EMPLOYMENT TRIBUNALS

Claimant: **Mr Kamour Raji**

Respondent: **West Ham United Football Club Limited**

Heard at: **East London Hearing Centre**

On: **20 and 21 August 2020**

Before: **Employment Judge Ross**
Members: **Ms J Forecast**
Dr L Rylah

Representation

Claimant: Mr Aghayere (Counsel)

Respondent: Mr G Baker (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:-

1. **The following complaints are dismissed:**

   1.1 **Unfair dismissal;**

   1.2 **Direct race discrimination;**

   1.3 **Direct discrimination because of religion or belief;**

   1.4 **Indirect discrimination because of religion.**

2. **The complaint of indirect race discrimination is dismissed on withdrawal.**

3. **The Claim is dismissed.**

REASONS

1 By a Claim presented on 7 October 2019 the Claimant brought complaints of direct race discrimination, direct discrimination because of religion or belief, indirect religion and/or race discrimination and unfair dismissal.

2 After a Preliminary Hearing before Employment Judge Lewis on 14 February 2020, the parties agreed a list of issues and the Claimant withdrew the complaint of indirect discrimination because of race. In this set of Reasons, we refer to that agreed list of issues. This Tribunal formally dismissed the complaint of indirect race discrimination.

3 The final merits hearing in this Claim was initially postponed because of the COVID-19 pandemic measures. When it came to be relisted at a telephone Preliminary Hearing before Employment Judge Crosfill, it was listed for an in-person hearing in part because of the need to view CCTV evidence upon which the Claimant sought to rely. For the final merits hearing, the Claimant requested an interpreter. An interpreter was provided by the Tribunal Service. There has been no complaint from the Claimant that he had any difficulty in following these proceedings nor about the interpretation provided, and nor did the Tribunal witness any such difficulty.

4 This Tribunal determined that the issues of liability should be determined in advance of the hearing of the issues relevant to remedy, save that we indicated that was would decide the issues set out at 5.4 (Polkey), 5.5 (whether any statutory uplift should be applied for unreasonable failure to comply with the ACAS Code) and 5.7 (contributory fault) of the list of issues.

The Evidence

5 The Employment Tribunal read witness statements from the following witnesses. For the Respondent:

5.1 Ben Illingworth, Head of Operations for the Respondent.

5.2 Philippa Cartwright, Project and Operations Director for the Respondent.

5.3 Faisal Ahmed, Head of Security.

5.4 The Claimant.

6 On 21 August 2020, when submissions were expected, the Respondent applied to adduce the oral evidence of Faisal Ali, Head of Security, limited to 3 questions. This followed certain evidence given by the Claimant in cross-examination on the preceding day. The late application was made so that the Respondent could address new allegations made by the Claimant in his evidence. This further evidence was admitted for reasons given at the time. Mr Ali gave his evidence after we had heard all of the oral evidence from Mr Illingworth, Ms Cartwright and the Claimant. The Respondent limited its questions to Mr Ali to three questions only; there was then an adjournment to enable

Counsel for the Claimant to take instructions; Counsel for the Claimant then cross-examined Mr Ali and the Tribunal asked him a question as well. There was no application to re-call the Claimant.

7 In addition, at the commencement of the hearing of the evidence, the Employment Tribunal and the parties and the witnesses viewed short extracts of CCTV evidence. This was done in a socially distanced way; the clips were shown more than once so that the witnesses could get as close as necessary to the laptop on which they were shown, followed by the Tribunal as required. No party or witness requested any more time to view the video nor any further viewing after the evidence had closed. During the viewing, Counsel for the Claimant explained what each clip purported to show.

8 There was an agreed bundle of documents, referred to in this set of Reasons as "the bundle".

The Facts

9 The Claimant was employed from 27 February 2015 by the Respondent as a security guard, latterly at the Respondent's first team training ground at Rush Green. He worked in the security office at the gate. It was the Respondent's policy for security guards to work in pairs at the Rush Green site in order to prevent crime and ensure the safety of the guards themselves.

10 The Assignment instructions for security guards included "standard instructions" (at page 228 of the bundle). These instructions included, at Section 3, a Discipline Code which included the following as breaches of the Discipline Code and terms and conditions of employment:

> "(b) leaving place of work without permission or without sufficient cause;
>
> … (l) permitting unauthorised access to the premises to any person"

11 It was not the Claimant's case that he did not know either rule.

The events of May and June 2019

12 In the training ground, there was a skip or bin into which the Respondent placed items which were to be sent for incineration. The Claimant and the other security staff knew that items in the skip belonged to the Respondent and could not be taken from that skip without permission. From time to time, the items in the skip included used kit, which included kit branded with initials of players or managers.

13 On about 31 May 2019, Faisal Ali received a complaint from Mr Tyson, the kit man. The complaint was that used kit was missing from the skip. Mr Faisal Ali viewed the CCTV from the night of 30 – 31 May 2019. Although CCTV did not cover the skip itself, he concluded that the Claimant, who was on duty that night, was likely to have taken a number of items from the skip with assistance from an unauthorised vehicle and driver.

14 On or about 31 May 2019, Faisal Ali, the Claimant's line manager raised concerns about this with Ben Illingworth. He explained about the matters that he had seen on the CCTV for the night of 30 – 31 May 2019. The allegations were that the Claimant was seen to allow an unauthorised vehicle into the ground twice and that the Claimant was likely to have taken several items of used kit from the skip placing them in the unauthorised vehicle, and that the Claimant had then left the premises without consent for a period of time.

15 Purely on the information provided to him, Mr Illingworth decided that there should be a formal investigation and referred Mr Ali to Human Resources for advice.

16 On 7 June 2019, Mr Ali interviewed the Claimant. The minutes of this interview are at page 123 – 124 of the bundle. It was not alleged by the Claimant that these minutes were concocted nor that they were inaccurate. The Tribunal found that these minutes were accurate albeit not verbatim records of the interview.

