EMPLOYMENT TRIBUNALS

Claimant: **Mr Eddison Chidzvondo**

Respondent: **Amazon UK Services Limited**

Heard at: **Watford** **On: 24, 25 & 26 May 2023**

Before: **Employment Judge Bansal**

Members **Mr D Sutton**
Mr T Poil

Representation

Claimant: In person

Respondent: Mr P Lockley (Counsel)

JUDGMENT

The unanimous judgment of this Tribunal is that the claimant's complaints of race discrimination and harassment are not well founded and are dismissed.

REASONS

(written reasons provided following an oral request made by the claimant at the hearing on 26 May 2023)

Introduction

1. By a claim form presented on 18 May 2021, the claimant made complaints of: race discrimination and harassment related to his race.

2. By a response filed on 11 October 2021, the respondent resisted the complaints and also raised a preliminary issue contending the Tribunal did not have jurisdiction to hear the complaints as the claimant was not an employee of the respondent.

Issues

3. The issues in this case were identified and agreed at a preliminary case management hearing on 24 June 2022, before Employment Judge J Lewis QC. These were recorded in the Case Management Order sent to the parties on 29 June 2022.

4. At the start of this hearing, Mr Lockley, counsel for the respondent, addressed the tribunal to vary paragraph 11.1 of the List of Issues to read:

   "Was the Claimant employed by either Team Prevent and/or Nevile Unique Care Ltd"

5. The amendment arose following the claimant's disclosure of his employment information and his Directorship with Nevile Unique Care Ltd ("Nevile"), a company which was incorporated on 13 January 2021 and registered with TP Health Ltd ("Team Prevent") on 19 January 2021. The claimant did not oppose this amendment. The tribunal did consider the claimant's employment status to be a key issue.

6. Accordingly, the List of Issues previously agreed, were amended and agreed for the purposes of this hearing. The agreed List of Issues are set out below.

Agreed List of issues

7. Contract worker status (s 41 EqA 2010)

   At the material time (i.e on 10 February 2021) was the claimant a "contract worker" for the purposes of s41(7) of the EqA and was the respondent a "principal" within the meaning of s41(5). In particular;

   7.1 Was the claimant employed by TP Health ("Team Prevent") and/or Nevile Unique Care Ltd ("Nevile")

   7.2 Was the claimant supplied by Team Prevent to the respondent pursuant to a contract between Team Prevent and the respondent?

   7.3 Did Amazon make work available for the claimant?

8. Direct Discrimination (s13 EqA)

   8.1 The claimant describes his race as black. He is British but also relies as a relevant characteristic of being African origin.

   8.2 The claimant compares himself to;

   (a) Layla, who was collecting the test kits and putting them in the box to be sent to the laboratory, and was an employee of Amazon and is white and Romanian.

(b) A hypothetical comparator, being a person who is white and/or not black and/or not of African origin who was provided by an agency to carry out the role as supervising clinician.

8.3 Did Mikolaj Zychla (for whom the Respondent accepts it bears vicarious liability) do any of the following things on 10 February 2021 (between about 10.30am and 11am);

(a) Refusing to permit the claimant to take a short break during his shift alleged to be in a small/congested and hot cubicle) to use the toilet and get some fresh air or to get a hot drink and trying to force him to return to work without a break. (The respondent states that the claimant was permitted to take a break of that nature but that the claimant stated he was taking of around 30 minutes to have breakfast and was not permitted to do so. The claimant disputes this)

(b) The way that Mr Zychla spoke to the claimant in front of colleagues, ranting and shouting.

(c) Stating it was against Amazon Dunstable policy to leave the clinic before the end of the shift and in response to the claimant questioning this and asking whether it was “Amazon Africa” repeatedly stating it was “Amazon UK”.

(d) Requiring the claimant to leave the respondent’s premises in response to the claimant’s refusal to return to work without any break despite the conditions making it inhuman not to take a break.

8.4 Was that less favourable treatment?

8.5 If so, was it because of race?

8.6 Did the treatment amount to a detriment?

9 <u>Harassment related to race (s26 EqA)</u>

9.1 The claimant relies on the same alleged treatment as relied upon in relation to direct discrimination. Did Mr Zychla do those things?

