



EMPLOYMENT TRIBUNALS

Claimant

Mr C M Pereira

Respondent

Sainsbury's Supermarkets
Limited

v

Heard at: Watford

On: 17-19 August 2022

Before: Employment Judge Anderson
L Hoey
C Grant

Appearances

For the Claimant: In Person

For the Respondent: Mr N Bidnell-Edwards (counsel)

JUDGMENT

1. The claimant's claim of discrimination on the grounds of race is dismissed.

REASONS

Claim

1. The claimant brings a claim of race discrimination against the respondent, a supermarket chain. He was employed by the respondent as a trading assistant from 22 August 2020 to 14 January 2021 when he was dismissed for gross misconduct. The claimant filed a claim of unfair dismissal and race discrimination on 10 March 2021. As he had employed by the respondent for under two years the Tribunal did not have jurisdiction to hear a claim of unfair dismissal. The claim proceeded as a race discrimination claim only.
2. A case management hearing by telephone took place on 1 November 2021 and the respondent was ordered to draft a list of issues. The list was drafted. The claimant had the opportunity to comment on the list and say if he thought it was not correct. The claimant made no comment. Discussion at the hearing on 17 August 2022 led to a slight amendment to the wording of Act A. The list is as follows:

Limitation

1. By means of an ET1 dated 10 March 2021 the Claimant has brought claims of:

Direct Race Discrimination

2. The Claimant relies on his race as an Indian man.

3. Did the Respondent treat the Claimant less favourably than it treated or would treat someone of a different race.

3.1. Did the following occur?

a. Act A – Did Bibash Limbu between mid-November 2020 and the Claimant’s suspension on 3 January 2021, contact the Claimant to inform him of the duties he wanted the Claimant to perform?;

b. Act B – Did Bibash Limbu tell the Claimant at the end of November 2020 that “I can dismiss you whenever I want”?;

c. Act C – Did Bibash Limbu refer to the Claimant and some of his colleagues on 3 January 2021 as “you Indians”?;

d. Act D – Did Bibash Limbu suspend the Claimant on 3 January 2021?; and

e. Act E – Did Dipak Gami, Customer and Trading Manager, dismiss the Claimant on 14 January 2021?

4. To the extent they occurred, were any of the acts done because of the Claimant’s race?

5. Would a hypothetical comparator have been treated any differently?

Harassment

6. Do acts A-C amount to unwanted conduct related to the Claimant’s protected characteristic of race?

7. Having regard to:

(a) the perception of the Claimant;

(b) the other circumstances of the case; and

(c) whether it was reasonable for the conduct to have had that effect; did any of the conduct relied on by the Claimant create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

Remedy

8. In the event that the ET finds that the Claimant was directly discriminated against, and/or harassed:

a. What is the extent of the Claimant’s financial loss?

b. Has the Claimant taken reasonable steps to mitigate his loss?

c. *What is the percentage chance the Claimant would have been dismissed in any event?*

9. *Is the Claimant entitled to an award for injuries to feelings?*

10. *Is the Claimant entitled to any interest?*

The Law

3. The claims are brought under sections 13 and 26 of the Equality Act 2010. Those sections are reproduced below.

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.

26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

...

• race;

• ...

4. For all the Equality Act 2010 claims the burden of proof provisions as set out in section 136 apply. Section 136 reads:

136 Burden of proof

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

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

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

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

5. The Tribunal must make findings of fact and apply the legal tests to those facts. The tests for direct discrimination were discussed in *Igen v Wong [2005] ICR 931* and it is clear that all evidence before the Tribunal can be taken into account, not just that put forward by the claimant. The test is: is the Tribunal satisfied, on the balance of probabilities that this respondent treated this

claimant less favourably than they treated or would have treated a white employee.

6. If the Tribunal is satisfied that the primary facts show less favourable treatment because of race, the Tribunal proceeds to the second stage. At this stage, the Tribunal looks to the employer for a credible, non-discriminatory explanation or reason for such less favourable treatment as has been proved. In the absence of such an explanation, proved to the Tribunal's satisfaction on the balance of probabilities, the Tribunal will conclude that the less favourable or unfavourable treatment occurred because of race discrimination.