17 At the commencement of the interview with Mr Ali (at which a HR Adviser was taking notes) the Claimant admitted as follows: (page 123)

> "*KR then explained before any questions were asked, he admitted that he did take WHU goods from the skip and said that he holds his hands up to this. KR reasons for doing this without permission was because he said there are people in Africa that do not have any food or clothes and that they are poor and if the items were in the skip he thought that he could take them and send them back to Africa.*
>
> *KR stated that he was finishing his patrol near the Women's side of the site near the bin area and that's when he found the skip which had clothes in and around it. So he then called the cab man to come to the site to pick the clothes up and take to his house.*"

18 The Claimant admitted in the interview that a cab had collected the items and the driver was a friend. He explained at the meeting that he did not ring Mr Ali because it was late but he could not explain why he could not have asked permission to take the goods the next day. As for leaving site, the Claimant admitted that he left at 10.44pm and returned at 11.18pm leaving his security guard partner alone; he said it was because he needed to break his fast (because it was Ramadan) and he had not brought food with him so he went to the kebab shop. During the interview, the Claimant did not dispute the allegation that his colleague should not have been left alone.

19 The Claimant stated that no one had given him permission to take the items from the skip (see page 124). However, in cross-examination, the Claimant alleged that Faisal Ali had given him and his partner permission to take the Respondent's items from the skip. This allegation was not made during the investigation interview nor the disciplinary hearing nor during the appeal process, nor in the ET1, nor in the Claimant's witness statement. At other points during cross-examination, the Claimant relied not on express permission from Faisal Ali, but on a general permission that security staff could take items from the skip. We found that his evidence was inherently inconsistent, because if there was a general authority, there would have been no need for Faisal Ali to give express authority to the Claimant and his partner. Faisal Ali's oral evidence was that he did not give permission to anyone to take items belonging to the Respondent from the skip.

20 We found it very inconsistent for the Claimant to state during the investigation that no one had given him permission, if Mr Ali had given him express permission to take the items that he admitted taking from the skip or if there was a general permission that security staff could take items from the skip. We find that by stating that no one had given him permission to take the items, any reasonable employer would consider that the Claimant was recognising that he had committed misconduct; otherwise, there was no need for him to ask for a "second chance", which he did later in the interview.

21 In addition, it was inconsistent with the Claimant's case in the Tribunal that, at the end of the investigation interview, the Claimant had an opportunity to provide more information or ask any question but he failed to mention the alleged grant of permission.

22 As mentioned above, at the end of the investigation meeting, the Claimant stated "*I am really sorry, I know I have messed up, I beg you for a second chance.*"

23 The Tribunal finds it very inconsistent for the Claimant to state this if Mr Ali had given him permission to take the items that the Claimant admitted taking from the skip.

24 Mr. Ali, and any reasonable employer, would have concluded from the interview that that Claimant knew that he had no permission to take the items of clothing from the skip. Moreover, by saying sorry and asking for a second chance, Mr. Ali and any reasonable investigator would have decided that the Claimant was admitting that he committed misconduct, or else there would have been no need for the Claimant to ask for a "second chance".

25 At the end of the investigation interview with Mr Ali, the Claimant was suspended on full pay.

26 Although the notes of the interview do not refer to it, the Claimant viewed the relevant CCTV evidence which had led Mr Ali to suspect that the Claimant had taken items from the skip and allowed an unauthorised vehicle and person to enter the ground on two occasions, and then shown the Claimant leaving the ground, because the Claimant admitted to Mr Illingworth that he had seen the relevant CCTV. We find that he made this admission to Mr. Illingworth, even though this fact is not recorded in the formal notes of the disciplinary hearing.

27 The Claimant's complaint in this claim was that the Claimant had not been shown <u>all</u> CCTV from the night of the 30th and 31st May 2019, including the clips he adduced before the Tribunal. He did not complain that he had not been shown the parts relied upon by Faisal Ali in putting allegations to the Claimant at the interview.

28 After the investigatory interview, Mr Illingworth spoke to Mr Ali and read the minutes of the investigatory meeting. Mr Illingworth checked with the kit man whether the Claimant had been given permission to take the items. He said that no permission had been given. Mr Illingworth decided that there was sufficient evidence to proceed to a formal disciplinary hearing. From the CCTV, he had viewed and from the kit man and the minutes of the investigation interview, the Claimant appeared to have taken a large number of items from the skip.

29 We found that the decisions to initiate the disciplinary investigation, and the disciplinary investigation itself, including the holding of the disciplinary hearing, had nothing to do with the Claimant's race or religion. There was no direct evidence that race or religion were a factor in the decisions; and the primary facts pointed to non-discriminatory reasons for the decisions.

30 The reasons for initiating the disciplinary investigation have been set out above. In particular, the reason why Mr Ali viewed the CCTV at all was because of a complaint made by the kit man that a quantity of used kit had been taken from the skip; and there was no allegation that the kit man made the complaint because of the Claimant's race or religion. Contrary to the allegations in the Claimant's witness statement at paragraph 26, Faisal Ali had not threatened to have the Claimant dismissed; the alleged detail in the witness statement was not mentioned at the disciplinary hearing nor at the appeal stage.

31 Moreover, the decision to proceed after the investigation to a formal disciplinary hearing was reached by Mr Illingworth purely on the evidence before him, which caused him to be suspicious about the Claimant's action on the night in question, and because the Claimant had admitted doing the matters alleged at the investigatory meeting. Moreover, it was reasonable, if not inevitable, for Mr. Ali to decide to investigate; and he did not make the decision about whether the matter should proceed to a disciplinary hearing.

32 Mr Illingworth invited the Claimant to a disciplinary hearing. The invitation letter is at page 125 – 126. The allegations were as follows:-

> "*That you allowed an unauthorised vehicle on site at Rush Green training ground and that you were complicit in stealing WHUFC goods from a skip which was located on site.*
>
> *That you left site between 22:44 – 23:18 without authorisation leaving your co-worker vulnerable*."

33 The Claimant was advised that the allegations were of gross misconduct.

34 The minutes of the disciplinary hearing on 13 June 2019 are at pages 127 – 132. These minutes were taken by a HR Adviser, Ms Dixon. In cross-examination, Mr Illingworth was not challenged about their accuracy, save that it was put to him that two statements were made which were not recorded: the Claimant had complained about others acting in the same way, and that Mr. Illingworth said that he would take the complaint to the board. We preferred Mr Illingworth's evidence that these two statements were not said at the meeting, because we considered it very unlikely that these words would be omitted if they were said, and these minutes were timed and relatively detailed, and read as minutes of a discussion. We find that the minutes were an accurate although not a verbatim note of the meeting.

