



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 8000043/2022**

**Final Hearing held  
in Edinburgh on 6 and 7 June 2023**

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**Employment Judge A Jones  
Tribunal Member M Macfarlane  
Tribunal Member R Taggart**

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**Ms T Teneva**

**Claimant  
In person  
Assisted by Interpreter  
Mr Gantchev**

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**Atalian Servest Ltd**

**Respondent  
Represented by:  
Mr W Rollinson,  
solicitor**

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**Judgment**

It is the unanimous judgment of the Tribunal that:

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- i. The claimant was not discriminated against by the respondent.
- ii. In any event, the Tribunal has no jurisdiction to consider her claims of race discrimination, and
- iii. The respondent did not provide the claimant with a statement of particulars as required by section 1 Employment Rights Act 1996

## Background

1. The claimant presented a claim of race discrimination on 27 August 2022. Preliminary hearings took place on 26 October 2022 and 16 January 2023. By the time of the Final Hearing, the Tribunal had identified the matters for determination being as follows:
  - 5 i. Was the R vicariously liable for the actions of Kevin Gray and if so, did Kevin Gray say to the claimant in March 2022 that 'you Bulgarians are at the same level as Romanian Gypsies'. If Mr Gray  
10 did say these words did this amount to conduct on the ground of the claimant's nationality contrary to the Equality Act 2010. If so, has the claim been lodged timeously, and/or would it be just and equitable for the Tribunal to consider the claim?
  - 15 ii. Did either Mr Inglis or Mr Cave refuse to allow the claimant to cook and require the claimant to clean up after them on dates during March 2022? If so, did such conduct amount to direct discrimination or harassment on the ground of the claimant's nationality? If so, has the claim been lodged timeously and/or would it be just and equitable  
20 for the Tribunal to consider the claim?
  - 25 iii. In the event of the Tribunal determining that it has jurisdiction to consider a claim under the Equality Act 2010 and being satisfied that discriminatory conduct has occurred for which the respondent is liable, what if any compensation should be awarded to the claimant?
  - 30 iv. In the event that the claimant succeeds in a claim in terms of the Equality Act 2010, should the Tribunal award any compensation in terms of section 38 Employment Act 2002 because of any failure to provide the claimant with a statement of terms and particulars as required by the Employment Rights Act
2. This list of issues was set out in correspondence to parties in a letter of 30 January 2023 and parties were invited to propose any amendments to the list of issues. No amendments were proposed.
- 35 3. Although the claimant had been ordered to provide the respondent with a schedule of loss, she had not done so by the time of the Final Hearing. In these circumstances, the respondent made an application that the Final Hearing determine only the issue of liability and that if the claimant was successful in her claim, a further hearing on remedy would be listed. No

comment was provided from the claimant in relation to the respondent's request and the request was granted.

4. The claimant represented herself at the Final hearing with the assistance of an interpreter. The respondent was represented by Mr Rollinson. The respondent produced a bundle of documents for use at the Final hearing and produced an additional document on the second day of the hearing. As the claimant made no objection to this being received by the Tribunal it was included in the productions.
5. The claimant gave evidence on her own behalf and called one witness, Mr Vasilev. The respondent called four witnesses, Mr Gray, Mr Holdsworth, Mr Inglis and Mr Dailly.
6. Parties made submissions at the end of the evidence. Having listened to the evidence, considered the documents to which reference was made and the submissions of the parties, the Tribunal made the following findings in fact.

#### 15 **Findings in fact**

7. The claimant is a Bulgarian national. She was employed by the respondent as a chef in the Tesco Distribution Centre in Livingston. She worked in a canteen which served food to the staff employed at the Centre. She worked backshift which was generally between 11am and 7pm.
8. The claimant signed a contract of employment but was not provided with a copy of that document at any time.
9. There was a job description available which set out the duties required of someone in the claimant's role, but the claimant was not provided with a copy of that document, nor were her specific duties explained to her. She was not provided with any training in relation to her role.
10. The claimant was often the only chef on duty in the kitchen. A number of general assistants would also normally be on duty. The claimant's role required her to cook and also to ensure that the kitchen was kept clean in line with Health and Safety requirements.

