his bank card or any documentation. The claimant did not provide Ms Kirkpatrick with this information, but he emailed it to an individual, Wendy, at Braehead on the 7 of June.
15. The claimant signed his contract of employment on the 7 of June. The contract stated that the claimants normal place of work was KFC Braehead. The contract also contained a mobility clause which stated: "*Alderforce SC Ltd reserve the right to transfer you to another company unit within a reasonable distance of your normal place of work. It is unlikely that you will be required to work outside the United Kingdom.*"
16. The claimant's salary was £26,000 per annum. The contract provided for fortnightly payment.

17. Clause 4 of contract provided for a probationary period. It stated: *“Your employment is subject to a 13 week probationary period, during which all aspects of your performance and conduct will be monitored. If your performance or conduct is found to be unsatisfactory, Alderforce SC Ltd may terminate your employment at any point giving the following periods of notice.”* 5
18. The contract provided for no notice period if employment was for less than four weeks.
19. The claimant started work on 1 June 2023 in the Braehead branch. On the first day of his employment Ms Kirkpatrick suggested to him that he looked 10 round the unit and familiarise himself with its workings. Later that day he approached her with a list of issues which he considered had to be addressed. These include that the chef was lazy, other staff issues, and issues about cleanliness. The claimant indicated that he wished to call a staff meeting to deal with these matters. Mr Kilpatrick considered it was not appropriate to hold 15 such a meeting, and that it would be very unusual for a newly appointed assistant manager to call a staff meeting to discuss these types of matters so soon after he commenced working. She explained to the claimant that she considered it was too quick for him to call such a meeting with the team.
20. Ms Kirkpatrick did not hold an induction meeting with the claimant and with 20 staff. It was not the respondent’s practice to hold this type of meeting.
21. Ms Kirkpatrick trained the claimant on the respondents clocking in system, Easyclock. When the claimant was not at Braehead, and not able to use this system, he asked other staff to clock in for him.
22. The claimant also undertook the respondent’s online training when he was at 25 Braehead.
23. On one occasion the claimant messaged Ms Kirkpatrick late at night or very early morning with a query about his wages. She saw the message, which woke her up, but did not respond to it immediately due to the hour when she received it. She intended to deal with it but forgot to do so and did not respond.
- 30 24. The claimant worked at Braehead on the 1, 2,3 and 6 of June 2023.

25. Ms Kirkpatrick was on leave as of 6 June. It had been intended that the claimant would move to the Linwood branch for training, however the manager at Linwood was also on annual leave, and therefore it was not considered useful for the claimant to go to Linwood at that time as there was no manager to train him. Instead, the claimant was directed to work at the Greenock Branch, where there was a manager, Ms Collins, to provide training. This was explained to the claimant by Ms Kirkpatrick. The claimant raised no objection to it.
26. Ms Kirkpatrick formed the view from the days when she worked alongside the claimant that he did not engage well with the team. Ms Kirkpatrick considered that engagement with her team members was very important element of management of her team, many of whom were young. She felt that the claimant was standoffish. From her observations she got the impression that he walked about the unit in silence not speaking to staff and that when staff tried to speak to him, he gave one word answers. She provided this feedback about the claimant to Mr Stevenson when he requested it.
27. Ms Kirkpatrick contacted Ms Collins in advance of 7 June to advise that the claimant would be attending the Greenock Branch on 7 June 2023. The claimant also messaged Ms Collins on 6 June advising that he would be working there the following day. The 6 June 2023 was Ms Collin's day off, and she did not check her work messages or respond to them that day, and therefore did not respond to the claimant.
28. When the claimant arrived at work on 7 June 2023, he queried with Ms Collins why she had not responded to his message. She explained that she did not normally check her work messages on her day off.
29. The claimant worked at Greenock on the 7, 8, 9 and 10 of June 2023.
30. Ms Collins formed the impression that the claimant did not take kindly to her. She did not form the view that his rapport with other team members was particularly positive or negative. However, she formed the impression that he was not keen on engaging in all the operational tasks which team members have to undertake, and which she herself undertook in addition to her

management duties. She noticed in particular then he was hesitant to work in the Service area which is a key operational area of the unit. She provided this feedback to Mr Stevenson when he requested it.