35 It was alleged by the Claimant, during his oral evidence in cross-examination, that at the disciplinary hearing he told Mr. Illingworth that Hafiz Ali (Faisal Ali's brother) had used one of the Respondent's vans to leave with goods taken from the skip and then returned, the inference being that the Claimant was alleging that these goods were taken without consent. A further allegation to be drawn from his evidence was that this was

shown by one of the CCTV clips which we shall refer to later in these reasons. However, this allegation was never stated by the Claimant at the disciplinary hearing; he stated Hafiz Ali left in the van and returned, not that he had transported items away which had been taken without consent. In any event, after 30 May 2019, neither the Claimant nor anyone else had complained to the Respondent about the alleged misuse of a van and the taking of items from the skip by Hafiz Ali without consent. The Tribunal did not believe this part of the Claimant's evidence, nor could we understand why the alleged gross misconduct by other members of the security team was not mentioned by the Claimant if he knew what was happening and if he believed Faisal Ali was turning a blind eye to it or expressly permitting it.

36 At the disciplinary hearing, Mr Illingworth understood that the Claimant was accepting that he had done wrong and accepted that he had done the acts alleged. There was good reason for this, because at the disciplinary hearing the Claimant admitted each allegation when they were put to him: see pages 127 – 128 of the bundle. In particular, the Claimant stated:

> "*Yes I do agree with you all the allegations against me and when I came here last week to the meeting I said yes this has happened*."

37 The Respondent's procedure was to log all visitors and cars which come onto the Rush Green site. The minutes of the disciplinary hearing indicated that Mr Illingworth was suspicious of the Claimant's actions for various reasons including that the unauthorised vehicle had entered the site on the relevant night but was not logged in, and the Claimant had not rung to ask permission to remove the items either before the night or after the items had been taken.

38 We found that the Claimant admitted the first two allegations (taking without permission and allowing an unauthorised person on site) and admitted that he had committed misconduct. In respect of taking the items from the skip the Claimant stated:

> "*But this issue I know I make big mistake to take stuff from the bin without asking that's why we are here*."

39 In addition, during the meeting, the Claimant stated that he had been rushing and had not prepared food prior to his shift, and that there was no food on site when he got there, so he asked his security guard colleague (because the guards on the gate work in teams of two) if he could go and get a kebab which his colleague agreed to.

40 The Claimant did not explain at the disciplinary hearing why food could not have been ordered for delivery, nor why no permission had been sought from his line manager prior to leaving site.

41 The Claimant accepted in the disciplinary hearing (page 131 of the bundle) that he could have contacted Faisal Ali to ask permission to do what he did, or what he had done, if it was requested after the event. The Claimant agreed at the meeting with Mr Illingworth that he did not do so because he did not know if permission would have been granted, and the Claimant did not think he would be caught.

42 There was no challenge to Mr Illingworth's evidence that the Claimant was dismissed for misconduct. We accepted Mr Illingworth's evidence that he had a genuine belief that the Claimant was guilty of three matters of gross misconduct. He believed that each of these even if taken separately without the other two matters would have been sufficient to have dismissed the Claimant. The sole reason why the Respondent dismissed the Claimant was because Mr Illingworth believed that he was guilty of gross misconduct, namely the matters alleged in the invitation letter, which he believed to be very serious misconduct. In evidence, Mr Illingworth confirmed that at the time of the decision to dismiss he took into account the matters outlined in paragraph 17 of his witness statement which he genuinely believed meant that the Claimant had to be summarily dismissed. These matters included:

42.1 The matters happened in the evening;

42.2 The Claimant was bringing a total stranger onto the site;

42.3 No one knew if there were others in the taxi;

42.4 The Claimant let the taxi go away and come back again;

42.5 The Respondent did not know if someone was returning because they thought it was an 'easy touch';

42.6 The other guard was left vulnerable when the Claimant went to the kebab shop;

42.7 The Claimant had left the site for a long time;

42.8 If a security colleague had been hurt, no one would have known.

43 In addition to the above, the Claimant admitted what he had been accused of, that it was wrong, and was begging for his job.

44 The Tribunal found that Mr Illingworth had reasonable grounds for the belief that the Claimant was guilty of each of the allegations of gross misconduct. Again, there was no challenge when Mr Illingworth was cross-examined about his decision to dismiss. It was not put to him that he lacked reasonable grounds nor that his decision was made because of race or religion. The Tribunal found that Mr Illingworth had reasonable grounds, including the terms of the assignment instruction to security guards of the Respondent, the complaint made by the kit man that kit had been taken on the night of 30 May from the skip, the report to him from Faisal Ali, and Mr. Illingworth's own viewing of the CCTV evidence, in addition to which the Claimant had admitted taking the used kit and allowing an unauthorised vehicle and person into the ground on two occasions to remove it. In addition, the Claimant had admitted to leaving the ground without permission for over 30 minutes.

45 Mr Illingworth decided that he could not have a security officer working for the Respondent whom he no longer trusted, because the Respondent must be able to trust its security guards completely. In the light of the incidents admitted, we found that there were

reasonable grounds for the belief that the Claimant could not be trusted.

46 Mr. Illingworth did consider whether any sanction less than dismissal was appropriate but he concluded that the offences could not be excused and noted that the Claimant had only admitted to the incidents after he was caught out by the complaint from the kit man and CCTV evidence being viewed.

47 The Claimant was informed of his dismissal by letter dated 18 June 2019. The dismissal letter is at pages 133 – 134.

The Appeal

48 On 24 June 2019, the Claimant's current solicitors sent the Respondent a letter requesting an extension of time to provide grounds of appeal. The letter requested minutes of the investigation meeting of 7 June and minutes or notes or other evidence against the Claimant including CCTV evidence of the night in question. The letter stated that the Claimant intended to appeal and set out four grounds. Those four grounds alleged lack of a reasonable investigation into the alleged misconduct, direct discrimination because of race, indirect discrimination because of religion, and that dismissal was not within the band of reasonable responses open to a reasonable employer in the circumstances. It is notable that this letter does not allege that Mr Faisal Ali gave the Claimant or other members of staff permission to take things from the skip nor that there was a custom and practice to this effect.

