EMPLOYMENT TRIBUNALS

Claimant: **Khwaja Ahmed**

Respondent: **Tesco Stores Limited**

Heard at: **East London Hearing Centre (via CVP)**

On: **24 – 25 October 2023 and (in chambers) 27 November 2023**

Before: **Employment Judge P Feeney**
Members: **Ms A Berry**
Ms S Harwood

Representation:
For the Claimant: Ms Choudhury, Counsel
For the Respondent: Ms Sharpe, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claimant's claims of age and religion discrimination fail and are dismissed.

2. The claimant's claim of deduction from wages succeeds in respect of the 'second' payment; he is awarded £819.14 in relation to this

3. The claimant's claim that the respondent failed to provide him with written particulars contrary to Section 1 Employment Rights Act 1996 succeeds, and we award the claimant two weeks' pay for the same.

REASONS

The Issues (as set out at case management hearing of 28 February 2023)

1. The issues for the Tribunal to decide are as follows:

<u>Time Limits</u>

(1) Were the claimant's claims brought within time? Considering the dates of early conciliation and the date the claim was presented, a complaint about something before 20 July 2022 may not have been brought in time.

(2) If so, would it be just and equitable to extend time in respect of the discrimination complaints?

(3) Were the unauthorised deduction complaints made within the time limit in section 23 of the Employment Rights Act 1996?

(4) If not, was it reasonably practicable for the claim to be made within the time limit, and if not, was it made within a reasonable period thereafter?

Direct Age Discrimination

(5) The claimant's age is 60 and he considers his age group to be people over 45. He compares himself with people in the age group under 45.

(6) Did the respondent do the following things:

(i) From 23 May 2022 and then on a daily or nearly daily basis make the claimant do more physical work than was normal for someone in his role or more than people who were younger than him?

(ii) From 23 May 2022 and then on a daily or nearly daily basis prevent him from assigning physical tasks to others who he was entitled to assign tasks to?

(iii) From 23 May 2022 and then on a daily or nearly daily basis deny the claimant the breaks he was entitled to?

(iv) On 11 October 2022 did Mr Vekaria tell the claimant to give him the claimant's password to the claimant's payroll login in breach of the respondent's own policies and the claimant's right to privacy?

(v) Did Mr Vekaria tell the claimant about his own sexual exploits and tell the claimant to reveal his own sexual history to him? The claimant will supply a date for this incident. (5 July 2022)

(7) In respect of the above, was it less favourable treatment? The Tribunal will consider whether the claimant was treated worse than someone else was treated. There must be no material difference between that person and the circumstances of the claimant. If there was no-one in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else had been treated. The claimant says that he was treated worse than a younger colleague called Nirupa Patel.

(8) If the claimant was treated less favourably, was it because of his age?

(9) Did the respondent's treatment amount to a detriment?

(10) Was the treatment a proportionate means of achieving a legitimate aim? The Tribunal will decide in particular was the treatment an appropriate and reasonably necessary way to achieve those aims.

(11) Could something less discriminatory have been done instead?

(12) How should the needs of the claimant and respondent be balanced?

Direct religious discrimination (section 13 Equality Act 2010)

(13) The claimant is a Muslim and compares himself with people who are not Muslim.

(14) Did the respondent do the following things:

(i) From 23 May 2022 and then on a daily or nearly daily basis make the claimant do more physical work than was normal for someone in his role or more than people who were not Muslim?

(ii) From 23 May 2022 and then on a daily or nearly daily basis prevent him from assigning physical tasks to others who he was entitled to assign tasks to?

(iii) From 23 May 2022 and then on a daily or nearly daily basis deny the claimant the breaks he was entitled to?

(iv) On 11 October 2022 did Mr Vekaria tell the claimant to give him the claimant's password to the claimant's payroll login in breach of the respondent's own policies and the claimant's right to privacy?

(v) Did Mr Vekaria tell the claimant about his own sexual exploits and tell the claimant to reveal his own sexual history to him? The claimant will supply a date for this incident. (5 July 2022)

(15) Was that treatment less favourable? The Tribunal will decide whether the claimant was treated worse than someone else was treated – there must be no material difference between their circumstances and the claimant's circumstances. If no-one was in the same circumstances as the claimant, the Tribunal will decide if the claimant was treated worse than someone else would have been treated. No specific comparators have been named.

(16) If so, was this less favourable treatment because of the claimant's religion?

(17) Did the respondent's treatment amount to a detriment?

Harassment relating to age or religion (section 26 Equality Act 2010)

(18) Did the respondent do the following things:

(i) From 23 May 2022 and then on a daily or nearly daily basis make the claimant do more physical work than was normal for someone in his role or more than people who are younger than him or who are not Muslim?

(ii) From 23 May 2022 and then on a daily or nearly daily basis prevent him from assigning physical tasks to others who he was entitled to assign tasks to?

(iii) From 23 May 2022 and then on a daily or nearly daily basis deny the claimant the breaks he was entitled to?

(iv) On 11 October 2022 did Mr Vekaria tell the claimant to give him the claimant's password to the claimant's payroll login in breach of the respondent's own policies and the claimant's right to privacy?

(v) Did Mr Vekaria tell the claimant about his own sexual exploits and tell the claimant to reveal his own sexual history to him? The claimant will supply a date for this incident. (5 July 2022)

(19) If so, was that unwanted conduct?

(20) Did it relate to age or religion?

(21) Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

(22) If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Unauthorised deductions

(23) What was the hourly rate of pay due to the claimant in the periods:

(a) 23 May 2022 to 30 June 2022, and

(b) 1 July 2022 to 23 September 2022.

(24) What hourly was the claimant actually paid in these periods?

(25) If there was a difference between the rate he was paid and the rate he was entitled to, what is that difference?

(26) How many hours did the claimant work in each period?

(27) What therefore is the difference between what the claimant was paid and what he was actually paid for the hours he has been paid?

Been made to work instead of taking breaks and not being paid for this

(28) Was the claimant denied one hour of break from work that he should have had?

(29) How many days did the claimant work and on how many days was he denied a one-hour break?

(30) Was the claimant unpaid for this?

(31) What therefore is the total amount the claimant ought to have been made for these breaks that were forcibly converted into working time?

<u>Being made to work for an extra hour and not being paid for this</u>

(32) Was the claimant made to do an extra hour of work after a shift by his manager?

