EMPLOYMENT TRIBUNALS

Claimant: **Mrs Tracey Hartley**

Respondent: **HM Courts and Tribunal Service**

Heard at: **Bristol** **on: 20, 21 and 22 January 2020**

Before: **Employment Judge Walters**
Ms. Luscombe-Watts
Mr. Howard

Representation
Claimant: **In person**
Respondent: **Ms J. Williams of Counsel**

JUDGMENT

The unanimous Judgment of the Tribunal is that:

1. The claimant's claim that she was unfairly dismissed contrary to section 94 and 98 of the Employment Rights Act 1996 is dismissed.

2. The claimant's claim that she suffered direct race discrimination contrary to section 13 of the Equality Act 2010 is dismissed.

REASONS

Introduction

1. This claim was heard at Bristol on 20-22 January 2020. The Tribunal gave its judgment and reasons orally to the parties on the morning of 22 January 2020.

2. The claimant who was born on 1 October 1970 had commenced proceedings in the Bristol Employment Tribunal in July 2014 alleging unfair dismissal and direct race discrimination concerning that dismissal. At that time there was a requirement to pay tribunal fees in order to commence employment tribunal proceedings. The claimant made application for remission of fees which was rejected. However, on 26 February 2018 in light of the Supreme Court decision on the lawfulness of the fees provisions the Claimant made application for her claim to be reinstated. However, the Tribunal had mislaid the original claim form and she was invited to resubmit a new claim form. The claimant completed the second claim form and it included claims against named individuals as well as the respondent. After the respondents submitted a response by ET3 form a preliminary hearing was held presided over by Regional Judge Pirani on 13 August 2018.

3. At the preliminary hearing the claimant withdrew the claims against the individual respondents and Regional Judge Pirani ordered a further preliminary hearing to consider whether the non-dismissal claims should be allowed to proceed.

4. That issue was determined by Employment Judge Maxwell on 14 November 2018 where it was held that the non-dismissal claims could not proceed. Therefore, only the direct race discrimination claim which related to the dismissal and which had been brought within the statutory time limit was allowed to proceed, along with the unfair dismissal claim.

5. At a further preliminary hearing on 30 May 2019 Regional Judge Pirani made further orders and recorded that the Claimant was alleging that in the race discrimination claim the comparator was a hypothetical comparator i.e. she did not wish to compare her treatment with that meted out to an actual comparator.

6. The parties exchanged witness statements on 18 December 2019. In her witness statement the Claimant made vague reference to the circumstances of another employee but gave no indication that she was seeking to rely upon the treatment of an actual comparator. Nor did she give details of his circumstances.

7. The matter was listed for hearing on Monday January 20 2020 for three days. On the morning of the first day at the outset of the hearing I informed the claimant in the tribunal hearing that I was a member of the same chambers

as counsel for the respondent. She was informed that ordinarily that would not be a reason to prevent me from hearing the case but as she was a litigant in person, the Tribunal allowed her time to reflect on her position and what she wanted to do. After an adjournment the parties returned to the Tribunal and the claimant indicated she did not wish there to be an adjournment and she was content to continue with the hearing with the Tribunal as constituted.

8. In considering the outcome of this case the Tribunal had regard to the ET1, the ET3 grounds of response, the bundle of documents prepared by the parties,[1] the evidence provided by the witnesses and the submissions of the parties.

9. The respondent called three witnesses: Ms. Dass, Mr. Pearce and Ms. Wood. The claimant gave evidence in support of her claims. The Tribunal should point out that the claimant at times seemed to be unprepared for the hearing. She did not bring with her the witness statements disclosed to her by the respondent on 18 December 2019 and she had not prepared any cross-examination. Therefore, before each witness for the respondent was called to give evidence we allowed the claimant a period of time to prepare her questions. This slowed down the hearing considerably but it was entirely right that the claimant should be afforded the opportunity to present her case appropriately.

10. At the conclusion of the evidence the claimant and respondent's counsel made submissions orally. The parties set out their respective positions which had not varied from the position as set out in the preliminary hearing orders.

11. For the sake of completeness, the Tribunal adds that at the outset of the hearing with the consent of the parties it was decided that the Tribunal would focus only on the question of 'liability' and that if there was a need for a remedy hearing then that would be addressed subsequently. However, notwithstanding the fact that the question of contributory conduct is essentially a matter for remedy and compensation, it was decided that the parties should make representations in respect of that matter at the liability stage and that a determination would be made in respect of the issue to assist a proper and expeditious conclusion of these proceedings.