49 In response to that letter, Michelle Gull, Head of HR for the Respondent sent the notes from the meetings on 7 and 13 June 2019 and links to the relevant CCTV recordings. These were sent by email on 25 June 2019. It is notable that prior to the request on 24 June 2019, the Claimant had never sought the minutes or notes of the investigation meeting of 7 June, or links to the CCTV or any other evidence. At the disciplinary he did not suggest any unfairness or disadvantage because he had not been provided with copies of the evidence. We find that this is because he had made full admissions at the investigatory hearing and did so again at the disciplinary hearing.

50 The Respondent, as well as providing the documents requested, provided an extension of time in which to appeal.

51 By a letter dated 1 July 2019, the Claimant's solicitors provided grounds of appeal: see pages 138 – 145 of the bundle.

52 The appeal was heard by Philippa Cartwright, Project and Operations Director for the Respondent. In cross-examination Ms Cartwright was asked relatively few questions, and we accepted her evidence.

53 The notes of the appeal hearing are short (see page 146) but it was not suggested to Ms Cartwright in cross-examination that they were incorrect.

54 The Claimant's case at the appeal was different to that before Mr Illingworth. At the appeal the Claimant stated that he did take the goods because they were in a "waste bin" and that other members of staff had previously removed items from the skip, and that

he did not need permission to remove the items, and that he did not think he needed to sign in the visitor on the night in question because he was a friend. He alleged that other members of security had gone off site without permission.

55 After the appeal, Ms Cartwright asked Michelle Gull to carry out some further investigation, believing that staff were more likely to give Michelle Gull the truth. On the 8 August 2019, Ms Gull asked the Claimant's solicitors for the identities of those responsible for taking the Respondent's property, and which staff had left the site without permission from their security supervisor.

56 Further information was provided by email on 12 August 2019 by the Claimant's solicitors: see page 147 of the bundle. It was alleged that two named security staff had taken used items from the bin, but that every security employee had done it at one time or the other. The Claimant's solicitors did not allege that Faisal Ali or anyone else had given him express permission to take items nor that Hafiz Ali took items from the skip on 30 May 2019. There were fresh allegations made in this case by the Claimant at the Employment Tribunal hearing about those two matters. The email from the Claimant's solicitors also alleged that various guards had left site without permission.

57 The Tribunal found that Michelle Gull did interview individuals who could give relevant evidence as stated in the appeal outcome letter (page 154). Although the Tribunal would normally expect an employer of this size and financial resources to have a system to ensure any investigatory steps were recorded in writing (including who was spoken to and exactly what was said) there were no such written notes or records in this case of who Michelle Gull had spoken to. We put this down to both a lack of a procedure when investigation took place at the appeal stage (even though we found, in this case, that investigation at the appeal stage was not required, which may explain the lack of notes from Ms. Gull, an experienced HR practitioner), and Ms Cartwright's lack of experience (in that this was her first appeal hearing).

58 Ms Gull's investigation did not find evidence to support the allegations made by the Claimant. She interviewed Mr Saban, the kit manager, who was the manager of the original complainant, the kit man (Mr Tyson), and Faisal Ali. The evidence was that there was no habitual taking of used kit from the skip. The evidence was that unwanted gifts were sometimes given to staff from players with their authority, such as unwanted toys.

59 The Employment Tribunal found that the appeal was fair in itself and that it was more in the form of a re-hearing that a mere review, because it allowed new matters to be raised and it produced further investigation. We accepted Ms Cartwright's evidence as to what matters she took into account, including the mitigation taken into account.

60 Ms Cartwright concluded that the summary dismissal should be upheld. We found in the circumstances this was a decision within the band of reasonableness on the evidence before her. Ms Cartwright did consider whether the dismissal was because of race or religion but found that it was not so. She concluded that the allegations were acts of gross misconduct which included elements of dishonesty which had caused a breakdown in trust and confidence in the Claimant.

61 By an outcome letter dated 23 August 2019, the Respondent informed the Claimant that the decision to dismiss was upheld and full reasons for this were given.

The CCTV Evidence and the Comparators

62 In the list of issues, the Claimant named Hafiz Ali (Faisal Ali's brother), Sunny and Ahmed as comparators. These are all members of the security team.

63 We found no evidence of any difference between their treatment and the treatment of the Claimant. There was no evidence that any complaint had been made which implicated them, nor about conduct by them, which was similar to that which the CCTV showed the Claimant had been engaged in on the night of 30-31 May 2019.

64 The Tribunal viewed four clips of the CCTV provided by the Respondent, but adduced in evidence by the Claimant. Although Counsel for the Claimant explained what each clip purported to show, the Claimant did not given evidence about what they were alleged to show in oral evidence nor in his witness statement. The evidence of Mr Illingworth about what they showed was basically unchallenged. Mr Illingworth had never seen the CCTV clips before the Employment Tribunal hearing, because they had not been considered to cover the relevant times for the events leading to the disciplinary hearing into the Claimant's conduct. In any event, from the clips that we saw, we made the following findings. It was not disputed that the CCTV clips that we saw related to the night of 30 – 31 May 2019.

20.20 – 20.42

65 This clip showed three members of staff approaching the security office. Two members of the day shift team, Hafiz Ali and Mr Gardiner, were wearing sliders; there was a third person who was a part-time employee who was in trainers. The third person was a steward and occasionally helped out with security work. It was impossible to determine from the CCTV clip whether the sliders worn by the two security employees were branded as the Respondent's good, nor whether they had been obtained without permission or purchase. We accepted Mr Illingworth's evidence that if he had seen the CTV evidence at the time of the disciplinary hearing it would have made no difference to the outcome of the disciplinary hearing because he would have had no reason to think that the sliders were stolen.

21:50

66 This clip showed a private car leaving the site. The allegation was that the occupants (who could not be determined from the CCTV) due to the dark glass in the car, did not sign out as they left. The Tribunal found that this was not relevant to the issues before us; but we agreed with Mr Illingworth's evidence, that it was up to the Claimant or his colleague in the security office to sign them out. The Claimant must have been aware of the car leaving as was his partner.

12:40 – 12:58

67 In this clip, a white van enters the ground. It is not possible to see how many occupants there are. This was one of the Respondent's vans. It could only have been used with permission from the kit manager. We accepted Faisal Ali's evidence that the van was driven by his brother and he had permission to use the van to move personal

items, namely furniture. We accepted Mr Illingworth's evidence that he would have been amazed if the van had been used without permission because the kit man needed to know where it was at all times.