(33) Was the claimant not paid for this extra hour?

(34) On how many days did this happen?

(35) What therefore is the total amount the claimant should have been paid for these extra hours of work that he was made to do?

<u>First aider uplifted pay</u>

(36) Was the claimant entitled to a monthly uplift (of £13.52 or similar) to his pay for being a qualified first aider?

(37) How many months was this not paid to the claimant?

<u>Total owed</u>

(38) Have any shortfalls in pay due to the claimant already been corrected by the respondent?

(39) How much is the claimant owed?

Witnesses

2. The Tribunal heard from Mr Ahmed himself and there was a witness statement from Mr W Mian

3. In respect of the respondent, we heard from Mark Pooley and Hems Vekaria. There was a witness statement from Christian Pratt, but we did not hear from him.

The Bundle

4. There was an agreed bundle, but several documents were added to it just prior to and during the hearing in respect of the unlawful deductions issue in particular.

Pre-Issues

5. The claimant applied to amend to include a claim regarding his pension contributions. We agreed he could make this application under the heading of “unlawful deductions”, however as will be seen later, in closing submissions the respondent asserted that there was no right to claim pension contributions under the unlawful deduction of wages provisions of the Employment Rights Act 1996. Accordingly, that claim is now dismissed. He also applied to include claim of failure to provide written particulars in relation to the secondment, which we allowed.

Findings of Fact

6. The Tribunal’s findings of fact are as follows.

7. The claimant commenced employment with the respondent around September 2013 as a Customer Assistant at Enfield Express. Originally this was for one day a week for 7.5 hours. The rest of the week the claimant had a different job, but he was flexible and could do additional hours.

8. In 2014 the claimant moved to Upper Clacton Tesco Express where he was a Stock Controller and he was eventually required to work four days a week spread over Thursday, Friday, Saturday and Sunday. After this the claimant moved to Dalston Express as a Shift Leader under a new contract. He was required to work 21½ hours over three days a week. The claimant could not achieve a permanent position so was transferred to Haringey Express with the same contractual arrangements and the same position. Again, for similar reasons the claimant transferred to West Green Road near Wood Green.

9. After a year the claimant was given the opportunity to address the fact that he had not been offered a permanent full-time position despite being promised this at previous stores. This was agreed and the claimant was told he would have to move to Islington to obtain a permanent full-time position, which he did in 2015. The claimant was still a Shift Leader. A year later the claimant transferred to Edmonton Express in order to undertake an opportunity to be trained as a Store Manager. However, the situation there was inappropriate as the claimant felt it was not properly organised – he was not provided with training and the environment was not suitable. The claimant was then transferred to Haringey to be trained as a Store Manager. However, he was attacked by a shoplifter who broke his cheekbone, and he was off work on sick leave and transferred from Haringey to avoid the claimant bring attacked by the same attacker.

10. The claimant moved to London Holloway and remained at that store for six months. There were some issues between himself and the staff and as a result of discussing this with HR the claimant transferred to Archway temporarily until he could be secured a position in a metro store at King's Cross. He was still a Shift Leader. He then moved to King's Cross and remained there for two years. Whilst he again obtained a Trainee Store Manager role, this had to be put on hold due to personal issues relating to his wife's health. The claimant then requested a transfer to Northampton where he worked and was there a year before he transferred back to London.

11. On returning to London the claimant was placed at Leytonstone Express ("Express" being a type of small Tesco store). When the claimant returned he spoke again to the Area Manager, Mark Pooley, and explained he wished to be put back on the training for Team Manager. The Area Manager arranged for this to take place at Leytonstone Superstore. He began there on 27 May 2022. The claimant agreed that he had had a telephone conversation where it was explained to him he would receive 90% of a team manager's pay in the secondment. The claimant was introduced to Neil Cheshire (the Manager) at Leytonstone Superstore where he was to do his Team Manager placement, and they discussed what he would be doing: looking after four departments – fresh department, meat and poultry, bakery, plant and bread. The claimant then met Mr Vekaria who took him on the shop floor and he started working in his new role.

12. It appears that in this secondment situation the respondent normally sent out a letter setting out any different terms and conditions. Unfortunately, this did not take place and may be a contributing factor to the problems the claimant subsequently had regarding his pay.

13. The claimant said he was surprised when he received his payroll as his pay had not changed to reflect the work he did at the new shop under the new role from 4 July. The claimant at this stage did not raise a grievance about this as he was concerned about upsetting Mr Vekaria but he found himself in a difficult situation. He had numerous complaints about his treatment by Mr Vekaria and towards the end of his placement The claimant asserts Mr Vekaria pushed him to move to Ponders End Express and he accepted a transfer to Ponders End. The claimant moved to Ponders End on 23 September 2022. However the claimant needed to be signed off by Mr Vekaria and Mr Vekaria did not do this as he felt the claimant had not performed well enough.

14. Once he had moved, he complained about what had happened at Leytonstone Store. The claimant complained to the respondent's protected telephone line of harassment/bullying, discrimination due to age, religious discrimination, unfair treatment and unlawful deduction of wages. The claimant did not hear anything and therefore raised a pay enquiry on 11 October 2022 followed by a grievance on 16 October 2022 against Mr Vekaria. It was sent to Mr Pooley, Mr Walton and Neil Cheshire (the Store Manager).

15. The claimant contacted ACAS on 17 October 2022 for early conciliation following which he issued the Tribunal claim.

16. In relation to direct age discrimination, the claimant complained that on 24 May 2022 (a promotion change day) he was not given any training on how he was to conduct five promotion plans. A promotion is when a store show cases a particular product. He was also told to do a deep clean and Mr Vekaria wiped his finger on the shelf after this and complained that it was still not cleaned properly. The claimant believed this was age discrimination.

17. On 5 July 2022 the claimant was given just five minutes to go to print the promotion plan – again he was not provided with any training on how to do this. The claimant asserted that the task is usually assigned to two staff members as it requires two pairs of hands due to the size of promotional material. The claimant complains of not receiving training and the reason for being treated like this was age.

18. In addition, the claimant asserted that on the same day Mr Vekaria kept knocking his shoulder and commenting:

> "When we were younger at university, we were able to f*** around more. Now we cannot do that anymore."