The Hearing

7. As the claimant had failed to comply with directions and had not agreed to a date to exchange witness statements with the respondent EJ Lewis issued a strike out warning on 6 July 2022, due to the claimant appearing not to be actively pursuing his claim. EJ Quill on 25 July 2022 directed that the Tribunal should consider at the outset of the hearing whether the claim should be struck out (*Rule 37(1)(d) Employment Tribunal (Constitution and Rules of Procedure) Regulations Schedule 1*). The Tribunal considered the matter and after hearing from both parties decided that the case should not be struck out. The parties were ready to go ahead, witness statements and relevant documents were before the Tribunal and Mr Bidnell-Edwards for the respondent said that the respondent would not be prejudiced by the hearing proceeding today. Although the Tribunal takes matters of non-compliance seriously, the claimant is a Litigant in Person and has explained that he had health issues during the last months which hampered his ability to turn his mind to preparing for the hearing.
8. Mr Bidnell-Edwards of counsel represented the respondent. The claimant represented himself. The respondent had two witnesses: Ranit Limbu and Dipak Gami. The Tribunal received two witness statements from the claimant and one each from Mr Limbu and Mr Gami. In addition, there was a bundle of 130 pages and the claimant supplied some further documentation which included a schedule of loss and evidence relating to his finances.
9. On the second day of the hearing the claimant said that he was intending to bring a witness that day. I explained that he needed to make an application to do so, which he did. The Tribunal made the following decision:

The claimant has made an application on the second morning of the hearing to bring Vincent Ferrandes as a witness in this claim. He did not raise this at the preliminary hearing on the 1 November 2021 and it was not raised at all until last week when in an e-mail to the respondent and the Tribunal the claimant said he may bring a witness. He did not specify who that would be. The claimant said he was unable to turn his mind fully to the case from November 21 to June 22 due to his ill health but also that the witness had been unsure as to whether he was prepared to attend. It is, in fact, still unclear as to whether he will attend. The witness has declined to provide a witness statement. Mr Bidnell-Edwards, for the respondent, objects to the application.

He notes it was not raised at the preliminary hearing, the witness will be unprepared, he will not have read the meeting notes and evidence on which he will be questioned, and there is no witness statement from him. He says that as a result the respondent is at a disadvantage and there is no real reason why this is being raised so late. After hearing from the parties the Tribunal refuses the application by the claimant that he be allowed to bring Vincent Ferrandes as a witness to give oral evidence in this case today. Whilst the Tribunal appreciates the claimant's difficulties in relation to his health and in acting as a litigant in person, the claimant was aware last week that he may have a witness, he did not raise this yesterday at the outset of the hearing and the respondent would clearly be disadvantaged in that it has had no time to prepare in relation to this witness. It is not clear how the claimant will be disadvantaged if the application is refused. Furthermore, no time allowance has been made in this listing for a further witness.

10. The Tribunal found that the documentary evidence provided in the bundle was incomplete. The notes of the investigation meeting were not included. When the Tribunal enquired about this it was advised that a search had been made for the notes but they could not be located. The Tribunal was left to make the discovery about the missing notes itself and it was not covered, for instance, by Mr Gami in his witness statement. Mr Limbu refers to communications with HR but no documentary evidence was provided to support the reference. On questioning by the Tribunal, he explained that he had the evidence but had been unable to print it out. From Mr Limbu's oral evidence, it does not appear to the Tribunal that those responsible for disclosure noticed this or assisted. Whether the email at page 73 was an appeal notice or not was not clear and it was not identified as such in the index. There does not appear to have been a search for the earlier document referred to in that email. Clearly it is a matter for the parties to decide what is relevant disclosure, but it is also their duty to assist the Tribunal to further the overriding objective. The respondent is not without significant resources. Having made these points the Tribunal notes that this is the claimant's claim and he has clearly failed to review the bundle and draw to the respondent's attention any missing documents.

Findings of Fact

11. The claimant was employed by the respondent as a trading assistant from 22 August 2020. He was interviewed for the position by Ranit (then known as Bibash) Limbu, one of the respondent's customer and trading managers.
12. During November and December 2020 Mr Limbu contacted the claimant, whilst Mr Limbu was at home, by telephone or WhatsApp, on a number of occasions to give him instructions as to what he needed to do whilst on shift that day. There were also occasions where Mr Limbu, when at work, contacted the claimant by telephone or WhatsApp when the claimant was not at work, in order to give him information about his shifts. Mr Limbu confirmed that he carried out these acts and gave evidence that these were acts he carried out in relation to all of those he managed. He also said that most of the people in the same team as the claimant were of Indian origin. The claimant did not dispute the evidence that most of the team were Indian and

said he had no knowledge of whether other people received such communications. The Tribunal finds that Mr Limbu had a practice of contacting the employees he managed when he was at home in order to give instructions on work duties and of calling people who were not at work to provide shift information. It finds that the claimant was not treated differently to other employees in this respect.