5 31. The claimant moved to Linwood, where he worked shifts on 12 and 13 of June 2023.

32. The claimant was dismissed by Mr Stevenson on 16 June 2023 during his probationary under clause 4.1 of his contract on the basis of his performance.

### **Payment of wages/issue of wage slips**

10 33. The respondents operate a system whereby payslips are accessed by employees via an online link. Employees are sent an email with details providing the link. The claimant was sent an email to the email address which the respondents held for him with this link. It was explained to the claimant by Mr Stevenson in a WhatsApp message of 12 June 2023 that this is how payslips were accessed.

15 34. The claimant was paid £511.55 on the 27 June 2023 directly into his bank account. A pay slip was issued and put onto the respondent's online system for the claimant to access. The claimant did not access the pay slip. The payslip showed the claimant's gross pay and deductions for tax and NI.

20 35. The payment of £511.55 did not cover the first 3 of the shifts which the claimant had worked. He had worked 24.5 hours over those three shifts, which as recorded in the respondents time records, and the claimants WhatsApp message to Mr Stevenson of 27 June.

25 36. On 27 June the claimant messaged Mr Stevenson advising he had only been paid for half of the hours he worked. In that message he makes reference to his race as being a reason for the way in which he considered he had been treated and non-payment of his wages.

37. Mr Stevenson responded the same day asking for clock in details and indicating that he would take matters up with Braehead. The claimant responded to him with a note of the shift and hours he had recorded working.



38. Mr Stevenson responded to the claimant advising that payroll did not have him clocked in for the three shifts he worked from 1 to 3 June 2023. Mr Stevenson contacted payroll about this and he contacted the claimant on 29 June 2023 advising he had asked payroll to pay the shifts. The claimant raised further queries on 30 June 2023, which Mr Stevenson responded to. He advised he had asked payroll to pay the shifts and that it was likely they would be paid in the next 2 weekly pay run. He also advised the claimant that he was about to go on leave.
39. The claimant did not receive payment by 18 July 2023 and messaged Mr Stevenson again. He responded by directing the claimant to Payroll. Mr Stevenson also emailed payroll on the same day, copying the claimant into the emails. He asked them to confirm when the claimant would be paid.
40. The claimant was paid £333.30 on 30 August 2023. The claimant had worked 24.5 hours during his first three shifts but paid an amount which equivalent to 30 hours gross. No deductions were made from the sum paid. And no itemised payslip was issued to the claimant.
41. The respondents had been experiencing issues with payroll around this time.

#### **Note on evidence**

42. There were some disputed issues of fact which the Tribunal had to determine. It did so by considering its impression of the credibility and reliability of the witnesses overall, and the specific evidence on the material conflicts which it had to resolve.
43. The Tribunal's impression was that the respondent's witnesses were credible and reliable. It considered that the extent to which their recollection of matters was diminished was commensurate with the passage of time and did not impact upon their credibility.
44. Ms Kilpatrick, and Ms Collins gave their evidence without exaggeration or embellishment which tended in the tribunal's view to enhance their credibility. Neither witness was an outspokenly critical of the claimant's performance during the probationary period, but rather gave a measured assessment what

they had observed. It was Ms Collins's evidence, there was nothing '*super positive or super negative*' about the claimant's performance. This was also the sense of Ms Kirkpatrick's evidence, in that she considered the claimant to be standoffish with staff and not sufficiently engaged with them, and provided her reason for this. Both witnesses gave convincing reasons for the view they had formed. Further, both witnesses made appropriate concessions. Ms Kirkpatrick accepted she forgot to respond to the claimant's text and Ms Collins accepted the comment attributed to her about not reading texts on her day.

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10 45. The tribunal did not find the claimant to be a credible or reliable witness on all material points. That is not to say that it found that he set out to deliberately mislead, but rather formed the view that he lacked insight on occasion and was so convinced that he had been wronged by the respondents that this impacted upon the credibility and reliability of his evidence on some matters.

15 Examples of this are found in the fact that the claimant appeared reluctant to accept his job title, which was specified in the contract of employment, suggesting he was as Assistant General Manager. He insisted that his being moved to other units was a breach of his contract and, initially at least an act of discrimination, despite the fact that his contract contained a mobility clause.