19. The claimant says he was offended by this comment and felt that was age related. The claimant had been asked to provide further particulars of the reference to sexual banter in his claim form but he did not add much more detail, then this was the only reference in the witness statement. We found that something was said which the claimant took to be an invitation to share sexual exploits but that the claimant misunderstood on the balance of probabilities by the use of the word fuck which could

have meant a lot of different things.as Mr Vekaria denied having made any comments referring to his sexual history it was not possible to explore this further. Certainly from simply knocking his shoulder we do not find that was an invitation to the claimant to share stories and indeed no stories were shared. We also note that this was not raised in the claimants grievance so there was no opportunity to ask other members of staff about it.

20. The claimant alleged that Mr Vekaria made a point that the claimant was the eldest member of staff and he advised the claimant that four people had transferred to the store for shop manager training but no-one had succeeded. Mr Vekaria said that this was not correct. Mr Vekaria said there had been four "failures". One was a Muslim, one a Christian, one a Punjabi Sikh. The fourth trainee, a Muslim, had had to go back to Pakistan for family reasons and had voluntarily given up their placement. At least one of the four had also said it wasn't for them. He stated the secondments ended for personal reasons. The respondent brought no proof of this as it was a matter which came up in cross examination. In addition Mr Vekaria had 'passed' 8 people whom he described as 4 Muslim, 2 white and 2 Black.

21. In addition the claimant mentioned an incident where Mr Vekaria had said "you people do not know how to deal with situations like this if he spoke to me like that I would have him in the office". The claimant believed that he was referring to his religion with you people and although it was not a matter he had ever raised before. Mr Vekaria had some recollection about advising the claimant how to handle a situation were a member of staff had been rude to the claimant but he denied he had said you people. We find that this was not said in view of the lateness with which the comment was raised and the context of the fact during the investigation none supported a view that Mr Vekaria treated people differently because of religion.

22. In addition, we were directed to an email from a HR Member Alice Boniface which indicated there had been other complaints re Mr Vekaria. The claimant had not dug deeper into this had we no more information about it. This was never put to Mr Vekaria. Therefore we could not simply rely on this as evidence that there was discrimination.

23. Regarding being given too much work to do the claimant said on a promotion day there should be one or two members assigned to print the promotion, one member of staff to clean the shelves and one member of staff to stock the shelves, but that he would have to do this on his own and he would miss his breaks because he was not allowed to take a break until he had completed the task. Mr Vekaria said the claimant was a Trainee Store Manager. It was up to him to direct his staff to help him and to arrange his breaks at a suitable time. The claimant did say that Mr Vekaria had told him he needed to get his staff to work harder and he did not like the way it was put but we find this was evidence of the claimant failing to manage his staff and delegate to his staff and consequently taking too much work himself. The claimant said this occurred again on 16 August 2022 and 17 August 2022. The claimant said he did find doing so much work difficult as he was not as fast paced as other younger members of staff. Mr Vekaria said in August when the claimant was doing 5 promotions another team manager was doing 17, so that he was not giving the claimant a disproportionate amount of work to do.

24. On 11 October 2022 the claimant said that Mr Vekaria rang him in the management room and asked him for his password and email address so that he could make enquiries regarding the claimant's pay as the claimant by this stage had brought up a complaint. The claimant said that Mr Vekaria said it would take too long for him to do it so if he gave Mr Vekaria his username and password he could do it more quickly The claimant was advised by a colleague in the room from payroll that he should not provide Mr Vekaria with any of that detail and the claimant provided him with information through WhatsApp instead. Mr Vekaria denied that he had said it would take him too long to do it. Mr Vekaria felt he had not asked the claimant for his password, although he could not be 100% sure. He could not see why he would need to access it directly as he could get the information from payroll in any event as the claimant's manager. Mr Vekaria had no recollection of this incident but said he might have said that it would be quicker if he did it.

25. In relation to harassment, the claimant said he was harassed all the time, treated with disrespect and pushed to breaking point, predominantly because of his age. The claimant stated there were a number of comments over the duration of his employment and one incident afterwards. He relied on being made to do work by himself when it required a team of 3-4 people. The claimant said Mr Vekaria had constantly made comments, "If you want to become a manager then you need to do as I say otherwise I will send you back to Express".

26. There was an incident the claimant was particularly concerned about that happened on 5 September 2022 where there was a complaint about milk not being transferred to the Costa machine (a coffee making machine in-store). It was then suggested that the claimant speak to Nirupa Patel nicely and ask her to do this. When the claimant did so her response was that she had been told not to do it by Hems Vekaria. The claimant said when he raised this with Mr Vekaria he reacted with rage and started flapping his arms about. The claimant believed this was because Mr Vekaria was caught in a lie, however when Nirupa Patel was questioned about this in the grievance investigation she could not any such scenario had occurred. In addition no one interviewed for the grievance agreed that Mr Vekaria had behaved aggressively towards the claimant. Accordingly, we do not find this incident happened in the way the claimant describes it. We find there was a misunderstanding about the milk and nothing more.

27. On that same date in effect Mr Vekaria told the claimant that he would not be (in effect) "passing" him from his placement.

28. Mr Vekaria relied on an appraisal from 6 July 2022 to support his views on the claimant's performance. He said that he did feel Khwaja had struggled to adjust from his shift manager at an express to team leader at Leytonstone Store. Examples he gave where not asking colleagues to do jobs; not picking up departmental routines; not planning rotas etc correctly; failing to ensure there was enough cover on promotions day; and failure to use initiative leaving solutions to others i.e. he did not ring up colleagues to try and get them in to cover shifts. These were all concrete examples. The appraisal mentioned he had taken bakery away from him to help and put forward a coaching plan. Whilst there should have been further reviews this was a snapshot after the claimant had been there two months and supported Mr Vekaria's evidence on why the claimant did not succeed in the secondment. It was also important to note the claimant had provided this appraisal as Mr Vekaria said he did not have

access to any appraisals so he could not say with certainty whether there were any others.

29. The claimant then moved to Ponders End on 23 September 2022.

30. The claimant raised a concern about his pay with Neil Cheshire after moving to Ponders End and sent his payslips to Neil Cheshire via a text message on 4 October 2022. Mr Cheshire (who has retired and gave no evidence) asked the claimant to speak to Mr Vekaria about it, which is when Mr Vekaria asked the claimant for his email address and password. The claimant also says that Bobby (the manager of Leytonstone) advised him to take out a grievance as this was the fourth person Mr Vekaria had done this to.