13. The claimant said that he was upset and stressed by the calls Mr Limbu made to him when the claimant was at work as he was being given instructions on tasks by two different managers – Mr Limbu who was off site and also the duty manager onsite. The Tribunal accepts that the claimant found this situation to be stressful and unpleasant.
14. The claimant raised with Janina Bahrynowska, a manager senior to Mr Limbu, In November and December, the fact of Mr Limbu giving him instructions when Mr Limbu was at home and also calling him at home about his shifts. Ms Bahrynowska said she would speak to Mr Limbu but did not and when the claimant raised it a second time she was not interested. Ms Bahrynowska did not attend to give evidence on these matters. The Tribunal note that she recused herself as appeal manager when the claimant suggested he had spoken to her about his problems with Mr Limbu, and it is noted by the new appeal manager, Ms Maloney, in the appeal hearing notes that Ms Bahrynowska later denied that there had been such a conversation. The Tribunal accepts the claimant's evidence that he raised these two matters with Ms Bahrynowska and she took no action. The claimant did not say, and there is no evidence to suggest, that he raised with Ms Bahrynowska that the actions of Mr Limbu were motivated by the claimant's race.
15. The claimant says that between mid-November and mid-December 2020 Mr Limbu said to him that he could dismiss him at any time. He said this was in the context of him raising with Mr Limbu that he had not correctly recorded the claimant's hours. Mr Limbu denied saying this in written and oral evidence. He said that the claimant was on probation at this time so he could have dismissed him, he did not need to threaten the claimant. He said that he had recorded all of the claimant's claimable hours. Mr Limbu also gave evidence that he had reported a particular telephone conversation he had with the claimant to HR who advised that he could start formal action. Mr Limbu chose not to and to address the matter informally. The allegation that Mr Limbu said to the claimant that he could dismiss him at any time is one to which there were no witnesses, and the Tribunal can only weigh up the evidence provided. The Tribunal finds, on the balance of probabilities, that Mr Limbu did not say to the claimant that he could dismiss him at any time. The claimant's evidence to the Tribunal was, at times, inconsistent and at times incredible. Mr Limbu was a credible and consistent witness.
16. Mr Limbu says that on 28 November 2020 the claimant called him at home to complain about a colleague, and Mr Limbu explained the grievance process to the claimant. He said the claimant became aggressive and criticised him. Mr Limbu asked the claimant not to speak to him in that manner. Mr Limbu said he called HR for advice the following day and was told he could commence a formal investigation, but he decided against that and received

further advice on how to address the matter informally. The Tribunal queried why this evidence was not in the bundle. Mr Limbu said that the evidence was present on the HR portal, but he could not print it off as he needed to scroll up and down to read it. The claimant said that he did not call Mr Limbu on 28 November, but Mr Limbu called him. When asked if he had ever called Mr Limbu he said he did not remember, but he had not called him on 28 November, then said that he had called back at times when he saw he had a missed call from Mr Limbu. He said that he had never had a problem or disagreement with a colleague during his employment with the respondent and denied that this conversation took place. The Tribunal accepts Mr Limbu's evidence about this conversation, and it accepts that he contacted HR the next day. His evidence about the telephone conversation is credible as it is part of the wider evidence about why he asked the claimant to a meeting on 3 January 2021.