20 He questioned what was a reasonable distance from his workplace, but led no evidence about this and did not lead evidence that he had complained about the moves at the time. He considered he was entitled to call a staff meeting, having identified that the cook in his view was lazy and other matters, after a very short period of working during his probationary period as an assistant restaurant manager, and cast Ms Kirkpatrick's refusal to hold such

25 a meeting as an act of discrimination on the grounds of his race, rather than being explained by the his position and duration of his employment. The Tribunal did not accept he had been hired by Mr Stevenson to identify and sort out the problems at the Braehead unit, as he suggested. That was not a

30 role which was consistent with his job as assistant restaurant manager.

46. There was a conflict as to whether the claimant had been told he would move to other units for training purposes during his interview. It was put to Ms

5 Kirkpatrick that this had not been said, however the Tribunal accepted her evidence that it had. She gave a convincing explanation that it was something which Mr Stevenson had introduced, and all new management staff were rotated for training purposes, and the claimant was told about it and the Tribunal had no reason to disbelieve her.

10 47. There was a conflict as to whether the claimant gave Ms Kirkpatrick his bank card when he met with her to complete paperwork before he stated his employment. The claimant put to her that he had given her his bank card; Ms Kirkpatrick denied it. She explained, convincingly in the Tribunal's view that he said there was a problem with his bank account, and not provided this to her.

15 48. The tribunal's view of Ms Kirkpatrick credibility is fortified in that claimant's WhatsApp message of 7 June supports the conclusion that the claimant provided documentation about his bank details to Wendy on that date. The claimant suggested this WhatsApp related to his Right to work certificate which accompanied the message, of however, the message to Mr Stevenson on that date states: *"I emailed all the documentation to Wendy this afternoon. Here is my Right to work page."* Mr Stevenson responds that *"Wendy confirmed she had it later and all documentation sent to Payroll now."*

20 49. The reference to the Right to Work page is separate to other information sent to Wendy earlier that day. The information sent to Wendy was sent on to payroll, and on balance the Tribunal was satisfied that this was likely to be the necessary bank documentation. The significance of this is that the claimant was not paid for three shifts which he worked at the commencement of his employment.

25 50. There was no significant conflict was around how Ms Kilpatrick dealt with the claimant's request for a staff meeting. He classified her this as her 'brushing off his concerns'. Ms Kirkpatrick did not call a staff meeting as requested by the claimant, however the tribunal accepted her evidence that she considered it to be too soon into the claimant's employment for him to call such a meeting.

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This appeared to be a decision on her part which was objectively reasonable given that the claimant had just started working in the Unit, and his position.

51. There was no evidence of her, or anyone else, having acted spitefully or  
5 having looked down on the claimant.
52. There was a conflict as to how Ms Collins treated the claimant on his arrival at the Greenock restaurant. It was the claimant's evidence that she was '*on his tail*' the whole time and had insisted that he take a break shortly after his shift started. He disagreed with that decision, and he told her so. His evidence  
10 that when he first saw Ms Collins her '*face was that was tripping her,*' and he could not expect anything good from her, therefore he just backed off.
53. In that the claimant's further particulars he alleged that Ms Collins said to him on arrival at the restaurant "*I didn't expect here, who asked you to come to my restaurant?*"
- 15 54. He responded that he had messaged her the day before, to which she replied: "*What you think I do my day off? I don't check messages when I am off work.*"
55. It was also alleged that she said to him not to touch the stuff in her restaurant.
56. The tribunal did not accept that Ms Collins had treated the claimant with hostility on his arrival at the restaurant. She readily accepted that she told the  
20 claimant that she did not check work messages on her day off, and her willingness to make this appropriate concession lent credibility to her evidence about her interaction with the claimant. The Tribunal accepted that Ms Collins knew the claimant was arriving at the restaurant. This was corroborated by Ms Kirkpatrick who confirmed that she had told Ms Collins about this. There  
25 was therefore no plausible reason why she would greet the claimant in the manner in which he suggested, and the tribunal was not persuaded that she did so.
57. There was no evidence from the claimant or Ms Collins about him being told not to touch stuff in the restaurant.