31. The claimant then brought a grievance on 18 October 2022.

32. The claimant was asked by Mr Vekaria to go to Leytonstone to sort out the pay situation and Mr Vekaria explained he was owed £1,200. This meeting on 28 October was also attended by Neil Cheshire and the claimant's trade union representative.

33. Mr Pooley explained what had happened with the pay, which is that when the claimant was moved on the Team Leader secondment he was placed at the Leytonstone Superstore from 27 May to 7 November 2022. However, the superstore did not have a role of Shift Manager, which is the role the claimant had before this move, and therefore unfortunately payroll started paying him as a Customer Service Assistant on the basis this was the nearest role. The agreement is that a Team Manager trainee would be paid 90% of the normal salary for a Team Manager. The normal salary is £26,400 and 90% is £23,760. The claimant should have been paid in accordance with this, which was on average £12.51 an hour. On this basis the calculated shortfall attributed to the incorrect hourly rate was £1,493.44 for the equivalent of approximately 154 hours. Mr Pooley said that the claimant and his representative, at a meeting with Neil Cheshire, confirmed those calculations were correct, and this was paid to the claimant on 28 October 2022.

34. At the Tribunal the claimant challenged the amount the respondent relied on as a store manager's pay. However, there was an email exchange with HR which set this out and we accept that Mr Pooley's evidence was correct. The claimant asserted he had been told by payroll that he would get an extra £5000 however he could not provide any details of this and Mr Pooley who regularly dealt with these matters said there was no basis for that within his knowledge. We accept Mr Pooley's evidence in relation to the amounts involved.

35. Mr Cheshire told Mr Pooley he believed in paying this sum he had probably overpaid the claimant, but it was difficult to work out the precise amounts of the premiums and the claimant had been underpaid due to a payroll error. The claimant was then paid £1,171.87 net by way of an ad hoc BACS payment on or around 23 November. This was paid to him in advance of the end of the relevant pay period and a corresponding sum was shown as due and marked as deducted from his December 2022 payslip to indicate he had already received it. Accordingly, we find the claimant was paid this first payment. The claimant in his evidence agreed he had received this payment.

36. As the claimant was still not happy the matter was referred direct to Mr Pooley. Mr Pooley was concerned that even being paid at 90% of the Team Manager role the claimant would actually be taking a pay cut because Shift Managers' full-time pay was more than 90% of the minimum Team Manager pay. Although Mr Pooley understood that the claimant had agreed to this when he took on the secondment it did not seem fair, and therefore he felt that a common-sense approach would be to calculate how much the claimant would have been paid if he had received 100% of the minimum full pay for a Team Manager for the entirety of his secondment:

- calculate the difference between the above and what he was actually paid for the same period;
- calculate any shortfalls in his pay for the period between the end of his secondment and December 2022 and pay him the difference.

37. The calculations worked out to be a difference of £1,278 gross.

38. The claimant still stated that he was entitled to further payments in respect of unpaid breaks. Mr Pooley explained the claimant was not entitled to payment for his breaks as this did not form part of his contract of employment or any relevant Tesco policy. He was responsible for ensuring he took his breaks.

39. On 28 February the claimant also alleged he was entitled to payment in respect of uniform allowance or laundry costs, but Mr Pooley said there was no entitlement to be paid for this and his calculation did not account for it. No colleagues are paid a uniform allowance or reimbursed for the cost of cleaning their uniform. Colleagues are not paid for their breaks and managers are expected to manage their own workload and are solely responsible for taking breaks.

40. A second payment was then to be paid to the claimant. The claimant still did not accept this and did not want to be paid the second payment as he intended to pursue his claim in the Tribunal, but Mr Pooley insisted it should be paid irrespective of the Tribunal claim.

41. Mr Pooley then said that the claimant was mistakenly paid a gross payment of £1,907.55 which meant he received £1,278.20 net when it should have been gross, therefore he was still of the belief that the claimant had been paid more than he was due.

42. As a result of the amount of confusion regarding the claimant's pay, and we have to say the incredibly complicated payslips, we allowed Mr Pooley to give a second witness statement to further explain the pay calculations. In addition, an issue had arisen as to whether the second payment had been clawed back from the claimant as the payslips seemed to show this. Mr Pooley gave more information about the pension but as we have now ruled that out that is not being added.

43. Mr Pooley however, during the Tribunal, had revised his views on the claimant's pay enquiry. He believed the claimant had been overpaid by one week's worth of wages and should have been paid £819.14 gross not £1,278 gross. This is because he should have been paid in respect of any pay discrepancy across 21 weeks as a Team Manager and paid at the correct rate across seven weeks at the rate of a Shift Leader (i.e. when he moved back to doing this). However, the claimant was paid for

eight weeks at the rate of Shift Leader due to this error. In any event, Mr Pooley believed that the claimant had been overpaid due to the fact that the £1,278 payment was paid as a net payment and not as a gross payment.

44. Further the claimant claimed that this payment had been given and then deducted in his pay and this was indeed reflected in his payslip for this period. As there had been no separate direct in advance payment Mr Pooley during the Tribunal formed the view that the claimant was correct and that for some reason a mistake had been made. It was certainly disappointing that a large organisation as the respondent could make so many mistakes in relation to one person. Much stems from the failure to give the claimant a letter in advance setting out the pay arrangements for the secondment although it is not all due to that omission. We were told that since the hearing the claimant was paid the full amount originally paid in even though it was wrong on two counts. Having viewed that payslip we agree that the claimant was not paid this amount as in the case of the second payment there had been no payment in advance.

45. Regarding the claimant's grievance There was a grievance meeting on 6 December 2022 with Christian Pratt who was a Store Manager at Woodford Green. The allegations in the grievance were slightly different from the allegations in this Tribunal, and therefore the overlap is what we have considered.

46. After meeting with the claimant and going through his grievance Mr Pratt met with Mr Vekaria on 11 January 2023.

47. Mr Vekaria did address the issue of breaks and said that he had seen the claimant taking breaks and that he went to the mosque every Friday for prayer, and that he had emphasised to all his managers that it was their responsibility to take their own breaks provided the department was ok. Mr Vekaria agreed that he had said to the claimant that he did not look like a manager because on that particular day his shift was untucked and stained and he did not look presentable. Mr Vekaria insisted his relationship with the claimant was no different from any other manager, and he had in fact given him more time because he was not experienced, and that the claimant's problem was that he did not delegate work to his team but did it all himself, and he told them he needed to get his colleagues to work harder.