11. At some point in her employment disparaging comments were to the claimant regarding her Bulgarian nationality. Mr Gray did not make any such disparaging comments to the claimant.
12. The claimant was not required to carrying out more cleaning than other chefs. The claimant was not prevented from cooking in the kitchen by other individuals.
13. On one occasion when the claimant was working the Facilities Manager, Mr Holdsworth, who was in overall charge of the contract to provide services at the Tesco Distribution Centre, pointed out an area of the kitchen which was not clean and asked her to clean it. The claimant refused to do so, saying that it was not her area. When Mr Holdsworth checked the area the claimant was working at, he found it too was not clean. The claimant was asked to clean that area but again refused. The claimant was not reprimanded by Mr Holdsworth who left the kitchen in order to defuse the situation.
14. On some occasions, managers employed by the respondent in roles which also involved management responsibilities would assist in the kitchen during busy periods. In particular, Mr Inglis would occasionally work in the kitchen with the claimant.
15. Around August, the claimant informed Mr Inglis that she was not willing to wear her chef whites as she could not afford to wash them. Mr Dailly sought to discuss this matter further with the claimant on 16 August, and the claimant again refused to wear the chef whites while working in the kitchen. Mr Dailly informed the claimant that she could not work in the kitchen without them. The claimant took umbrage at this and left the office and the building. She informed Mr Dailly that she would not work for the company anymore.

### **Observations on the evidence**

16. The claimant appeared extremely agitated throughout the proceedings. She was argumentative and would not follow the instructions of the Tribunal to answer questions directly or ask questions of the respondents witnesses rather than make statements. She took no notes throughout the evidence and

5 did not appear to have given any thought as to how she would present her case. She commenced her evidence by suggesting she did not believe in the justice system in the UK. The evidence she gave was confusing. The Tribunal did not find her to be a wholly credible witness in that she was clearly so enraged by how she perceived she had been treated by the respondent that she was not able to present her case in any cogent manner. The Tribunal appreciated that the claimant had sought to obtain advice in relation to the proceedings and while she had been in contact with the Citizen's Advice Bureau, she was not able to secure representation.

10 17. While the claimant called one witness, Mr Vasilev, he had not worked with the claimant and could not give any relevant evidence.

15 18. The Tribunal found the respondent's witnesses to be generally credible. There were some aspects of their evidence which was not entirely reliable, but the Tribunal was mindful that the events in question had taken place around 2 years ago and indeed the claimant's evidence was very vague so it was difficult to establish when it was that she said events took place.

### **Relevant law**

19. Section 9 of the Equality Act 2010 ("EA") provides that the protected characteristic of race includes nationality and ethnic or national origins.

20 20. Section 13 provides that a person will be discriminated against if, because of a protected characteristic he is treated less favourably than others have or would be treated.

25 21. Section 23 EA provides that where a comparison is made in a discrimination case there must be no material difference between the circumstances relating to each case.

30 22. Section 123 provides that a complaint must be brought within 3 months of the act complained of unless it relates to conduct extending over a period of time in which case the claim must be brought within 3 months of the end of that period. Section 123 also provides that a Tribunal may consider a complaint within such further period as it considers just and equitable.

23. Section 136 EA sets out the requirements of the burden proof and provides that 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.

5 24. Section 1 of the Employment Rights Act 1996 ('ERA') provides that an employer must give a worker a written statement of particulars of employment. A complaint can be made in terms of section 11 ERA where the obligation in terms of section 1 is not met. A Tribunal cannot make a monetary award in relation to a failure in this regard unless a successful claim has also  
10 been made under one of the jurisdictions set out in Schedule 5 of section 38 Employment Act 2002.

### **Discussion and decision**

25. The Tribunal first considered the claimant's claims of race discrimination.

#### **Did Mr Gray make the comment alleged?**

15 26. In relation to the allegation that Mr Gray had said to the claimant words to the effect of "you are the same as Romanian gypsies", while the Tribunal was of the view that something along these lines may have been said to the claimant at some point during the course of her employment, it was not said by Mr Gray.

20 27. Mr Dailly's evidence was that when Mr Gray was asked by him about this and he categorically denied it, and Mr Dailly went back to discuss the matter further with the claimant. After that conversation, he formed the view that it was not an employee of the respondent who had made such a comment, but an employee or agency worker employed in the Centre on behalf of Tesco.  
25 He said that he raised this with Tesco and that he understood that someone was identified by them and was dismissed. A difficulty for the Tribunal was that the claimant did not challenge any of the evidence of the respondent's witnesses. Indeed, the claimant gave very limited evidence throughout the hearing. Efforts were made by the Tribunal to explain to the claimant that she  
30 was required to ask questions of the respondent's witnesses and to put her

case to them in the way that the respondent had put its case to the claimant in cross examination. However, these efforts were in vain. Rather than ask questions, the claimant would make statements and then when it was pointed out to her that this was not appropriate, she seemed to suggest that she was not being permitted to ask questions. The claimant was informed on a number of occasions she should ask questions which were relevant to the issues to be determined. An example of the claimant's approach was that she sought to ask one of the respondent's witnesses why he was telling lies. She was asked to be specific about what was suggested to be a lie, but then suggested she was not allowed to ask questions and that there was no point anyway as the respondent's witnesses would only tell lies. This was not an effective way in which to seek to present her case.