58. The allegation about being told to take a break did not appear in the claimant's fairly extensive further particulars, and it was not put to the Ms Collins that this occurred, and therefore the tribunal did not consider it necessary to make findings about it. Even if it had, there was nothing unreasonable in her telling the claimant when he should take his break, as she was charged with overall responsibility for running the restaurant.

59. The tribunal was satisfied that the respondents provided payslips to their employees via an online link. This was spoken to by all the witnesses and is consistent with Mr Stevenson's message to the claimant of 12 June. The tribunal was also satisfied that even if the claimant did not pick up the email, an email had been sent to the claimant at his email address about this.

### Submissions

60. Both parties presented written submissions which they supplemented with oral submissions. In the interests of brevity these are not set out here but are dealt with below where relevant.

### Consideration

#### *Claims under Section 13 Claim – Direct Race Discrimination*

61. Section 13 of the Equality Act 2010 (the EQA) provides:

“(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.”

62. Section 23 provides:

“(1) On a comparison of cases for the purposes of section 13, 14, 19 or 19A there must be no material difference between the circumstances relating to each case.”

63. Section 136 deals with the burden of proof and provides:

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

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

(3) *But subsection (2) does not apply if A shows that A did not contravene the provision.”*

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64. The question for the Tribunal under section 13 is to determine whether the claimant has been treated less favourably than a relevant comparator for the purposes of Section 23. Such a comparator is an individual, not of the claimant's Pakistani origin, but whose circumstances are in all other material respects the same as the claimant's.

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65. The claimant relies upon a hypothetical comparator.

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66. In terms of section 136 of the EQA the claimant has the initial burden of proving facts from which the Tribunal could decide, in the absence of any other explanation, that the respondents have committed act(s) of discrimination. In considering this the tribunal should consider any inferences which it is proper to draw from primary facts found.

67. If the claimant discharges that burden, the onus of proof than shifts to the respondent to prove that it did not commit the acts of discrimination.

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68. There was a lack of consistency in the claimant's position as set out in his written claim, his oral evidence, and his submissions as to what was alleged to be acts of discriminatory less favourable treatment. Some of the matters identified at the PH on 29 January 2023, after discussion with the EJ and consideration of the claimant's further particulars, as acts of discrimination, were classed not as discrimination but as breaches of contract in the claimants submissions. In his evidence he said that some matters were not about race, but he also appeared to suggest that was because he could not prove race discrimination. The claimant made reference on more than one occasion to a psychological report being able to prove race discrimination had occurred. No such a report was before the Tribunal; such a report might be relevant to remedy if the claim succeeds and EJ O'Donnell had split the

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hearing into merit and remedy to allow time for this to be produced if necessary. It was in any event not clear how such a report could prove that race discrimination had occurred.

69. In order to make sure that it had properly dealt with all the claims before it the  
5 Tribunal considered the allegations of race discrimination identified by the EJ  
in case management.

**(1)** *“Spitefulness” by his seniors and having been looked down upon.*

70. The Tribunal was not satisfied that that as a matter of fact this occurred. There  
was no credible evidence to support such a conclusion.

10 **(2)** *The general manager had told him off after he had identified problems (and  
solutions) with the way in which the restaurant was being run and that these  
problems had been brushed off.*

71. The Tribunal understands this to relate to Ms Kirkpatrick’s not holding a  
meeting as requested by the claimant just after he started working in  
15 Braehead. For the reasons given above the Tribunal was satisfied that she  
considered it was too soon for him to call such a meeting. The Tribunal was  
satisfied that and that not was not unreasonable of her, given the time worked  
in that Unit by the claimant and his position, alongside her responsibility for  
the overall running of the restaurant. Her decision was unconnected to the  
20 claimant’s race. There was no evidence to suggest that her treatment of a  
relevant comparator would have been any different.

72. In the event the compliant is about failure to hold an induction meeting, the  
Tribunal was satisfied that he reason there was no such meeting was  
because it was not the respondents practice to hold induction meetings. That  
25 was unconnected to the claimant’s race.

**(3)** *The claimant’s concerns were ignored.*

73. There was no evidence before the Tribunal as to what this relates, other that  
the mattes dealt with at (2) above.

**(4)** *The claimant had not been given proper training, had not been clocked in properly and that the general manager at Braehead had ignored his messages.*

74. The evidence supported that the claimant had been trained online on the respondent's procedures and was transferred to Units where there was a manager present so that he could be trained. There was no evidence to support a conclusion he had not been trained.