The Issues

12. The issues as identified by the parties were as set out in the narrative in the preliminary hearing case management orders on 13 August 2018 at paragraphs 29-34 and again on 30 May 2019 paragraphs 11, 16-20.

[1] Page numbers of the bundle when referred to in the Reasons are in bold type.

Legal Principles

Unfair dismissal

13. Section 98 of the Employment Rights Act 1996 (ERA 1996) states:

'(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
(2) A reason falls within this subsection if it—
….. (b)relates to the conduct of the employee,
(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.'

14. In applying that legislation, the Tribunal has had regard to the guidance set out in **British Home Stores v Burchell [1978] IRLR 379** as follows:

(1) It is for the respondent to prove the fact of its belief in the misconduct.

(2) At the time of dismissal did the respondent have in its mind reasonable grounds on which to sustain that belief?

(3) Had the respondent carried out as much investigation into the matter as was reasonable in all the circumstances of the case?

15. Except for cases involving automatically unfair dismissal it can be seen that establishing a prima facie fair reason for dismissal is the first stage in defending an unfair dismissal claim. One of the potentially fair reasons under section 98(2) of ERA 1996 is conduct.

16. In addition, under ERA 1996 s 98(4) the Tribunal must be satisfied that the employer has acted reasonably in all the circumstances in treating that reason as sufficient.

17. The Tribunal must determine whether s 98(4) ERA 1996 is satisfied in the light of all the information before it. In **Iceland Frozen Foods v Jones [1982] IRLR 439.** The test was there formulated in the following terms:

'Since the present state of the law can only be found by going through a number of different authorities, it may be convenient if we should seek to summarise the present law. We consider that the authorities establish that in law the correct approach for the Industrial Tribunal to adopt in answering the question posed by [ERA 1996 s 98(4)] is as follows.

(1) the starting point should always be the words of [s 98(4)] themselves;

(2) in applying the section an Industrial Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the Industrial Tribunal) consider the dismissal to be fair;

(3) in judging the reasonableness of the employer's conduct an Industrial Tribunal must not substitute its decision as to what the right course to adopt for that of the employer;

(4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;'

(5) the function of the Industrial Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair'.'

18. In **Linfood Cash and Carry Ltd v Thomson [1989] IRLR 235** the relevant question is whether an employer acting reasonably and fairly in the circumstances could properly have accepted the facts and opinions which it did. The Tribunal must not substitute its own views of the employee's conduct. The test is whether a reasonable employer could have acted as the employer did and that includes the investigative phase of the process and the final outcome of that process.

19. Therefore, in looking at whether dismissal was an appropriate sanction, the question is not whether some lesser sanction would have been appropriate, but rather whether dismissal was within the band of reasonable responses that an employer could reasonably make in the circumstances. The fact that other employers might reasonably have been more lenient is irrelevant.

Contributory fault

20. Section 123(6) of the ERA 1996 states that:

> *"Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding*".

21. In determining whether to make a reduction for contributory conduct the Tribunal reminds itself that it has to make findings of fact on what actually the claimant did and whether it contributed to the dismissal before deciding on what, if any, level of contribution arises.

Race Discrimination

22. Section 13 of the Equality Act 2010 contains the prohibition of direct discrimination as follows:

"13 Direct discrimination
(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"

23. There are in fact two elements which need to be considered in a case of direct discrimination:

(1) the less favourable treatment, and
(2) the reason for that treatment.

24. In **Glasgow City Council v Zafar [1998] IRLR 36** it was stated that:

"Although at the end of the day, s 1(1) of the Act of 1976 requires an answer to be given to a single question (viz has the complainant been treated less favourably than others on [the ground of that protected characteristic]?) … it is convenient for the purposes of analysis to split that question into two parts—(a) less favourable treatment; and (b) [on grounds of that protected characteristic]."

25. Of course, direct discrimination claims require a comparison as between the treatment of different individuals i.e. individuals who do not share the protected characteristic in issue. In doing so there must be no material difference between the circumstances relating to each individual see Equality Act 2010 s 23. The Tribunal has to compare 'like with like'.

26. In **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] IRLR 285** it was held that:

'the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects of the victim save that he, or she, is not a member of the protected class.'