17. A colleague of the claimant raised an issue with Mr Limbu by WhatsApp on 1 January 2021. The colleague said that the claimant advised him not to work so fast. Mr Limbu said that he had not had time due to the busy Christmas period to have an informal discussion with the claimant about his behaviour on 28 November 2020 and decided to address both of these matters when he received the colleague's complaint.
18. Mr Limbu asked the claimant to come to a meeting with him on 3 January 2021 in the general office. The claimant's evidence is that Mr Limbu called him while he was at lunch, used a high tone, and demanded he come immediately. Mr Limbu said he called the claimant, who said he was on his lunch, and asked him to come when he had finished eating. It is not necessary for the Tribunal to make a finding on this point.
19. Mr Limbu's account of the meeting is that the claimant came to the meeting and complained about other colleagues. Mr Limbu started trying to explain that the meeting was about 28 November and was about to refer to the WhatsApp of 1 January 2021 when the claimant became aggressive and began to shout. As someone else entered the office at this time he took the claimant next door to the training room and the claimant continued in an aggressive and argumentative manner, making various allegations about Mr Limbu's management style. Mr Limbu tried to calm the claimant. He would not be calmed and Mr Limbu therefore asked Josh Corcoran, his co-manager, to join the meeting to help calm the claimant and to act as a witness. The claimant said that if Mr Limbu had a representative, he wanted one and called on his colleague Vincent Ferrandes to come into the room. Mr Ferrandes was not keen to do so and Mr Limbu told him that he could do so if the claimant wanted him to. At this point Mr Corcoran began to take a note of the meeting. Mr Ferrandes is from the same city in Goa as the claimant. Mr Limbu said that the claimant began speaking and swearing in his own language. He said the claimant was swearing at him in his own language, using foul language and that he decided to suspend him. He went through the suspension procedure with the claimant and the claimant then began to swear at Mr Limbu in English. Mr Limbu decided to call security who escorted the claimant

from the premises. Before he left, the claimant said to Mr Limbu that he should come outside.

20. The claimant's account of the meeting is that Mr Limbu began asking him about other colleagues and he told him he was not interested in other colleagues. Once they moved to the training room Mr Limbu raised that the claimant had not completed a cleaning task in what the claimant describes as a high tone. The claimant raised the issue about Mr Limbu giving him instructions when Mr Limbu was at home and this led to Mr Limbu calling the claimant a 'bloody Indian'. The claimant says that when Mr Corcoran came into the room and began to take a note he asked him to write down both sides. Mr Corcoran was rude and then wrote what Mr Limbu told him to write, which was false. Mr Limbu and Mr Corcoran tried to force him to sign the meeting notes and when he would not they called security. In oral evidence the witness denied that he had been angry in the meeting, that he had sworn at Mr Limbu either in his own language or in English, or that he spoke in any language other than English during the meeting. He said that Mr Limbu, who is of Nepalese origin was 'grumbling' in his own language.
21. Following the claimant's suspension the respondent carried out an investigation. Michael King was the investigation manager. He took statements from Mr Corcoran and Mr Limbu. Mr Ferrandes declined to give a statement. He interviewed the claimant. This was not in dispute though the notes of that interview were not before the Tribunal. Dipak Gami, the disciplinary hearing manager, confirmed in evidence that Mr King had recommended that the matter be considered at a disciplinary hearing and that he, Mr Gami, had received the notes of Mr King's interview with the claimant. Those notes are referred to in the notes of the disciplinary hearing
22. The claimant attended a disciplinary hearing with Mr Gami on 14 January 2021. Maureen Burns took a note of the hearing. The claimant declined the offer to have a representative at the meeting. Mr Gami refers in the meeting to the investigation notes which, he says record that the claimant said he swore and got angry. The claimant denied this but later in the meeting said that he got angry because Mr Limbu called him a bloody Indian and said then he (the claimant) told Mr Limbu to fuck off.
23. Mr Gami dismissed the claimant with immediate effect. The reasons given in the decision letter are that the claimant was dismissed for gross misconduct, namely using inappropriate behaviour towards a line manager, swearing at him in the claimant's own language and showing aggressive behaviour.
24. The claimant makes no complaint of discrimination on the grounds of race after the dismissal on 14 January 2021 but the Tribunal notes the following chronology. Mr Pereira appealed the dismissal. He sent an email to ER support on 14 January 2021 referring to a previous complaint against Mr Limbu, accusing him of harassing him and referring to the comment 'bloody Indian'. In oral evidence he said that this was his appeal letter. A first appeal hearing was set for 2 February 2021 with Janina Bahrynowska as appeal manager. When the meeting commenced the claimant referred to his previous complaints to her about Mr Limbu. Ms Bahrynowska said she could

not remember that but if she was involved, she could not hear the appeal. The appeal was then heard by Jane Mahoney on 23 February 2021. Ms Mahoney upheld Mr Gami's decision to dismiss the claimant. The appeal meeting notes record the claimant as saying that when Mr Limbu called him a bloody Indian, he told Mr Limbu to fuck off.