68 We found the outcome of the disciplinary hearing would have been no different if Mr Illingworth had seen this CCTV clip at the time of the disciplinary hearing, because there was no evidence that any occupant of the van was doing anything wrong. Moreover, we found that there would be no reason for the Respondent to investigate the use of the van prior to the disciplinary hearing because no complaint had been made by the Claimant, the kit manager, nor anyone else, about the use of the van.

25:20 – 27:00

69 It was admitted by the Respondent that this showed the Claimant leaving the ground on his moped and that his colleague and security guard partner assisted him by opening the and closing the gate behind him.

70 There was no evidence that the Claimant had complained about his partner guard that night; but in any event, the Respondent disciplined him for not informing the Respondent of the Claimant being absent without leave.

71 We found that none of the CCTV evidence provided any support for the Claimant's complaint of less favourable treatment compared to the named or any hypothetical comparator.

New Allegations

72 For the avoidance of doubt and given the cross-examination of Mr Illingworth, we find that at the disciplinary hearing the Claimant did not allege that other security staff often took used kit or other things from the skip without consent, evidenced by the notes of the hearing at page 130.

73 In addition, at the disciplinary hearing, the Claimant did not allege that other staff regularly had unauthorised visitors, whom they did not sign in or out. This allegation was made in his evidence to this Tribunal; but we did not accept it given that it was not raised at the disciplinary hearing. In any event, in cross-examination, he accepted that this was breaking the rules and in answer to the Tribunal he admitted that he had never complained of any staff member doing this.

74 Therefore, it was reasonable (and probably inevitable) that Mr Illingworth took no steps to have these alleged habits or practices investigated.

75 The Claimant's evidence and arguments in this Claim were different to that put before Mr Illingworth at the disciplinary hearing. In order to decide the complaint of unfair dismissal, it is not necessary to decide whether the new allegations were correct on a balance of probability, but we have decided to provide our findings on these factual issues given the time spent on them and their relevance to the issue of contributory fault.

76 The Claimant alleged that Hafiz Ali and other security staff regularly took things

from the skip, the inference being that this was without consent. We accepted the evidence of Mr Illingworth and Faisal Ali that this did not happen.

Fresh Allegations made against Faisal Ali

77 In cross-examination, it was put to the Claimant that he had never stated in the investigatory interview with Faisal Ali that all members of the security team took from the skip. In response, the Claimant stated that this was because Faisal Ali had telephoned him on the day before the meeting and stated that, at the meeting, the Claimant should pretend as if he did not know anything, and he told the Claimant that he should not say anybody had been taking from the skip. The Claimant alleged that Mr Ali had stated that he knew how to speak to the bosses so that the Claimant would be able to come back to work.

78 This allegation was not made in the detailed grounds of appeal when the Claimant was represented professionally by solicitors, and it was not mentioned at the disciplinary hearing, and it was not mentioned in the ET1 claim form. As to why it was not in the Claim form, the Claimant alleged that his solicitors had made a mistake.

79 Mr Faisal Ali's evidence was that there was no such conversation. Mr Ali admitted that there was a conversation with the Claimant on the day before the investigatory hearing (which took place on 7 June 2019), but that this arose because the Claimant had called because his moped had broken down on the way to the investigatory meeting which had been originally listed for the 6 June 2019.

80 The Tribunal decided that the Claimant's evidence about the alleged conversation on 6 June 2019 was not credible for the following reasons:

80.1 The Tribunal preferred the evidence of Mr Ali whom we found to be credible and reliable as a witness generally and on this issue in particular.

80.2 Even if this had been said prior to the investigation interview, we could not understand why the Claimant would not have raised this alleged phone call at the disciplinary hearing or at the appeal or in his ET1, had it taken place.

80.3 We found it extremely inconsistent that there was no mention of it in the Claimant's witness statement.

80.4 The Tribunal found that it was not credible that Faisal Ali and all members of the security team knew that there was a practice or custom or habit whereby discarded items could be taken from the skip, and that this was either authorised expressly or by implication by the turning of a blind eye, because:

(a) There was no evidence that the kit man had complained of missing items before;

(b) There was no evidence that a complaint had been made about

anyone else before;

(c) This was not raised in the disciplinary hearing despite what was at stake for the Claimant.

81 Furthermore, the Tribunal found that there was no evidence of a history of Faisal Ali overlooking misconduct by security staff in terms of taking items or leaving without permission or of allowing unauthorised persons onto the site.

82 In any event, the Tribunal noted that Faisal Ali had no input in the decision to dismiss.

The Law

Race or Religion discrimination

Direct Discrimination

83 Section 13 Equality Act 2010 ("EQA") provides:

> "A person (A) treats another person (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

84 The required comparison must be by reference to circumstances. Section 23(1) EQA provides:

> "On a comparison of cases for the purposes of section 13,14 or 19 there must be no material difference between the circumstances relating to each case."

85 Whether the comparison is sufficiently similar will be a question of fact and degree for the tribunal, see Hewage v Grampian Heath Board [2012] ICR 1054.

86 In Shamoon, at 9-11, Lord Nicholls gave guidance as to how an employment tribunal may approach a complaint of direct discrimination and explained that it was sometimes unnecessary to identify a comparator:

> "…*employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others*."

Causation in direct discrimination cases

87 If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason: see the observations of Lord Nicholls in Nagarajan v London Regional Transport [1999] ICR 877 as explained by Peter Gibson LJ in Igen v Wong [2005] ICR

931, paragraph 37.

88 In Igen v Wong, at paragraph (11) of the Appendix, it is pointed out that, if the burden of proof shifts, it is necessary for an employer to prove that the treatment was in no sense whatsoever on the grounds of the protected characteristic, because "no discrimination whatsoever" is compatible with the Burden of Proof Directive. The guidance in Igen v Wong was approved by the Supreme Court in Hewage v Grampian Health Board.

Indirect discrimination

89 Section 19 EQA provides as follows:

> "(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
>
> (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if -
>
> (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
>
> (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
>
> (c) it puts, or would put, B at that disadvantage, and
>
> (d) A cannot show it to be a proportionate means of achieving a legitimate aim."
>
> Subsection (3) lists the relevant protected characteristics, which include race and religion or belief.