27. Therefore, for example, the mere fact that a woman is not successful in applying for a vacancy but a man is, would not be enough to raise an inference of discrimination that had to be rebutted by the employer, unless it could be shown that she was as well qualified. If not, her circumstances would not be similar see **Adebayo v Dresdner Kleinwort Wasserstein Ltd [2005] IRLR 514**.

28. In cases where an actual comparator is identified by the claimant the Tribunal needs to consider carefully the circumstances of that alleged comparator. However, whether or not an actual comparator is identified the Tribunal needs

to look at how, hypothetically, a person without the particular protected characteristic whose circumstances are otherwise the same would have been treated.

29. It has to be emphasised that it is for the claimant to show that the hypothetical comparator would have been treated more favourably. As a part of that process it is quite appropriate for the claimant to invite the Tribunal to draw inferences from all the relevant circumstances of the case.

Burden of proof

30. In **Igen Ltd v Wong [2005] IRLR 258** the Court of Appeal endorsed the principles set out in **Barton v Investec Securities Ltd [2003] IRLR 332** as follows:

'*(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".*

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word "could" in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 74(2) of the SDA 1975.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.'

31. The two-stage process remains the starting point for considering direct discrimination claims. In the first instance, the claimant must prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination against the claimant. In **Madarassy v Nomura International plc [2007] IRLR 246** 'could conclude' must mean 'a reasonable tribunal could properly conclude' from all the evidence before it which means a prima facie case. In **Madarassy** it was held that a difference of status and a difference of treatment was not sufficient to reverse the burden of proof automatically. However, whether the burden has shifted will be a matter of assessment of the evidence. The second stage requires the respondent to prove that he did not commit the unlawful act. In **Laing v Manchester City Council [2006] IRLR 748** it was stated that:

"71. We would add this. There still seems to be much confusion created by the decision in Igen v Wong. What must be borne in mind by a tribunal faced with a race claim is that ultimately the issue is whether or not the employer has committed an act of race discrimination. The shifting in the burden of proof simply recognises the fact that there are problems of proof facing an employee which it would be very difficult to overcome if the employee had at all stages to satisfy the tribunal on the balance of probabilities that certain treatment had been by reason of race.

72. The courts have long recognised, at least since the decision of Lord Justice Neill in the King case to which we have referred, that this would be unjust and that there will be circumstances where it is reasonable to infer discrimination unless there is some appropriate explanation. Igen v Wong confirms that, and also in accordance with the Burden of Proof directive, emphasises that where there is no adequate explanation in those circumstances, then a Tribunal must infer discrimination, whereas under the approach adumbrated by Lord Justice Neill, it was in its discretion whether it would do so or not. That is the significant difference which has been achieved as a result of the burden of proof directive, as Peter Gibson LJ recognised in Igen.

73. No doubt in most cases it will be sensible for a tribunal formally to analyse a case by reference to the two stages. But it is not obligatory on them formally to go through each step in each case. As I said in Network Rail Infrastructure v Griffiths-Henry [2006] IRLR 865 (at para 17), it may be legitimate to infer that a black person may have been discriminated on grounds of race if he is equally qualified for a post which is given to a white person and there are only two candidates, but not necessarily legitimate to do so if there are many candidates and a substantial number of other white persons are also rejected. But at what stage does the inference of possible discrimination become justifiable? There is no single right answer and tribunals can waste much time and become embroiled in highly artificial distinctions if they always feel obliged to go through these two stages."

Factual findings

32. The Tribunal has only made findings of fact in respect of such matters as provide context and which are relevant to the issues as identified above.

33. The Claimant, who is black was dismissed from her employment as a Tribunal Clerk on 28 February 2014 after 20 years' service. The claimed reason for dismissal was gross misconduct. There were two allegations which were upheld against her as follows:

    a. On 18 September 2013 pressurising a security guard employed by a third party at Wolverhampton Crown Court to lend her money
    b. Some years previously, forcing the same individual to read out a letter of apology to members of the public waiting for their cases to be heard because he had allegedly failed to tell the claimant that an appellant had not arrived.

34. As a result of information coming to the attention of the respondent a disciplinary investigation was launched on 10 October 2013 into the first of the allegations. The second allegation only emerged during the disciplinary investigation The claimant was informed by letter of the commencement of the investigation on 25 October 2013**.[85]** The disciplinary policy is in the bundle **[173-191**] There was a change of investigating officer for an entirely

proper reason **[85A]** i.e. the original officer was not senior enough in the organisation to conduct the investigation.