48. Mr Pratt also went to speak to colleagues that the claimant had suggested he speak to. He spoke to "Nirupa", and Nirupa had said she did not recall the incident regarding the milk transfer. She was asked if she had had any issues involving the religion of any colleagues and she said she had not. He also met with another female member of staff (Aisha) and she confirmed she had not witnessed any aggressive behaviour from Mr Vekaria towards the claimant and rejected the suggestion that colleagues were treated differently because of their religion – she felt the team was inclusive. It had been alleged by the claimant that Ayesha had stepped away from the secondment programme because of Mr Vekaria's behaviour, but she denied this and said that Mr Vekaria had given her positive feedback.

49. Mr Pratt also met with Kishor who confirmed he had not seen any rude behaviour by Mr Vekaria towards the claimant and he did not think that anybody had been treated differently because of their religion. He confirmed he had been with Tesco for 20 years. Zafar confirmed that he had not seen any negative behaviour towards the claimant by Mr Vekaria and that they were always allowed to pray at

appropriate times, and he had never witnessed any other colleagues being treated differently due to their religion. Mr Pratt also met with Khalid who in effect stated the same matters as Zafar. Another member of staff (Elise) was interviewed, and she had not observed any aggressive behaviour towards the claimant. There had been an issue about holidays to participate in the “Race for Life”, but she was not sure whether it was Mr Vekaria or the claimant who had denied the request, but it was approved when she took the matter further with the Store Manager.

50. Mr Pratt also met with Bobby who said she had not witnessed Mr Vekaria shouting at the claimant nor did Mr Vekaria treat Muslims any differently, and that she did not believe that Mr Vekaria deliberately made the claimant’s secondment unsuccessful, but she did believe he did not get the level of support he needed for the role having arrived at Leytonstone from a much smaller store.

51. Mr Pratt ultimately concluded there was no evidence to support the claimant's grievances, in particular to suggest he had been treated differently because he was Muslim, and everybody had categorically denied that Mr Vekaria had behaved in a rude or aggressive manner towards the claimant.

52. It was then not possible to find a date for the grievance outcome to be delivered in person due to the claimant being off sick or annual leave or the representative being unavailable. Mr Pratt believed the claimant had not responded to his last correspondence so in the end he wrote on 18 August 2023 to the claimant with the outcome of his grievance. The claimant denied that he had not been available to meet in person. However, no claim was made in respect of the grievance.

53. We understand the claimant appealed the grievance outcome but we have no information regarding its progress.

The Law

<u>Time Limits</u>

54. Section 123(1) of the Equality Act 2010 states:

“A claim for discrimination may not be brought after the end of –

(1) The period of three months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable;

(2) …

(3) For the purpose of this section –

(a) Conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided on it. Where it is conduct extending over the period the time runs from the end of that period.

55. Whether conduct extends over a period was considered by the Court of **Appeal in Hendricks v The Commission of Police for the Metropolis [2003]** Court of Appeal where it was held that:

(1) The burden is on the claimant to prove, either by direct evidence or inference i.e. from primary facts, that the alleged incidents of discrimination are linked to one another and that they are evidence as to a continuing discrimination state of affairs covered by the concept of an act extending over a period.

(2) Tribunals should not adopt too literal approach to the identification of a continuing act.

(3) Tribunals should focus on the substance of the complaint and whether the respondent "was responsible for an ongoing situation or continuing state of affairs".

56. The question is whether there is an act extending over a period as distinct from a succession of unconnected or isolated specific acts from which time should begin to run from the date when each specific act was committed. Even if a claim is out of time the Tribunal can allow it out of time is it is just and equitable to do so.

57. The matters to be considered in deciding this were set out in **British Coal Corporation v Keeble** which referred to section 33 of the Limitation Act 1980. The matters the Tribunal should consider are:

(1) The length of and reasons for the delay;

(2) The extent to which the cogency of the evidence is likely to be affected by the delay;

(3) The extent to which the party sued had cooperated with any requests for information;

(4) The promptness with which the claimant acted once they knew of the possibility of taking action; and

(5) The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

<u>Written Particulars</u>

58. Section 1 of the Employment Rights Act 1996 provides that:

> "Not later than two months after the beginning of an employee's employment the employer must give him or her a written statement of his or her employment particulars."

59. What should be included is set out in sections 1(3), 1(4) and 3(1).

60. It was not argued here that the claimant had not originally been given a contract of employment with written particulars, but that when he went on secondment he should have been given further particulars.

61. Sections 4(1) and 3(1) states that:

    "An employer must give an employee a written statement containing particulars of any changes to the section 1 statement."

62. It is not necessary to give each employee who is affected a separate written notification of the changes, for example changes affecting a number of employees can be effected by a circular, and a written notification of a change could refer to another document.

63. Another way of considering the situation is whether there was an agreed variation in the terms of the contract, however in this case the claimant appeared to be unaware of what the salary provisions were and therefore that cannot be a useful argument.

64. In respect of a failure to comply with the law regarding written particulars, the Tribunal also has the power to award compensation under section 38 of the Employment Act 2002 whereupon a successful claim being made under any of the Tribunal jurisdictions listed in schedule 5 to the Act it becomes evident the employer was in breach of its duty to provide full and accurate written particulars under section 1. This means that the claimant has to be successful in another claim in order to pursue a remedy.

65. Accordingly, there is no freestanding right to claim compensation for failure to provide full and accurate written particulars. Where there has been a schedule 5 successful claim the Tribunal must award the minimum amount of two weeks' pay and (if it considers it just and equitable) award the higher amount of four weeks' pay. The Tribunal does not have to make any award if there are exceptional circumstances which would make the award or increase unjust or inequitable (section 38(5)).

<u>Unlawful deduction from wages</u>

66. Section 23 of the Employment Rights Act 1996 provides that:

    (2) Subject to subsection (4), an Employment Tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –

        (a) in the case of a complaint relating to a deduction by the employer, the date of payment of wages from which the deduction was made; or

        (b) in the case of a complaint relating to a payment received by the employee, the date when the payment was received.

    (3) Where a complaint is brought under this section in respect of –

        (a) a series of deductions or payment, or

        …

the references in subsection (2) to the deduction or payment are to the last deduction or payment made in the series or to the past of the payments so received.