89 Direct discrimination expressly requires a causal link between the less favourable treatment and the protected characteristic. Indirect discrimination does not. Instead, it requires a causal link between the PCP and the particular disadvantage suffered by the group and the individual. The reason for this is that the prohibition of direct discrimination aims to achieve equality of treatment. Indirect discrimination assumes equality of treatment - the PCP is applied indiscriminately to all - but aims to achieve a level playing field, where people sharing a particular protected characteristic are not subjected to requirements which many of them cannot meet but which cannot be shown to be justified. The prohibition of indirect discrimination thus aims to achieve equality of results in the absence of such justification. It is dealing with hidden barriers which are not easy to anticipate or to spot: see Essop v Home Office [2017] UKSC at paragraph 25.

90 There is no finding of unlawful discrimination until all four elements of the definition are met.

91 The requirement to justify a PCP should not be seen as placing an unreasonable burden upon respondents. Nor should it be seen as casting some sort of shadow or stigma upon them. There is no shame in it. There may well be very good reasons for the PCP in question - such as fitness levels in fire-fighters or policemen: see Essop at paragraph 29.

Burden of proof in discrimination cases

92 We reminded ourselves of the reversal of the burden of proof provisions within section 136(2) EQA 2010, and as explained in Igen v Wong and Madarassy v Nomura [2007] ICR 867, referred to in the Respondent's submissions.

93 It is important, however, not to make too much of the role of the burden of proof provisions at section 136. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they do not apply where the tribunal is in a position to make positive findings on the evidence one way or the other: Hewage v Grampian Health Board [2013] UKSC 37.

Unfair dismissal

Gross misconduct

94 Gross misconduct is conduct which is so serious that it goes to the root of the contract. It must be conduct so serious as to amount to repudiatory breach. By its very nature, it is conduct which would justify dismissal, even for a first offence.

95 Dishonest conduct is likely to amount to a fundamental breach of the implied term of trust and confidence, which means that summary dismissal is a course open to an employer.

Unfair Dismissal

96 In determining whether a dismissal was unfair, it is for the employer to show that the reason for the dismissal is a potentially fair reason within s.98 Employment Rights Act 1996 ("ERA 1996").

97 A potentially fair reason is one which relates to conduct: s.98(2)(b) ERA.

Reasonableness: s.98(4) ERA 1996

98 The Tribunal directed itself to section 98(4) ERA which provides:

> "*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 reasons shown by the employer)*
>
> *(a) depends on whether in the circumstances including the size and administrative resources of the employers 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."*

99 The burden of proof on the issue of fairness is neutral.

100 In conduct cases, in considering the fairness of a dismissal, the classic questions for a Tribunal to consider are:

100.1 Did the employer have an honest belief that the employee was guilty of misconduct?

100.2 Was that belief based on reasonable grounds?

100.3 Was that belief formed on those grounds after such investigation as was reasonable in the circumstances?

(See BHS v Burchell [1980] ICR 303)

101 The principles which the Tribunal must apply when considering section 98(4) ERA include the following:

101.1 The Employment Tribunal must not substitute its own view for that of the employer as to what was the right course to adopt for that employer.

101.2 On the issue of liability of the unfair dismissal the Tribunal must confine itself to the facts found by the employer at the time of the dismissal.

101.3 The employer should ask: did the employer's action fall within the band of reasonable responses open to an employer in those circumstances?

(See Foley v Post Office and HSBC Bank plc v Madden [2000] IRLR 3 and Iceland Frozen Foods v Jones [1983] ICR 17)

102 The range of reasonable responses test applies not only to the decision to dismiss but also to the procedure by which that decision is reached including the investigation: see Sainsbury plc v Hitt [2003] ICR 1111. The Tribunal considered the following passage in Hitt, to be relevant to this case:

> "*The investigation carried out by Sainsburys was not for the purposes of determining, as one would in a court of law, whether Mr Hitt was guilty or not guilty of the theft of the razor blades.* ***The purpose of the investigation was to establish whether there were reasonable grounds for the belief that they had formed, from the circumstances in which the razor blades were found in his locker, that there had been misconduct on his part, to which a reasonable response was a decision to dismiss him.*** *The uncontested facts were that the missing razor blades were found in Mr Hitt's locker and that he had had the opportunity to steal them in the periods of his absence from the bakery during the time they went missing. Investigations were then made, both prior to and during the period of an adjournment of the disciplinary proceedings, into the question whether, as Mr Hitt alleged, someone else had planted the missing razor blades in his locker. In my judgment, Sainsburys were reasonably entitled to conclude, on the basis of such an investigation, that Mr Hitt's explanation was improbable. The objective standard of the reasonable employer did not require them to carry out yet further investigations of the kind which the majority in the employment tribunal in their view considered ought to have been carried out.*"

103 Reading Hitt and Foley together, it is clear that the Tribunal must not substitute its own standards of what was an adequate investigation for the standard that could be objectively expected of a reasonable employer.

104 Whether a procedural defect is sufficient to undermine the fairness of the dismissal as a whole is a question for the Tribunal. Not every procedural error will do so; the fairness of the whole process should be looked at. In South Maudsley NHS Foundation Trust v Balogan UKEAT 0212/14, the EAT held at paragraph 9:

> *"As this Tribunal has said countless times, the crucial thing is the statutory test in section 98(4) namely whether in all the circumstances the employer acted reasonably in treating its reasons for dismissing the employer sufficient. A procedural defect is a factor to be taken into account but the weight to be given to it depends on the circumstances and the mere fact that there has been a procedural defect should not lead to a decision that the dismissal was unfair. The fairness of the whole process needs to be looked at and any procedural issues considered together with the reason for the dismissal, as the two will impact on each other".*

105 It is particularly important that employers take seriously their responsibility to conduct a fair investigation where the employee's reputation or ability to work in his chosen field is likely to be affected by a finding of misconduct: see Salford Royal NHS Foundation Trust v Roldan [2010] ICR 1457. As the Employment Judge pointed out during submissions to ensure fairness to the Claimant, where the purpose of the investigation is to establish whether there are reasonable grounds for the suspicion of gross misconduct in the form of a charge grave enough to effect a career or reputation in a chosen field, a more careful investigation is required which produces more cogent or weighty evidence.

106 However, the extent of an individual's admissions may determine the extent to which matters need to be investigated. Where individuals have made wide-ranging admissions, that will make it more likely that it is within the band of reasonable responses not to investigate further: see CRO Ports London Ltd v Wiltshire UKEAT/0344/14, paragraph 37.