35. The new investigator was Ms. Kamlesh Dass. It is suggested by the claimant that there was a conflict of interest on the part of Ms. Dass as she was known to the claimant. Ms. Dass now remembers meeting the claimant at a recruitment drive sometime prior to the investigation. The claimant has no memory of it. The claimant remembers that she had been interviewed by Ms. Dass for a role at some time although she was extremely vague about the details. Ms. Dass has no recollection of it. Whatever the situation we find that there was absolutely no conflict or impropriety in the appointment of Ms. Dass. Simply knowing one another or having met one another in a professional setting does not preclude an individual acting as an investigating officer. We are fortified in our view by the fact that at no time did the Claimant or her trade union object to Ms. Dass's involvement.

36. The Tribunal finds that a thorough investigation was conducted by Ms. Dass. **[80A-99, 104-112]**. She interviewed those persons who could provide meaningful evidence. We find that at no time did the Claimant or her union suggest to Ms. Dass that there were additional people she wished to be interviewed. The claimant would have had ample opportunity to raise the question of the interviewing of witnesses as would her trade union.

37. The claimant attended at a disciplinary investigation meeting on 7 January 2014. The notes of the meeting as amended by the claimant are in the bundle **[104-112]**. The claimant contends that she did not receive the letters dated 18 November 2013, 6 December 2013 or 17 December 2013 **[85A-87]**.

38. The claimant claims that she only found out about the meeting when she spoke to her trade union representative on or about 7 January 2014 and she printed off the letters for her. We are surprised that she did not receive the letters as they were all sent to her work address and there appeared to have been no issue with missing post previously. We are also surprised that the trade union representative was able to print them off because she doesn't appear to have been copied into the letters. Be that as it may no point was made about insufficient time to prepare or inadequate information being provided when the claimant was interviewed and, furthermore, she was able to add further comments subsequently and we are entirely satisfied that she had been provided with all relevant documentation and she had sufficient notice and time to prepare for the meeting.

39. The claimant was suspended on 8 January 2014 **[114-115]** and there is no complaint about that.

40. As a result of the investigation a report was prepared by Ms. Dass **[115-130]** We are satisfied that the report is balanced and thorough.

41. The claimant was invited to attend a disciplinary hearing by letter dated 11 February 2014 **[131-134]** and she was provided with all the relevant documentation beforehand.

42. The disciplinary hearing took place on 28 February 2014 and Mr. Dave Pearce conducted the hearing. The claimant was present with her trade union representative. The hearing followed a reasonable course and one which was entirely consistent with the terms of the disciplinary policy. We interject here that there is no provision in the policy for calling witnesses to the hearing on behalf of the management side. We are somewhat surprised by that but no point is taken by the claimant in respect of it. There was, however, complaint that the claimant had not been asked to identify her own witnesses to the investigator for interview. We find that a reasonably competent trade union representative would have known that it was open to the claimant to ask for a witness to be interviewed at any time and it is really rather surprising that complaint was made about it.

43. In any event we find that the two witnesses who were mentioned as being potential witnesses for the claimant were Caroline Davies who had apparently borrowed money for a taxi from the same security guard and Sue Townshend who had fallen out with the same individual. Mr. Pearce considered whether either of those witnesses could provide meaningful evidence and he concluded they could not. We consider his reasoning to be reasonable bearing in mind the suggested evidence they could give and the lateness of the request. It had never been suggested that Ms. Davies had pressurised the security guard to lend her money for the taxi. The facts in the claimant's case were very different: she had taken all of the security guard's money for an unspecified reason. She had asked for £70 but she had taken all he had i.e. £29.13. And in so far as Ms Townshend was concerned, she was not a witness to any interaction between the claimant and the security guard. Furthermore, in relation to the second allegation there was corroborative evidence of the event and neither of the claimant's witnesses was able to speak to those facts.

44. The claimant was dismissed in respect of the two allegations set out in the outcome letter and above. **[146-148**] The respondent reasonably considered that they were serious matters. Pressurising someone to lend them money was viewed as wholly unacceptable conduct as was making someone read out an apology in the circumstances in which it occurred. We accept that the respondent reasonably considered that the allegations amounted to a serious breach of the respondent's Standards of Behaviour. Other allegations were not upheld which is consistent with a careful appraisal of the evidence and inconsistent with a hostile animus on the part of Mr. Pearce.