9.2 If so, was that unwanted conduct?

9.3 Did it relate to race?

9.4 Did the conduct have the purpose of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

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

10 Remedy for discrimination or harassment

10.1 What financial losses has the discrimination or harassment caused the claimant?

10.2 What injury to feelings has the discrimination or harassment caused the claimant and how much compensation should be awarded for that?

10.3 Has the claimant sustained psychological injury amounting to a personal injury?

10.4 Should there be an award of aggravated damages?

10.5 Should interest be awarded? How much?

Evidence

11. The tribunal heard evidence from the claimant. He did not present any other witnesses. He did not prepare a written statement and neither did he exchange any statement as ordered. The claimant explained to the tribunal that he had informed the respondent representative in correspondence that he had nothing to add to his previous statements made. Therefore the tribunal accepted the claimant's statement dated 5 October 2022 (bundle pages 74 & 75) as his evidence in chief. In addition, in cross examination, he confirmed that his statement dated 12 February 2021 (pages 35-37) was true to the best of his knowledge and belief. This was also accepted as his evidence.

12. For the respondent, the tribunal heard evidence from Mr Mikolaj Zychla (Area Manager with the respondent). He provided a written statement and was cross examined by the claimant.

13. There was an agreed bundle of 117 pages. At the start of the hearing the claimant provided the second page to page 73. This was added to the bundle at page 73A. Also Mr Lockley provided additional documents in the form of Companies House documents and Articles of Association for Nevile. These were added to the bundle at pages 89 to 117.

14. At the start of the hearing Mr Lockley provided an opening note. The tribunal heard oral submissions from both parties. Neither party provided written submissions. Mr Lockley, in support of his oral submissions provided two case authorities, namely *Pimlico Plumbers Ltd v Smith (2018) UKSC 29 and MHC Consulting services Ltd v Tansall (2000) ICR 789. B*oth cases were relevant to the contract worker status issue.

15. In our deliberations, we had regard to and applied the applicable statutory provisions and relevant case law.

Findings of fact

16. The respondent is a UK subsidiary of a global online commerce business which sells a range of goods and services to consumers, enterprise and content creators.

17. From September 2020, the respondent set up a designated on-site clinic to enable voluntary Covid-19 testing for its employees at its LTN4 Fulfilment Centre at Dunstable. ("LTN4 Dunstable") The testing clinic was housed in a portacabin located outside the main building.

18. At the respondent's main building, there was a works canteen for use by the workers. This was situated on the 1st floor above the entrance/reception area of the main building. It was sign posted on site and was some 2 minutes' walk from the portacabin.

19. At the material time, which for the purposes of this case, was February 2021, the Covid-19 testing was conducted in blocks of five hours each, multiples times per week. The morning testing block was carried out between 7.30am – 12.30pm. The testing was done in slots of 10 minutes each, 4 people at a time. The testing was overseen by a trained supervisor or clinician who was required to be present at the site at all times. If the supervisor or clinician left the site for any reason, the respondent's procedures required the testing to cease immediately. In particular, if the testing was to stop for a long break in excess of 10 minutes, the supervisor/clinician had to notify the Flow Director and obtain his permission to leave the cabin.

20. At the material time, the respondent engaged Team Prevent to provide Covid19 testing support services across its various sites, including at LTN4 Dunstable. They were responsible for the recruitment, training, engagement; rostering and allocation of the clinicians it supplied to the respondent across its various sites.

21. The supervisors and clinicians were not direct employees of the respondent.

The Claimant

22. The claimant describes his race as black. He is Black British and of African origin.

23. At the relevant time, he was a Nursing Assistant and also a Student Nurse pursuing a mental health nursing degree.

24. Prior to 13 January 2021, the claimant contracted with Team Prevent through an umbrella company, the name of which remains unknown, as the claimant

did not give disclosure of this and neither did he reveal its identity to this tribunal when questioned.

25. From 13 January 2021, the claimant formed his own company, Nevile. He was noted as the sole Director. This company was registered with Team Prevent on 19 January 2021. From the New Supplier Registration Form (pages 71-72) Nevile supplied services to Team Prevent. It is noted the contact details on the Form are that of the claimant. He was the controller of this company.

26. In an email sent to the respondent's solicitors (page 58) the claimant stated he was *" working as self-employed but under Team Prevent the main contractor with Amazon".* The claimant provided no evidence of any written contract of employment with Nevile or any documentation in the form of wage slips, P60 or payroll information to show he was an employee of Nevile. In evidence the claimant explained he withdrew monies from the company account to pay himself.