Appeals

107 In Taylor v OCS Group Ltd [2006] IRLR 613, it was stated that ultimately a tribunal must look at the overall fairness of the procedure, and not just consider whether the appeal had taken the form of a rehearing rather than a review.

Submissions

108 Counsel for the parties both provided written submissions, which the Tribunal read prior to the start of submissions. Each counsel then expanded on those submissions orally.

109 In reaching our conclusions, we have taken into account all of those submissions. It is not necessary to address each of them separately below.

Conclusions

110 Applying the above law to our findings of fact, the Tribunal has reached the following conclusions on the issues within the list agreed between the parties. It is important for any subsequent Tribunal looking at this set of reasons to understand that we are addressing the case set out in the Claim, and the agreed List of Issues, even though we have sought to address in our findings of fact the new matters raised by the Claimant during this hearing.

Issues 1.1 to 1.3: Unfair dismissal: the reason for dismissal

111 The reason for dismissal was a reason relating to conduct. Mr. Illingworth genuinely believed that the Claimant was guilty of three matters of gross misconduct, and that he had acted dishonestly by taking the items from the skip without permission. The relevant findings of fact are at paragraphs 42-43 above.

112 Mr. Illingworth's evidence about the reason for dismissal was unchallenged during the hearing before us. It was not suggested, for example, that he acted at the request of Faisal Ali.

113 The reason for dismissal was a potentially fair reason within section 98(2) ERA.

114 The Respondent had reasonable grounds for the belief that the Claimant was guilty of gross misconduct. We repeat the facts set out at paragraphs 44-45.

115 In this hearing, the Claimant's case was advanced in part on the basis that the Claimant had no intention of appropriating the items of kit, and that the items were left in a skip and so were abandoned for disposal; and therefore he could not have been guilty of theft. These arguments were not raised at the disciplinary hearing. Moreover, it was evident from the Claimant's own admissions and request for a second chance, from the evidence of Mr. Illingworth and Mr. Ali, and from the fact that the kit man had made a complaint in the first place, that it was reasonable for Mr. Illingworth to believe that the items in the skip remained the property of the Respondent until destroyed. Furthermore, up to and including the disciplinary hearing, there was no evidence that the Claimant intended to return the items to the Respondent; so it was reasonable for Mr. Illingworth to conclude that the Claimant had appropriated the items of used kit and that the Claimant's actions were dishonest.

Issue 2: Reasonableness

Issue 2.1

116 The standard of procedure adopted by the employer must fall within the band of reasonable responses open to an employer of this size and resource.

117 The Tribunal concluded that the Respondent carried out as much investigation as was reasonable in the circumstances of this case. Given the admissions made by the Claimant at the start of the investigation interview, and the subsequent repetition of those admissions at the start of the disciplinary hearing, it was not necessary for the Respondent to carry out further investigation; the complaint by the kit man, the CCTV evidence from around the site (which led to Mr. Ali suspecting that the Claimant had taken the kit, by use of an unauthorised vehicle, and then left site for over 30 minutes without permission) and the full admissions from the Claimant were more than sufficient to provide the reasonable grounds for the Respondent's belief that the Claimant was guilty of the allegations of gross misconduct.

118 Given that the Claimant was a security guard, an allegation of taking property without consent could well affect his career or reputation in the security field. However, the

Tribunal concluded that the investigation in this case was sufficient to meet the standard required in this type of case. In particular, the extensive admissions by the Claimant – both that he committed the acts alleged and that they were misconduct – provided cogent and weighty evidence to prove the allegations.

119 Up to and including the point of dismissal, the Claimant had not alleged that there was a practice whereby all security guards took items from the skip, nor that there was express or implied consent from Faisal Ali that they could do so, nor that he had given express consent to the Claimant and his partner guard that they could take items. Accordingly, there was no need for the Respondent to investigate these matters further nor to seek other witness evidence up to and including the point of dismissal.

120 In any event, when the new matters were raised at the appeal stage, the Respondent did carry out further investigation. True, these investigations were not recorded in the professional form that this Tribunal would expect from an employer of this size and financial resources (being a Premier League football club); but the Tribunal accepted that further investigation was carried out as explained above.

121 Taken as a whole, the investigations conducted by the Respondent were within the band of reasonableness open to this employer.

Issue 2.2: Was dismissal within the band of reasonable responses?

122 The decision to dismiss was within the band of reasonable responses open to this Respondent on the facts in this case. Mr. Illingworth's evidence was not challenged on the decision to dismiss. The Tribunal concluded that the decision to dismiss was well within the band of reasonableness, for at least the following reasons:

122.1 The Claimant admitted each of the three allegations, but only after the complaint had been made by Mr. Tyson, the kit man, and the CCTV had been reviewed. The Claimant admitted, in effect, that he knew that his actions were wrong and that he had never sought consent.

122.2 The Claimant was employed in a role where he should have protected the Respondent's property, premises and staff, but instead he had taken a large volume of items belonging to the Respondent without consent, allowed an unauthorised vehicle in twice to load the items taken, and left site without permission for over 30 minutes. Mr. Illingworth had reasonable grounds for believing that each of the three acts of misconduct were very serious, and that they amounted to gross misconduct.

122.3 The Respondent had to be able to trust its security guards completely. Mr. Illingworth had reasonable grounds to decide that the Respondent could no longer trust the Claimant, in part because he believed that the Claimant had acted in a dishonest way.

122.4 Mr. Illingworth concluded that Claimant's absence without permission from the site was a serious act of misconduct, for reasons that he gave in evidence including the need to ensure the health and safety of the other

security guard on duty.

122.5 Although the Claimant had some mitigation because of the admissions, these carried limited weight because they were made when he knew he had been identified as likely to be guilty of misconduct from CCTV footage available.

122.6 In this case, although Mr. Illingworth did consider lesser sanctions, it was reasonable for him to conclude that the offences could not be excused and that summary dismissal was appropriate. We repeat our findings of fact at paragraph 42 above.

Issue 2.3

123 This issue has been addressed in the findings of fact. In summary, the Claimant did not provide information prior to dismissal that other members of the security team were taking items from the skip, nor that Faisal Ali had a history of overlooking the same type of misconduct that the Claimant was accused of. We did not believe the Claimant's evidence on these points.