75. Although the claimant was not paid for his first three shifts there was no evidence that he had not been clocked in.

10 76. Ms Kirkpatrick accepted that she forgot to reply to a text sent by the claimant about his wages. The Tribunal accepted her evidence that the reason for this was that the text was received very late at night/ early morning, out with working hours and she intended to reply when she was at work but forgot to do so. This was a reason unconnected to the claimant's race. There was no evidence to suggest that she would have treated such a text from a relevant comparator differently. The same applies to Ms Collins' failure to respond to a text from the claimant she received on her day off. The reason she did not reply was because it was received on her day off, which is unconnected to the claimant's race.

20 **(5)** *The claimant had been asked to move branch.*

77. There is no dispute that this was the case. The Tribunal was satisfied that the claimant was told that he would be moved at interview and that there was good reason for it in terms of his training and the normal practice as far as the respondents were concerned. There was nothing to suggest a relevant comparator would not have been treated in the same way, and there was nothing to suggest that this treatment was linked to the claimant's race.

**(6)** *Comments by the general manager at the Greenock branch were alleged to be acts of race discrimination. He had been "snapped at and shouted at".*

78. There was no credible evidence that Ms Collins made any offensive remarks to the claimant, or that she snapped and shouted at him. The claimant's



evidence about this was that she was 'on his tail' and told him to take an early break, which is dealt with above. Advising the claimant that she did not check her work messages on no working days could not be categorised as offensive. She was reasonably entitled not to check messages while on leave. There was nothing to suggest she would not have treated a relevant comparator in the same way as she treated the claimant.

**(7) Dismissal**

79. It is accepted that the claimant was dismissed. The Tribunal accepted the evidence from the managers at Greenock and Braehead that they identified some concerns or reservations about the claimant's performance when he was working with them. Further the Tribunal accepted they both witnesses had an objective basis for their views. Ms Kirkpatrick gave convincing evidence about the important she attached to interacting with staff and what she observed about the claimant's failure to do so, explaining that he walked about in silence, not speaking to staff, and when they approached him , he gave one word answers. Ms Collins gave equally convincing evidence about the claimant's reluctance to engage with all the operational tasks required of him.

80. The tribunal accepted that Ms Kirkpatrick and Ms Collins were asked for feedback by Mr Stevenson, and that the feedback they gave represented their genuine assessment of the claimant's performance. The tribunal was satisfied that it was as a result of this that the claimant was dismissed prior to the expiry of his probationary period. The respondents were entitled to assess all aspects of performance and dismiss an employee for unsatisfactory performance during probationary period in terms of the contract of employment. There was no evidence to suggest that a relevant comparator, who was not of Pakistani origin, but who had performed in the same way as the claimant and about whom Ms Collins and Ms Kirkpatrick had formed the same impression, would not have been dismissed.

**(8) Alleged failure to pay wages on two occasions/ Alleged failure to provide pay slips.**

81. There was ultimately no failure to pay wages, but there was a delay in paying wages of £333.30 due in respect of the claimant's first three shifts. The Tribunal was satisfied that on balance the late payment was caused or contributed to by the claimants bank information not being produced till the 7 June 2023 and administrative error on the part of payroll. Mr Stevenson pursued payment of the claimant's wages on his behalf when the claimant brought this to his attention, which does not give rise to an inference that there was a deliberate failure to pay wages connected to the claimant's race. There was nothing to suggest payroll were aware of the claimant's race, as the claimant himself accepted. It is accepted by the respondents that one wage slip was not produced. There was nothing to suggest however that late payment or failure to issue a wage slip in these circumstances was linked to the claimant's race, or that a relevant comparator would not have been subjected to this treatment.
82. For these reasons the Tribunal did not conclude that the claimant had discharged the initial burden of proof in respect of any of the claims under section 13 , and the claim under Section 13 of the EQA is dismissed.