27. From the rota records provided by the respondent, these record the claimant carried out duties at various sites of the respondent from 3 November 2020 to 31 March 2021, on which date the respondent ceased to contract with external suppliers for assistance with their testing.

28. Also these records, show that prior to 10 February 2021, the claimant only attended at LTN4 Dunstable on 8 December 2020. This is inconsistent with the claimant's evidence that he believed he had attended the site on two consecutive nights, two to three weeks before the incident on 10 February 2021 (page 44-para 3.8) We accept the information recorded in the respondent's records to be correct.

<u>10 February 2021</u>

We now turn to the events which occurred on 10 February 2021, which is the subject matter of this claim.

29. On 10 February 2021, Team Prevent supplied the claimant to the respondent's Covid -19 testing at LTN4 Dunstable, as the supervising clinician for the scheduled shift of 7.30am to 12.30pm. He was the only clinician supplied by Team Prevent for LTN4 Dunstable that day.

30. That morning the claimant admitted he arrived late due to the weather and traffic conditions. (page 80) The claimant recalls arriving at 7.45am. The respondent recorded his arriving nearer 8am. However, this caused a delay to the scheduled testing, which is not in dispute.

31. Although the respondent did not provide any written documentation concerning the break entitlement for the supervisors/clinicians supplied by Team Prevent at LTN4 Dunstable, the tribunal accepts the respondent's position that as the testing window was only 5 hours duration, there was no 30 minutes rest break scheduled for the clinicians or contracted staff. However, they did provide for short comfort breaks of up to 10 minutes, as and when needed.

32. The tribunal also accepts that any clinician seeking to take a longer break rather than a short comfort/refreshment break had to report to the Flow Director so that cover could be arranged, otherwise the testing would have to be stopped.

33. On that day, Mr M Zychla was the Manager in charge of the Covid 19 testing process at the LTN4 Dunstable site.

34. At about 10.30am, Mr Zychla was informed by the Flow Director (Mr Kennedy) via an internal message that the claimant was requesting a 30 minute break. According to Mr Zychla he had been previously informed by the Mr Adrian Mabbs (HR Team) that Team Prevent clinicians were not entitled to a break if they only worked for up to 5 hours. They were, however, entitled to a short comfort/refreshment break.

35. Mr Zychla went to speak with the claimant at the portacabin used for testing. They met outside. This is the first time they had physically met and spoken with each other. According to Mr Zychla, the claimant was on his way out of the cabin.

36. There is a dispute between the claimant and Mr Zychla as to the discussion held. Mr Zychla claims the claimant told him he was taking a break of 30 minutes as he needed to have his breakfast, which he missed because of his arriving late. Mr Zychla maintains that he explained to the claimant that he was not entitled to a 30 minute break, but he could take a short refreshment break. He also explained to him that his understanding was that Team Prevent clinicians do not have a scheduled 30 minute break for working a 5 hour shift. Mr Zychla said the claimant would not accept this and insisted on taking a 30 minute break.

37. The claimant's account and evidence is different. His account is that Mr Zychla confronted him, and asked him why did he leave the clinic. The claimant told him he needed to use the toilet and take a few minutes break. Mr Zychla challenged him aggressively, and told him that he was the first clinician who had left the clinic before completing the 5 hour shift. The claimant told Mr Zychla that he was violating his working rights to use the toilet and have a break. Mr Zychla then started ranting at him in the presence of others standing around the cabin, stating this is Amazon UK. The claimant then responded by asking him, " am I working in Amazon Africa"

38. Mr Zychla in evidence and cross examination refuted the claimant's account. He stated he did not abuse shout or rant at him. He was clam and professional in their

exchange. He does recall the claimant saying to the effect, "is this Amazon UK or Amazon Africa". He remembers this because it arose when he was explaining to the claimant that he was not entitled to a 30 minute break because he was only working a 5 hour shift.

39. We prefer the account and evidence of Mr Zychla. We found him to be a credible and consistent witness. We find that he acted in a calm and professional manner. He did not shout or rant.