(3A) Section 207B (Extension of time to facilitate conciliation before the institute of proceedings) applies for the purposes of section (2).

(4) Where the Employment Tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the Tribunal may consider the complaint if it is presented within such further period as the Tribunal considers reasonable.

67. The respondent accepted that the claimant's unlawful deductions claim was in time.

Direct Discrimination

68. Section 13(1) of the Equality Act 2010 provides that:

(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.

Comparison

69. Section 13 of the Equality Act 2010 is supplemented by section 23 of the Equality Act 2010 which provides that:

(a) On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case.

Legitimate aim

70. In relation to direct age discrimination, this can be justified. Section 13(2) states:

"If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim."

Burden of Proof

71. There has been much case law on the burden of proof which is now set out in section 136(2) and (3) of the Equality Act 2010, which state that:

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

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

72. If a claimant makes out a prima facie case of discrimination the respondent must then provide a non-discriminatory explanation, taking into account:

(1) whether there are facts from which inferences of discrimination could be drawn, and

(2) if so, whether there is an explanation for the respondent's actions.

Inferences

73. "Inferences" are where the Tribunal can draw conclusions from primary facts and must proceed on the basis initially that there is no adequate explanation (**Igen Limited & others v Wong [2005] Court of Appeal**). This set out a two-stage process:

(a) First stage – complainant required to prove facts from which the Tribunal "could conclude in the absence of an adequate explanation that a respondent has unlawfully discriminated". If the complainant does not prove such facts he or she will fail.

(b) Second stage – if the Tribunal could conclude the possibility of unlawful discrimination and there is a shift in the burden to the respondent, and the respondent is required to prove that they did not unlawfully discriminate.

74. Tribunals cannot draw inferences from thin air (**Shamoon v The Chief Constable of the Royal Ulster Constabulary [2003] House of Lords**).

75. The mental processes of the discrimination should also be considered (**Reynolds v CFLIS (IL) Limited [2015] Court of Appeal**).

Reason why

76. In addition, the Tribunal can take a "reason why" approach and consider the evidence put forward by the respondent and if they are satisfied that the respondent has established the reason for the treatment and that it is not connected with discrimination they can proceed on that basis.

Submissions

Respondent's Submissions

77. The respondent submitted that overall the claimant was unable to provide evidence of his complaints, in particular in relation to being given too much physical work, as he could only provide one example, and that there were reasonable explanations for what transpired in that the claimant was in charge of ensuring work was delegated to other members of staff.

78. In respect of whether any treatment was due to a protected characteristic, no evidence was put forward that there was any connection with the claimant's age, nor was there any evidence in connection with this being the result of direct religious discrimination – it was just a pure assertion that somebody who was not a Muslim would have been given less physically demanding work.

79. In relation to harassment related to age or religion, the respondent said again this had no merits as the claimant simply referred in his evidence to being made to work on tasks that required a team of 3-4 people.

80. In relation to assigning tasks to individuals, again the claimant was entitled to delegate. There was no evidence that he was prevented from delegating. The one incident he referred to with Nirupa was denied by her.

81. In relation to breaks, the claimant was entitled to breaks, should have taken them and it was his responsibility as a Trainee Manager to ensure he took them. There was no evidence that anybody was treated differently because of their religion.

82. In general, the respondent relied on the fact that during the grievance investigation all those interviewed said there was no evidence of any religious discrimination.

83. In relation to allegation 4, whilst there was a dispute as to whether this happened (i.e. the password) there was no reference to age being the reason for this treatment in the pleadings, however the claimant did say in his witness statement that at the time Mr Vekaria had said "because he was too slow". This was not actually put properly to the witness in any event. There was no evidence to establish that a younger colleague would have not been asked for their password, neither was there any argument that it was related to him being a Muslim.

84. In relation to the harassment, again it is not clear how this incident would actually comprise harassment.

85. In relation to allegation 6 about the sexual exploits, this was denied and very little evidence was provided save for a general statement. The claimant in evidence had suggested that the knocking on his shoulder was an encouragement to make comments himself, however at no time did he say that he had actually been asked by Mr Vekaria to join in with any such discussion. Again, even if this occurred, it is not clear why it was religion or age discrimination and there was no claim of sex discrimination. In addition, this comment was out of time as the only date relied on was 5 July, which was more than three months prior to the presentation of the claim.

Unlawful deduction of wages

86. Following Mr Pooley's evidence the respondent submitted that the claimant was not due any paid time for rest breaks and that payments such as for a first aider had been taken into account in what he had been paid.

87. In relation to an allegation which developed that he was allowed an extra hour a week, it appeared this was overtime that was credited to people at previous stores but was discretionary and was not something that was provided in the store where the claimant did his training, and therefore there was no contractual entitlement to this amount.

88. It is accepted that the second payment appeared to have been clawed back resulting in the claimant not actually receiving this expected payment. This was only noticed during the trial and was alerted to payroll who has (the respondent submitted in written submissions) subsequently calculated the gross amount as £1,907.55 and a

net amount of £1,278 which will be paid to the claimant in his next salary slip. Therefore, by the time of our decision the respondent suggested the claimant would have received two payments – one of £1,278.24 and one of £1,171.87 and that this amounted to an overpayment as Mr Pooley had paid the claimant an extra week as he had calculated the claimant had worked for eight weeks as shift leader but in fact it was only seven weeks.

89. Despite the mistakes, the respondent honoured the expectation that the claimant would get £1,278.24 rather than the net amount based on that being a gross amount and had paid him £1,278.24.

Failure to provide a statement of initial particulars

90. The respondent accepted the claimant should have received a letter indicating the pay structure but agreed that he did not seem to have been provided with this, and it was expected that Neil Cheshire would arrange this.

Claimant's Submissions

Unlawful deduction of wages

91. The claimant claims he is owed £8731 – the difference between the gross pay of a Shift Leader's pay and the Customer Assistant's pay between June 2022 and November 2022 plus £5,000 secondment pay

92. In addition, the claimant submits that both payments was actually deducted from his pay at another point in time. The claimant did not accept that he should simply be paid 100% of a Team Manager's role – he should receive £5,000 on top of the Shift Leader's pay,

93. In relation to breaks, the claimant submitted that he should be paid for breaks as he was unable to take them due to the amount of work he had to do.