25. The events set out at paragraphs 9-16 above encompass three of the claimant's allegations of race discrimination: Mr Limbu calling him a bloody Indian, his suspension and his dismissal. The claimant's case is that all of the records of the meeting of 3 January 2021 are false. He says that in each case the respondent tried to force him to sign the minutes but he refused to do so. He says that all of the managers, Mr Limbu, Mr Gami, Mr Cororan and Ms Bahrynowska, as well as the note takers Ms Burns and Kelly McGee, and presumably the investigation manager Mr King, were part of a conspiracy to protect Mr Limbu. His case is that the conspiracy included the falsification of Mr Corcoran's account of the meeting on 3 January 2021, as well as the falsification of the claimant's answers to questions in the investigation, disciplinary and appeal meetings. Further that the witness statements given by Mr Corcoran and Mr Limbu to Mr King on 9 January 2021 are false.
26. The Tribunal notes that the contemporaneous note of the meeting on 3 January 2021 is cohesive and records the claimant swearing in English and in his own language. It records the claimant's colleague Vincent as telling the claimant to calm down and warning that he is putting his employment at risk. It does not record Mr Limbu using the term 'bloody Indian' nor does it record the claimant telling Mr Corcoran that Mr Limbu said that. The notes are credible, and the statement given by Mr Corcoran on 9 January 2021 is consistent with the notes. As stated, there is no reference to the comment 'bloody Indian' and Mr Limbu gave oral evidence that he was not aware of this allegation until Mr King asked him about it during his (Mr King's) interview with the claimant on 9 January 2021. Mr Limbu said the allegation shocked him. Mr Gami is of Indian ethnic origin. He has worked with Mr Limbu for two years. He said that he had never encountered any anti-Indian discrimination from him. The Tribunal heard evidence that there were a number of people of Indian ethnic origin in the claimant's team, some of whom came from the same town as the claimant, but there was no evidence before the Tribunal of any similar accusations against Mr Limbu.
27. The evidence that the claimant was angry and shouting during the meeting on 3 January 2021 is compelling. It is recorded contemporaneously, Mr Corcoran and Mr Limbu both gave witness statements to Mr King that the claimant had been angry and swearing. The claimant admitted to Mr King, Mr Gami and Ms Maloney that he had been angry and that he had sworn in English at Mr Limbu though he denied this in oral evidence. His evidence that there was a conspiracy between seven people, one of whom is of Indian origin, to falsify records to protect a manager is simply incredible and unsupported by any evidence other than his word.
28. The Tribunal finds that Mr Limbu did not make the comment 'bloody Indian' or any version of that comment including the word Indian to the claimant on 3 January 2021. The Tribunal notes that the claimant has been consistent in

this allegation since at least 9 January 2021, however, the claimant's evidence about his own behaviour on 3 January 2021 is not credible, and nor is his evidence about a conspiracy and falsification of notes, whilst conversely there has been no evidence provided to the Tribunal that would lead it to conclude that Mr Limbu was not a truthful witness.

29. The Tribunal accepts the evidence that the claimant was angry and swearing during the meeting on 3 January 2021. It finds that Mr Limbu suspended the claimant because of that behaviour on 3 January 2021 and that Mr Gami dismissed the claimant on 14 January 2021 because he decided on the evidence before him that gross misconduct had been proven.

Submissions

30. Mr Bidnell-Edwards, for the respondent, said that there were two explanations for why the claimant may have given evidence at the hearing that was so at odds with all contemporaneous records. The first of these was that he had not understood at the time of his employment that it was inappropriate to swear or be insubordinate to managers in the workplace. The second is that he is confused about what happened and has moved on. He now understands his behaviour was unacceptable and suggests it did not happen. Mr Bidnell-Edwards said the claimant cannot have any credibility. He was evasive in questioning and at times realised the cogency of his evidence was in danger and moved it to fit. He said that Mr Limbu's evidence was of a higher calibre than the claimant's. Mr Bidnell-Edwards said that the allegations were not made out and if the Tribunal found that they were, the respondent had provided reasons for its actions that were not connected to discrimination.
31. The claimant said that the witnesses both at the hearing and during the disciplinary process had made false allegations. He said Mr Limbu should have been more polite when asking him to the meeting on 3 January 2021. He said that the respondent, including HR and another manager whom he had emailed, had ignored his claims of harassment and mental torture. Mr Limbu should not have called the claimant from home when the claimant was on duty and this had caused stress, mental torture and the feeling of being harassed to the claimant. He said that after he was dismissed he had become depressed. He had no money and could not pay his rent. He was unable to see his family. The situation had led him to become ill and he had been hospitalised. He was still overdrawn.