Issue 2.4

124 The Claimant did not make a grievance against Faisal Ali. A grievance cannot be inferred from what is stated in the disciplinary hearing. In any event, the Tribunal did not accept that any grievance to be inferred about Faisal Ali, from the statements expressed in the disciplinary hearing, was relevant. The Respondent acted reasonably by proceeding to hear and conclude the disciplinary process against the Claimant, particularly because the Claimant was a security guard who had admitted taking items from the Respondent without consent, had admitted allowing an unauthorised person on site, and had admitted being absent without consent; and it was reasonable for Mr. Illingworth to conclude that the Respondent had to be able to trust its security guards and that the Respondent could no longer trust the Claimant.

Issue 2.5

125 The Tribunal found as a fact that, before the disciplinary hearing, the Claimant did see the relevant CCTV evidence relevant to the three matters leading to the charges against him. In any event, he made full admissions to the allegations against him, and did not request to view the CCTV again at the disciplinary hearing. We concluded that the procedure was fair and well within the band of reasonable responses in this respect. We found that the Claimant did not challenge the minutes of the disciplinary hearing in a substantive way.

126 There was no evidence that the Claimant was provided with minutes of the investigation meeting nor electronic files of the CCTV evidence prior to the disciplinary hearing. In the circumstances of this case, where the Claimant had made full admissions, we concluded that there was no unfairness in the procedure. The procedure at the disciplinary hearing was within the band of reasonableness open to this employer. It was never suggested in evidence or cross-examination that the Claimant was not fully aware

of the case against him, and there was no evidence that he requested copies of this evidence to help him prepare his case or to respond at the disciplinary hearing.

127 Prior to the appeal, the Claimant's solicitors were provided with a copy of the CCTV for the whole night in question and the minutes requested. The Claimant's solicitor formulated very full appeal submissions, which were considered by Ms. Cartwright.

128 If we are wrong in our above conclusion, and there was a defect in the procedure up to the point of dismissal in respect of disclosure of evidence, the Tribunal concluded that the steps taken at the appeal stage cured any such defect.

Issue 2.6

129 This issue repeats the words of section 98(4) ERA. The Tribunal directed itself to that wording, and we have reminded ourselves that the test of fairness is the statutory test within section 98(4). Having directed ourselves in this way, we concluded that this Respondent did act reasonably in treating the three acts of misconduct admitted as gross misconduct and as sufficient reason for dismissal. The dismissal was fair, having regard to equity and the substantial merits of the case. Prior to the appeal, there was no complaint made about any other security staff member and there was no evidence that any other staff member had been treated differently to the Claimant.

Issue 3: Direct discrimination because of race or religion

130 The Claimant relies on his race and ethnicity, which is Black African and his religion (Islam).

131 The Claimant was not treated less favourably than the comparators specified by him, namely Hafiz Ali, Ahmed and Sonny. Prior to the disciplinary hearing, there was no complaint to the Respondent, and no evidence before it, that they had also taken used kit from the skip without permission. As explained in the findings of fact above, no such allegation was made to Mr. Illingworth. Moreover, the video clips that we saw did not lead to the belief that these staff members had taken items without consent; and, had he viewed these clips at the time, Mr. Illingworth would not have held that belief.

132 The Claimant's case was that Faisal Ali treated security staff of Asian ethnicity more favourably. In any event, the Tribunal found that the Claimant was not treated less favourably than a hypothetical comparator of Asian or white British ethnicity. The Tribunal concluded that any security guard would have been dismissed given the same evidence before the Respondent and if the same admissions had been made.

133 Given the positive findings of fact made and the conclusions above, the Tribunal found that the burden of proof provisions did not need to be applied in this case, where the Claimant had failed to show less favourable treatment than a statutory comparator.

134 Furthermore, on the question of causation of the Claimant's treatment, the Tribunal repeats paragraph 42 above. The sole reason that the Claimant was dismissed was because of his misconduct. His race or ethnicity played no part in the decision to dismiss him; and it was not put to Mr. Illingworth in cross-examination that race or ethnicity

was at least one reason for dismissal.

Issue 4: Indirect religion discrimination

135 There was a requirement that security staff must not leave the Rush Green site during their shift (day or night), without permission or sufficient cause. We concluded that this was the provision, criterion or practice ("PCP") relied upon by the Claimant.

136 This PCP did not put persons with the Claimant's religion at a particular disadvantage because of the need to break the fast during Ramadan, when compared with persons who are not Muslim. All security staff members could bring food with them to work or order food for delivery.

137 The PCP did not put the Claimant at that disadvantage. The Claimant's evidence was that he could have brought food with him, but he had not had time before he left for work. The Tribunal concluded that this showed that he could have bought food with him to work. In any event, the Claimant could have asked for permission to leave the site explaining the reason that he had been fasting, or order food for delivery, but he did neither of those things.

138 In the Claimant's submissions, the argument shifted in respect of this complaint, and a fresh allegation was introduced. At paragraph 27 of the submissions, it was alleged that the PCP was indirect discrimination because of the Claimant's ethnicity and religion, because as an African Muslim he did not limit his shifts to day time as Asian Muslims did in the month of Ramadan. The Tribunal concluded that this allegation lacked any evidential basis and, in any event, it was a change in his case which he sought to make without any warning or amendment application. We did not accept this argument.

Issue 4.5 Proportionality

139 The Tribunal concluded that the PCP was a proportionate means of achieving a legitimate aim.

140 The legitimate aim was that the Respondent's staff, premises, and property were kept safe. Mr. Illingworth gave evidence to explain why two security guards were required to be at the premises at all times: see for example paragraphs 17 and 18 of his witness statement.

141 The PCP was necessary to meet the legitimate aim. If there was no such PCP, the purpose of the security guard role, particularly at night when less non-security staff would be present, would be undermined. The necessary balance was met by the provisos in the PCP that the requirement not to be absent did not apply where permission had been sought, or where there was sufficient cause.

142 In this case, no permission was sought, and there was not sufficient cause for the absence, given that the Claimant could have brought food with him or ordered food for delivery.

Summary

143 All the complaints fail. The Claim must be dismissed.

144 In the light of this, the Tribunal has found it unnecessary to determine issues 5.4, 5.5 or 5.7 of the List of Issues.

Employment Judge A Ross
Date: 17 September 2020