45. The claimant appealed the dismissal. **[149]** We are satisfied that at the appeal on 14 April 2014 the Claimant was given a full and comprehensive hearing. **[160-163]** The appeal was dismissed. **[165-172]**

46. At no time during the disciplinary investigation or disciplinary process did the claimant assert that she felt that the process was being conducted in a particular way because of her race. Nor did she assert in her appeal that she had been dismissed because of her race.

47. We find that in her witness statement there is vague reference to "Richard". It transpires that the claimant says that this individual i.e. RG who is white at some time swore at her in front of a judge and he was simply made to apologise. That is the extent of the evidence she gave.

48. We find that the position of RG as far as we can discern was not remotely similar to the position the claimant found herself in. The claimant was accused of demanding that she be given money by a third party's employee and bullying and humiliating him.

Conclusions

49. The Tribunal applies the legal principles to the facts as found. The parties are in dispute as to the reason for the dismissal. We find that the sole reason for the dismissal was 'conduct'. The respondent's dismissing officer and appellate officer genuinely believed the claimant had committed the misconduct found against her. Of course, the conduct which was found to have caused the claimant's dismissal was as set out above.

50. Accepting, as we do that the respondent had a genuine belief that the claimant had committed the alleged misconduct the next matter the Tribunal needs to resolve is whether the respondent formed its belief on reasonable grounds.

51. Of course, we remind ourselves again that it is not for us to substitute our own views of the actions of the employer but we should apply the range of reasonable response test to the investigation.

52. We therefore conclude in light of all of the above that the respondent carried out as much investigation as was reasonable in all the circumstances and that it was a reasonable investigation in the manner it was conducted. We are not satisfied that the contentions made by the claimant in respect of process particularly as set out in paragraph 11 of the preliminary hearing order of 30 May 2019 are valid. We also do not accept that whatever concerns were raised by the claimant previously had any bearing on the decisions of Mr. Pearce or Ms. Woods and that was not suggested to them at any time. We are entirely satisfied that the claimant was dismissed because of the findings that she had committed the misconduct as set out by Mr. Pearce in his letter of dismissal. **[147]**

53. Furthermore, we are entirely satisfied that the respondent had reasonable grounds for forming its belief in the claimant's guilt in respect of both allegations for which it dismissed her. There was sufficient evidence which it was open for the respondent to accept that the claimant had behaved in the manner alleged against her.

54. Finally, we are entirely satisfied that any employer who believed that its employee had behaved as it had found would have been acting reasonably

in considering that dismissal was one of the appropriate outcomes in respect of that conduct. Notwithstanding the length of service and her apparently unblemished disciplinary record the matters which the respondent found proven were indeed serious breaches of the relevant Standards and the respondent acted in accordance with its own disciplinary policy in treating them as sufficient reason to dismiss. Accordingly, we accept that dismissal was within a band of reasonable responses to that conduct.

55. Therefore, we find that the claimant's dismissal was fair and we dismiss the claim for unfair dismissal. If we are wrong about that we now consider the question of contributory fault. The respondent has not led any direct evidence to support findings of wrongdoing and the claimant denies any wrongdoing i.e. she denies pressurising the security guard or humiliating him by making him read out a letter of apology. In the absence of direct evidence from witnesses to prove that she did commit the acts of misconduct alleged against her we could not find any contributory fault.

56. Turning now to the direct race discrimination claim. The Tribunal is satisfied that there is absolutely no evidence of less favourable treatment because of race in this case. The actual comparator floated by the claimant really is an afterthought (he was not mentioned as late as May 2019) and a complete non-starter as his circumstances such as we understand them to be were materially different. As for the hypothetical comparator we are satisfied that any individual whether sharing the protected class or not would have been treated in exactly the same way. There is not a jot of evidence to suggest otherwise. The reason the claimant was dismissed was because she had committed acts of misconduct which were so serious that they justified the summary termination of her employment. We note that at no time did the claimant ever complain that she was receiving less favourable treatment because of her race.

57. This is a case in which the claimant has not proved any facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination against the claimant: the burden of proof simply does not shift to the respondent.

58. Accordingly, the claimant's claim of direct race discrimination must fail and is dismissed.

Employment Judge Walters
Date 22 January 2020