Decision and Reasons

32. The claimant alleges five acts of direct race discrimination. He alleges that three of these same acts also constitute harassment.
33. In direct discrimination it is for the claimant to establish, on the balance of probabilities, the factual basis of their claim including facts from which a Tribunal could conclude, in the absence of any other explanation, that the employer has acted in breach of s13 of the Equality Act 2010. It is only once this is established that the burden of proof switches to the respondent, i.e., the respondent then has the responsibility of providing a reason for its act or omission which is not discriminatory. Harassment occurs where a person engages in unwanted conduct which is related to a protected characteristic

and which has the purpose or effect of:- (a) violating the employee's dignity or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee (section 26 of the 2010 Act).

Act A: The allegation that Mr Limbu, between mid-November 2020 and the claimant's suspension on 3 January 2021, contacted the claimant to inform him of the duties he wanted the claimant to perform (harassment and direct discrimination).

34. The Tribunal found that Mr Limbu contacted the claimant when Mr Limbu was at home and the claimant was working to inform him of the duties he wanted the claimant to perform. The Tribunal also found that Mr Limbu called the claimant from work, when the claimant was not at work, to give information about shift times. On a consideration of the evidence the Tribunal does not accept that this was an act of harassment as there is no evidence that the act was related to the protected characteristic of race, nor does it find that it is an act from which it could be inferred, in the absence of another explanation, that Mr Limbu's actions were discriminatory on the grounds of race. The Tribunal accepts that the claimant did not find it acceptable that Mr Limbu was calling him about duties to perform or shifts, and it accepts that the claimant was upset by what he saw as being given contradictory instructions by managers on site and off site, but there is nothing to suggest that Mr Limbu's actions were motivated by the claimant's race.

Act B: The allegation that Mr Limbu, at the end of November 2020, said to the claimant 'I can dismiss you whenever I want' (harassment and direct discrimination).

35. The Tribunal found on hearing evidence from the claimant and Mr Limbu that Mr Limbu did not make this statement. It therefore concludes that no act of discrimination can be supported by this allegation.

Act C: The allegation that Mr Limbu, on 3 January 2021, referred to the claimant as 'you Indians' (harassment and direct discrimination).

36. The Tribunal found on hearing evidence from the claimant and Mr Limbu that Mr Limbu did not make this comment or a similar comment including the word 'Indians'. It therefore concludes that no act of discrimination can be supported by this allegation.

Act D: The allegation that Mr Limbu suspended the claimant on 3 January 2021 (direct discrimination).

37. The Tribunal found that Mr Limbu suspended the claimant on 3 January 2021. On a consideration of the evidence the Tribunal does not find that it is an act from which it could be inferred, in the absence of another explanation, that Mr Limbu's actions were discriminatory on the grounds of race.

Act E: The allegation that Mr Gami dismissed the claimant on 14 January 2021 (direct discrimination).

38. The Tribunal found that Mr Gami dismissed the claimant on 14 January 2021. On a consideration of the evidence the Tribunal does not find that it is an act from which it could be inferred, in the absence of another explanation, that Mr Limbu's actions were discriminatory on the grounds of race. The Tribunal notes that in oral evidence the claimant said that Mr Gami's actions were not motivated by race and also that in his cross examination of Mr Gami, suggested to Mr Gami that his actions had been for the purpose of protecting Mr Limbu, which is a reason unconnected to race.
39. The Tribunal considered, in relation to direct discrimination, whether looking cumulatively at those acts relied upon which the Tribunal found had occurred, the acts complained of were done on discriminatory grounds. These are Acts A, D and E. No evidence was provided by the claimant which would lead the Tribunal to conclude that in the absence of any other explanation the actions of Mr Limbu and Mr Gami, were carried out because of the claimant's race.
40. For these reasons the claimant's claim of discrimination on the grounds of race is dismissed.

Employment Judge Anderson

Date: 1 September 2022

Sent to the parties on: 15 September 2022

N Gotecha

For the Tribunal Office