Direct Discrimination

94. The claimant submitted that he had provided sufficient evidence to show he was bullied due to his age; that he was not given people to help him with tasks which were normally done by between two and four people; and that the claimant's account regarding his username and password and regard the harassment situation regarding sexual matters should be accepted. The claimant has been consistent about making these complaints.

95. There was some evidence from Bobby that the claimant was not treated properly as she said that he did not get the full support he needed. There was an issue regarding two managers covering the role but this had been implausibly explained as two people being appointed at the same time

96. The claimant relied on an email from AB to Neil Cheshire saying:

- This was not only complaint that has come in is about Hems' behaviour.

- The Tribunal should not accept that the four people on staff training who left, left due to personal reasons – no evidence of that was produced

- It was evidence of lack of support that there were no periodical reviews. There was only one review at page 420 which was six weeks into his secondment.

- That we should believe the claimant about the password allegation as it is implausible this would have been made up, and similarly in respect of the harassment as the claimant mentioned that Mr Vekaria said, "when we were at university….". The claimant did not know whether Mr Vekaria had gone to university and so was not in a position to "make this up".

- Inferences of religious discrimination should be drawn by the fact that Mr Vekaria disrespected the claimant, asking him to talk freely about sex.

- That he referred to the claimant as "you people".

- That the claimant had to take his lunch break to go to prayer.

Tribunal's Conclusions

Inferences

We have made findings which mean the only potential matter to draw an inference from is the 'you people' comment. We have not drawn an inference from this as we do not accept this was said as suggested due to the fact it has only just been raised and in the context of Mr Vekaria's track record in relation to secondments. Regarding prayer the other Muslim team members in the investigation confirmed that they had always been able to pray and the claimant provided no details regarding when and how this happened. Accordingly we have not accepted this happened.

Credibilty

We found both witnesses reasonably credible. However the claimant had formed a view and saw everything through that prism and as will be seen we did not agree with his view. Mr Vekaria was generally frank about what he could and could not remember and tried to help by thinking what he might have said and explaining the context. Also it was relevant that the claimant provide the appraisal which in the end backed up Mr Vekaria's evidence. Mr Vekaria said he didn't have access to the claimant's appraisals.

<u>Allegation 1 – Direct Discrimination</u>

The claimant was made to do more physical work than was normal for someone in his role and more work than people who were younger than him or more work than non-Muslims.

97. In relation to this first allegation, we find that the claimant has not established a prima facie case. Whilst we accept it was the claimant's perception, there was nothing to support this perception. In particular, during the grievance investigation everyone interviewed denied that there had been any difficult behaviour by Mr Vekaria to the claimant or any religious discrimination. In addition, the one allegation the claimant

relied on in relation to Nirupa was denied by Nirupa in evidence in the grievance investigation.

98. We accept Mr Vekaria's evidence that part of the claimant's job was to delegate to other people, and this was supported by the fact that the claimant himself said Mr Vekaria had told him he needed to get them working harder. The claimant mentioned this because he was unhappy with how Mr Vekaria put this. There were no further examples other than promotions of the claimant being given too much work. However Mr Vekaria's evidence which we accepted was that another team manager had 17 to do at the same time as the claimant had 5, which was in August. In addition, the one performance review we did have did support Mr Vekaria's evidence that the claimant was simply not stepping up to the management role he was in. Whilst Mr Vekaria may not have supported the claimant as much as he could have done, that was not the claim that the claimant was making. Accordingly we find that the claimant was not given any more work to do or heavier work than his equivalent colleagues.

99. Although we have found that the behaviour did not take place, if it had was there any evidence it was related to the claimant's age? There was nothing to suggest anything was age related in relation to the allegation that the claimant had been given too much work. He provided no comparators who were team managers.

100. In relation to whether it was religion, Mr Vekaria presented information regarding the four other people that had failed that showed they were a mixed religious background and that they had mainly left for personal reasons. Specifically in relation to the four people who had not succeeded in completing a secondment, three had realised the training was not for them and had left. Of those, one was Muslim, one was Christian and one was Sikh Punjabi, and the fourth (who was Muslim) came for a week but then had to leave the country to return to Pakistan for family reasons. He had also passed 8 people of diverse backgrounds.

101. In addition, as referred to above, all those interviewed in the grievance investigation stated that they had never been treated differently because of their religion and some of those interviewed were also Muslim.

102. For these reasons and again in the absence of a comparator we find if there was an unfavourable treatment it was not because of the claimant's religion.

103. In relation to harassment on the grounds of age and/ or race again there was no matters relevant from which we could draw an inference given the information about the other secondees who had been passed and the appraisal which should the only motivation was to ensure the claimant improved his performance.

<u>Allegation 2</u>

That the claimant was prevented from delegating.

104. The only example was Nirupa – the transfer of milk situation. There was no other evidence and in fact again we would rely on the matter the claimant raised himself that Mr Vekaria told him he needed to be getting people to work harder. This shows Mr Vekaria was encouraging the claimant to do this and this was something the claimant was required to be proactive about in his role as manager. Therefore whilst

this was the claimant's perception on the balance of probabilities we find this did not occur.

105. If we are wrong there was nothing to suggest it was because of the claimant's religion or age. We were not prepared to draw inference from the matters proposed as there was no relevance to the specific matter the claimant complained about. As we have discounted (see below) the sexual comment that leaves only the 'you people' comment which was only raised for the first time in the witness statement and on the balance of probabilities we find was not said in the way portrayed given the evidence that Mr Vekaria treated people the same (background of people 'passing' and the evidence of the investigation)

106. For the same reasons this was not harassment.

Allegation 3

That he was not given any breaks.

107. We accept Mr Vekaria's evidence and Mr Pooley's evidence that it was up to people at this level to manage their own breaks in line with the work available and that breaks were not paid.

108. No evidence was put forward as to why this was related to the claimant's religion or age (other than the suggested inferences) – no comparators were brought forward to say "X, Y or Z were able to take their breaks", although no doubt if there had been such comparators the respondent would have argued they were managing their teams better. Accordingly there was no prima facie case.

109. Refusing someone breaks could be harassment .There was nothing put forward as to if this had happened it was because of age or religion.

Allegation 4

Regarding requesting the claimant's password.

110. Mr Vekaria denied he had asked for the claimant's password as he could access the information himself. He was not 100% sure though and we find that this conversation did take place.