28. The Tribunal therefore accepted that while something was probably said to the claimant regarding her nationality and gypsies, Mr Gray or someone for whom the respondent was vicariously liable did not say this. In reaching this conclusion, the Tribunal also took into account that the claimant appeared to continue to work with Mr Gray with no further incident until the end of her employment in August, did not seek to raise a grievance in relation to the matter and could give no context in which this comment was allegedly said. Mr Gray's evidence was that he had understood he had a positive working relationship with the claimant, where he was interested in the culture and background of her country and where the claimant had brought in some Bulgarian food for him. This evidence was not challenged. In these circumstances, the Tribunal did not accept that it was at all likely that Mr Gray had made any comment to the claimant which she found offensive.

**Was the claimant prevented from cooking and/or required to carry out cleaning duties?**

29. The Tribunal then went on to consider whether the claimant's allegation that she was not permitted to cook and was required to clean, all because of her nationality was made out. The claimant's allegations in this regard were extremely vague, in that she suggested that this might have taken place in March 2022. The Tribunal could not find as a matter of fact that the claimant

was not permitted to cook. The Tribunal accepted that the claimant worked in a fast-paced environment and indeed was often the only cook on duty. While it accepted that Mr Inglis in particular may have worked with the claimant and asked her to assist him, there was no evidence to suggest that the claimant was not permitted to cook.

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30. Further, there was no evidence to suggest that the claimant was asked to clean other than in terms of what would be expected of someone in her role. Rather, the Tribunal formed the view that the claimant had taken umbrage at Mr Holdsworth asking her to clean someone else's workstation when he found it to be dirty on one particular occasion. The claimant refused to do this and then refused to clean her own workstation when asked. Therefore, there was simply no evidence to suggest that what the claimant alleged had ever actually happened, never mind that it was because of her nationality.

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#### **Were the claimant's claims of discrimination lodged in time?**

15 31. In any event, the Tribunal was conscious that the allegations made by the claimant related to March 2022. She did not lodge her claim until August 2022 and her claim was therefore lodged more than three months after any alleged act. Although it was made clear to the claimant in advance of the hearing that jurisdiction was an issue in this regard and that the Tribunal would have to determine whether it was just and equitable to consider her claim if it was found not to have been lodged in time, the claimant did not lead any evidence in this regard. The claimant did indicate that she found it difficult to find any lawyer to act on her behalf and indeed appeared to suggest that this of itself demonstrated discrimination. However she did not explain why it had taken her so long to lodge her claim.

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32. The claimant made reference to contacting 'her lawyer' in a text exchange with Mr Dailly when she left the employment of the respondent, and it appeared to the Tribunal that it was the circumstances in which she left the employment of the respondent which aggrieved her most and led to her seeking advice rather than any alleged discriminatory treatment some months before. Therefore, had the claimant established the facts on which

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she wished to rely in demonstrating that she had been subject to discriminatory treatment, the Tribunal would not have had jurisdiction to consider her claim. There was simply no information before it which would allow the Tribunal to conclude that it would have been just and equitable to do so.

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**Did the respondent provide the claimant with a statement of particulars?**

33. Finally, the Tribunal considered whether the claimant had been provided with a statement of particulars as required by section 1 Employment Rights Act. The respondent sought to argue that as the claimant had signed a document, the respondent had complied with the requirements of section 1. The Tribunal did not find this to be a convincing argument. Section 1 requires that a worker be given a copy of their statement of particulars, not that one should exist in a filing cabinet in the respondent's offices. There was no dispute that the claimant was not given a copy of the document she signed and she was simply told that there was a copy in the office. Therefore, had the claimant succeeded in her claim of discrimination, the Tribunal would have made a financial award of compensation to the claimant in respect of this failure. However, as the claimant has not succeeded in her claim of discrimination, no such award can be made.

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**Employment Judge: A Jones**  
**Date of Judgment: 13 June 2023**  
**Entered in register: 13 June 2023**  
**and copied to parties**

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