40. We find that the claimant did insist on taking a 30 minute break to eat his breakfast. Mr Zychla's contemporaneous note made after the incident at 11.22am, after the claimant left the premises, states *"Today at around 10.30 clinician requested 30mins break. The clinician has been advised that 30min break in the middle of testing window is not allowed, however short break for refreshments has been offered, the clinician disagreed with those rules and decided to go for break anyway, therefore has been asked by UV AM to leave the site"* (page 81). This note is consistent with his evidence. Also had the claimant only wanted a short break Mr Zychla would not have been instructed by the Flow director to attend to speak with the claimant.

41. We accept that the claimant believed he was entitled to a 30 minute break, which he claims he had been given at respondent's other sites, he had worked at.

42. We accept Mr Zychla did offer the claimant a short refreshment break but the claimant insisted on a longer break. Again, we note this offer of a short break is noted in the contemporaneous note referred to above.

43. We also find that Mr Zychla did not use the words "Amazon UK" in their conversation. We accept that he tried to explain to the claimant the rules relating to clinicians having a break and that under UK law he was not entitled to a break as he was contracted to work for 5 hours only. This was his understanding. We find the claimant used the words "Amazon UK and Amazon Africa" and not Mr Zychla.

44. At the end of their conversation, Mr Zychla told the claimant that if he insisted on taking a 30 minute break, it would be necessary to arrange cover, and if cover was arranged, his services would not be required. The claimant refused to take a short break, which prompted Mr Zychla to ask the claimant to leave the site. We accept Mr Zychla had the authority to do this, and his reason for doing so, was that the claimant refused to carry out his shift. In evidence, the claimant accepted that he refused to complete his shift and that was the reason why he was asked to leave.

45. Although, the claimant did not mention this in either of his two statements, in evidence he stated that before leaving the site, he took details of Layla (his comparator) who was in the reception area. He then left the site and did not return to LTN4 Dunstable again.

The relevant law

Direct race discrimination

46. Section 39 of the Equality Act 2010 provides that an employer must not discriminate against an employee of his by, amongst other things, subjecting him to a detriment.

47. Section 13 of the Equality Act 2010 provides that a person (A) discriminates against another (B) if, because of a protected characteristic (race in this case) A treats B less favourably than A treats or would treat others.

48. Section 23 of the Equality Act 2010 provides that on a comparison of cases for the purposes of s13, there must be no material difference between the circumstances relating to each case. In other words, the relevant circumstances of the complainant and the comparator must be either the same or not materially different. Comparison may be made with an actual individual or a hypothetical individual.

49. Bad treatment per se is not discriminatory; what needs to be shown is worse treatment than that given to a comparator.- ***Bahl v Law Society 2004 IRLR 799 (CA).*** Unreasonable behaviour alone cannot found an inference of discrimination but if there is no explanation for the unreasonableness, the absence of an explanation may give rise to this inference of discrimination. The Court of Appeal said that proof of equally unreasonable treatment of all is one way of avoiding an inference of unlawful discrimination, but it is not the only way. At paragraph 101 Gibson LJ said quoting from Elias J in the EAT in the same case*; " The inference may also be rebutted – and indeed this will, we suspect, be far more common – by the employer leading evidence of a genuine reason which is not discriminatory and which was the ground of his conduct. Employers will often have unjustified albeit genuine reasons for acting as they have. If these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination to be made."*

50. The fact that a claimant has been treated less favourably than an actual or hypothetical comparator is not enough to establish discrimination. Something more is required, In ***Madarassy v Nomura International Plc (2007) ICR 867,*** Mummery LJ said; *"The base facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, a sufficient material from which a tribunal could conclude that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination"*

51. In determining whether discrimination has taken place, the tribunal must enquire as to the conscious or subconscious mental processes which led the alleged discriminator to take a particular course of action in respect of the

claimant, and to consider whether a protected characteristic played a significant part in the treatment. ***(Nagarajan v London Regional Transport and others (1999) ICR 887 (HL)***

Harassment

52. Section 40 of the Equality Act 2010 provides that an employer must not, in relation to employment by him, harass an employee. The definition of harassment is set out in section26(1) of the Equality Act 2010. A person (A) harasses another (B) if;

(a) A engages in unwanted conduct related to a protected characteristic (race in this case); 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.

53. Section 26(4) of the Equality Act 2010, provides that 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.

54. The protection from harassment, which applies only if the conduct is related to a protected characteristic, is not designed to protect claimant's from trivial acts that cause upset.