111. However the first time there was any link with age was in the claimant's witness statement, where he says that Mr Vekaria said: 'he was too slow' and we take the view that although his password was requested and the claimant was annoyed about it but that he never made any link with his age specifically, and that the witness statement was an attempt to bring this evidence in by the "back door". Without that comment there is simply no evidence of any link with age or anything we could draw an inference from.

112. Accordingly, whilst we found the claimant overall credible, we do not accept that this remark was made – it is implausible given that the claimant has only remembered it for the purpose of his witness statement and not elsewhere.

113. In relation to religious discrimination, there was absolutely no suggestion in the witness evidence that this was in any way connected with the claimant's religion. There was no comparator. Accordingly there was no prima facie case.

114. Neither was there any evidence it met the definition of harassment or was related to age or religion given that we do not accept Mr Vekaria said he the claimant was too slow.

Allegation 5

That Mr Vekaria told the claimant about his own sexual exploits and told the claimant to reveal his own sexual history to him.

115. First of all, we do accept something was said by Mr Vekaria, however the claimant did not give evidence which suggested Mr Vekaria encouraged the claimant to make confessions himself – knocking his shoulder was simply insufficient to suggest that this was the intention.

116. While it seemed implausible on one level because the claimant did not obviously get on very well with Mr Vekaria and therefore it seemed unlikely that there would be such a conversation, we have accepted that the claimant has been consistent in making a similar allegation (albeit devoid of any detail, as in fact it was in his witness statement).

117. Accordingly, we find that something was said, however nothing is advanced to suggest it was related to the claimant's age or religion.

118. Re harassment: The only age-related part is that he refers to when they were younger but this was including himself so it was not a comment aimed at the claimant's protected characteristic and due to its inclusivity we find cannot be regarding as a hostile or intimidating comment . The most we can say is that: could it be argued it is intrinsically harassment to mention sexual exploits to a Muslim? We cannot say this. In addition, in the claimant's witness statement he states that this harassment was predominantly because of his age and not religion.

119. Re direct discrimination: There was no comparator here to look at in order to say, "he raised it with the claimant, but he didn't raise it with anyone else". Indeed in its first iteration the impression was that there was widespread sexual banter but this has never been backed up by any evidence. Accordingly in this context no prima facie case was established.

120. The claimant did not bring a sexual harassment claim as it may have been possible to argue it was intrinsically a sexual comment.

121. If we are wrong on the above we find the claim was out of time. The claimant was very unclear what the date was when this occurred. The only date provided was 5 July. Given that we have found that the other allegations are unfounded, there is no continuous conduct (as we do not uphold the other allegations) and therefore time does run from 5 July, and no plausible reason has been put forward to justify the late presentation. If the claimant had raised in his grievance and was waiting for the outcome that may have been a relevant factor but he had not. The fact that he did not have a legal representative is not a reason in our view for extending time.

Unlawful deduction of wages claims

122. It is accepted that the claimant was paid incorrectly due to the difference between an Express and a Superstore and that the respondent via Mr Pooley, when he realised what the problem was, made a decision that the claimant should be paid 100% of a Team Manager's salary. The claimant suggested that there was no evidence what this was, however the evidence in the bundle was satisfactory and it was also reflected in Mr Pooley's consistent calculations.

123. Therefore it is our finding that the claimant should have been paid 100% of the salary given Mr Pooley's decision. This was not the usual contractual position as the claimant should have got 90% of a Team Manager's salary.

124. In relation to the idea the claimant should have received £5,000 over a shift manager's position the claimant stated this was as a result of a conversation with somebody in payroll. There was never any evidence as to who this person was, why it was said, when it was said, and no effort to obtain any documentation that supported it. Mr Pooley struck us as a credible witness who did his best to sort out the claimant's pay issues and assist the Tribunal and therefore we accept his evidence that there was no such arrangement that anybody on a placement would receive their salary plus £5,000.

125. Accordingly, as far as the salary calculations were reliant on paying the claimant 100%, we find that was the position as varied by Mr Pooley.

126. In relation to rest breaks, we reject that the claimant was entitled to be paid for these because he was not allowed to take them, as we have not accepted that he was not allowed to take them.

127. In relation to the one hour's overtime perk, there was nothing in the contract to suggest this and this seems to have been an informal arrangement in some stores and therefore we accept it is not a matter that would be carried over into another store.

128. In relation to whether the claimant worked overtime generally because he could not get his work done in time, there was no agreement regarding the claimant being paid for overtime and he never sought any authority to work the overtime which would have been the normal procedure.

129. Accordingly, we find there was no entitlement to be paid overtime.

130. We have accepted the respondent's calculations and that the claimant was paid for an extra week. The respondent accepted that the second payment appeared to have been paid then deducted from the claimant's salary and therefore he did not actually receive it and accordingly averred that they had (subsequent to the Tribunal) paid the claimant this. However, as this is after we had finished the evidence, we simply say that the claimant was entitled to a net payment of £819.14. If the claimant has received in excess of this obviously the respondent would not have to make any further payments to the claimant.

Failure to provide statement of initial particulars

131. The Tribunal find that the respondent did fail to provide details as required by section 1 of the Employment Rights Act 1996 in respect of the changes to his contract during his secondment. A letter would have been sufficient, but there was no evidence a letter was sent.

132. As the claimant has succeeded in respect of his unlawful deductions claim (albeit not to the extent he wished to), we are in a position where we can award an amount and we find it just and equitable in this case to award the lower amount of two weeks as it was clear that the respondent did have a system of notifying changes but that it appeared not to have worked in this situation, and due to Mr Cheshire having retired it was not possible to investigate any further the circumstances of why that did not occur.

133. Alternatively, we could award four weeks if it feels like Tesco (being such a big employer) this should not have happened.

Overall Conclusion

134. Accordingly, the claimant's claims of discrimination on the basis of age and religion fail.

135. In relation to his unlawful deductions claim, we find the claimant was entitled to £819.14, however the respondent appears to have paid this now.

136. In relation to written particulars, we have found that the claimant was not advised of the changes to his contract when he went on secondment and award him two weeks' pay for the same.

137. As the claimant's discrimination claims have not succeeded, we have not considered the claimants submissions regarding aggravated damages and the uplift.

Employment Judge Feeney

24 December 2023