### **Breach of contract**

#### *The claims*

83. The tribunal was satisfied, leaving aside any issue when wages were paid, that all of the wages due to the claimant were paid to him. The tribunal understands that the claimant accepts that that is the case.
84. The claimant's breach of contract claim was advanced on the basis that the his last day at work was 14 June 2023, but he was not paid all of the wages due to him until 30 August 2023, by which point he had already raised a tribunal claim.
85. The claimant also advanced a claim on the basis that the respondents had not provided wage slips in compliance with the Payment of Wages Act 1991.
86. Thirdly, the claimant advanced a breach of contract claim on the basis that his is a place of work had been changed, and he had been required to move,

in breach of his contract of employment. He submitted that the respondent's moving him was in breach of the mobility clause.

87. The claimant also made submissions about psychological damage.

*Consideration*

5 88. Breach of contract gives the innocent party the right to sue for damages; that is financial compensation for losses flowing from the breach. The general principle applicable to all types of claims for breach of contract is that damages should return the innocent party to the position that party would have been in but for the breach.

10 89. As was explained to the claimant at the PH on 29th of January, the tribunal is not in a position to award punitive damages.

90. The respondents have paid the claimants wages, albeit late, and this does not give rise to the claim for damages for non-payment of wages.

91. There is no financial loss flowing from the failure to provide a wage slip.

15 92. Had the claimant considered that his been asked to move his work location amounted to a breach of his contract, it would have been open to him to have resigned from his employment and claimed constructive dismissal. Any alleged breach connection with his being asked to move does not give rise to a claim for damages.

20 93. The claimant's claims of breach of contract are therefore dismissed.

94. The claimants submissions about the psychological damage would only be relevant if the claim succeeded .

*Claim under Section 8 of the Employment Rights Act 1996 (the ERA)- failure to provide an itemised pay statement.*

25 95. Section 8 of the ERA provides:

(1) *A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.*

(2) *The statement shall contain particulars of—*

- 5 (a) *the gross amount of the wages or salary,*
- (b) *the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,*
- (c) *the net amount of wages or salary payable*
- 10 (d) *where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment; and*
- (e) *where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the*
- 15 *variable amount of wages or salary either as—*
- (i) *a single aggregate figure, or*
- (ii) *separate figures for different types of work or different rates of pay.*

96. Section 12 (3) provides:

- 20 (3) *Where on a reference under section 11 an employment tribunal finds—*
- (a) *that an employer has failed to give a worker any pay statement in accordance with section 8, or*
- (b) *that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars*
- 25 *required to be included in that statement by that section or section 9,*

*the tribunal shall make a declaration to that effect.*

(4) *Where on a reference in the case of which subsection (3) applies the tribunal further finds that any unnotified deductions have been made from the pay of the worker during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the worker a sum not exceeding the aggregate of the unnotified deductions so made.*

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10 97. The Tribunal was satisfied that it was the respondents practice to issue wage slips online. The Tribunal was satisfied that payslip dated 27 June 2023 was issued to the claimant, even if he had not accessed it.

15 98. The Tribunal was also satisfied that that the wage slip of 27 June 2023 complied with the requirements of Section 8 of the ERA. The claimant was paid an annual salary, and deductions are shown in respect of the tax and national insurance which were deducted from his wage.

99. The respondents accepted that they did not issue an itemised wage slip for the payment of £333.30 which the claimant was paid on 30 August 2023. Tax and national insurance deductions were not shown on the payment slip which was issued. No deductions were made from the amount paid to the claimant.

20 100. Mr Mitchell suggested it would be possible for the tribunal to conclude that the reason was because the claimant had not provided his bank details, and therefore no default could be attributed to the respondents.

25 101. The tribunal was not persuaded that there was any merit to this argument. There is nothing in the statutory provision which suggests it would be open to the tribunal to reach such a conclusion, and therefore the tribunal was satisfied that a declaration in terms of section 12 (3) (b) of the ERA should be made in respect of the wage slip which should have accompanied the payment of £330.30.

102. The tribunal however did not conclude that it should make any award under section 12(4). Only one wage slip which was not issued. No unnotified deductions are made from the claimant's wages, and even though he was paid late, he had worked 24.5 hours but was paid an equivalent to 30 hours gross

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**L Doherty**

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**Employment Judge**

**9/2/24**

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**Date**

**Date sent to parties**

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