The burden of proof

55. Section 136 of the Equality Act 2010 sets out the burden of proof that applies in discrimination cases. Subsection (2) provides that f there are facts from which the Tribunal could decide, in the absence of any other explanation, that person (A) has contravened the provisions concerned, the Tribunal must hold that the contravention occurred. However, subsection (2) does not apply if A shows that A did not contravene the provision.

56. In **Barton v Investec Henderson Crosthwaite securities Ltd (2003) IRLR 332**, the EAT set out the guidance to tribunals on the burden of proof rules then contained in the Sex Discrimination Act 1975. This was approved by the Court of Appeal in ***Igen Ltd and others v Wong and others (2005) ICR 931***

57. The conventional approach involves a two stage approach by the tribunal. At

stage 1 the question is; can the claimant show a prima facia case? If so, then the tribunal moves onto stage 2 and asks itself; is the respondent's explanation sufficient to show that it did not discriminate.?

Contract Worker status

58. Section 83(2) of the Equality Act 2010 defines employment for the purposes of the Equality Act, as "Employment" means (a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work.

59. Section 41 of the Equality Act 2010 prohibits discrimination by a "principal" against a "contract worker".
60. Sections 41(5)-(7) of the Equality Act 2010 provides as follows;

s41(5) A "principal" is a person who makes work available for an individual who is
(a) employed by another person, and
(b) supplied by that other person in furtherance to which the principal is a party (whether or not that other person is a party to it)

s41(6) "Contract Work" is work such as is mentioned in subsection (5).

s41(7) A "contract worker" is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).

On the preliminary issue of - Contract worker

61. At the Preliminary Hearing held on 24 June 2022 EJ J Lewis QC recorded that the claimant asserted that at the relevant time he was employed by Team Prevent. The Claimant repeated this assertion in his statement of 5 October 2022. The Respondent has disputed that the claimant was a contract worker within the meaning of s41 Equality Act 2010, at the relevant time.

62. Mr Lockley in his submissions contended that for the claimant to be able to pursue his claim, he must show that, at the relevant time, he was an employee of either Team Prevent and/or Nevile, and that Nevile was contracting with Team Prevent.

63. We have analysed the factual position based on the limited information available and the claimant's own evidence, and make the following findings;

(a) the claimant was not an employee of the respondent at the relevant time. In fact, the claimant has not asserted that he was ever an employee of the respondent.

(b) prior to 13 January 2021, the claimant was contracted to the respondent through Team Prevent, presumably on some contractual agreement. The claimant has provided no evidence of any written contract or documentation with Team Prevent

to verify the terms of their agreement. Given that we are concerned with the position as of February 2021, we do not need to make any determination of his status before this date.

(c) as from 19 January 2021, Nevile registered with Team Prevent. The claimant was engaged with Team Prevent through Nevile. He was not working pursuant to a direct contractual relationship with Team Prevent. Therefore, this relationship with Team Prevent was not a "contract personally to do work" so as to make the claimant an employee within the definition in s83(2)(a) Equality Act 2010.

(d) there is no evidence to show that the claimant was an employee of Nevile nor was there any contract to do the work personally. The claimant has provided no documentary evidence to show his employment status with Nevile. In evidence, the claimant re-confirmed he was working on a self-employed basis, as confirmed in his email dated 28 July 2022 sent to the respondent representative. In which he states, "…*I am pleased to send you my Limited Company Certificate as I was working as a self-employed but under Team Prevent the main contractor with Amazon. The above is the name of my Limited Company name as (Nevile Unique Care Ltd. Mr Roberts representing Amazon was quiring about my contract, to be clear there was no formal contract but registration to supply services. I was working with family remotely and behind the scenes…"* (page 58)

63. We therefore agree with Mr Lockley's submission that there was no evidence that the claimant was employed by any other person for the purposes of s41(5) & s83(2) Equality Act 2010. Accordingly, this tribunal does not have jurisdiction to hear this claim.

64. However, if the tribunal has erred on this issue, the tribunal considers it should determine the claims in any event.

Conclusion

65. The claimant has relied on 4 allegations as set out in Paras 12.3 a-d. of the agreed List of issues, which he claims amount to direct discrimination on grounds of race. Race is a protected characteristic.

Comparator

66. The claimant has compared himself with an individual called Layla, a white Romanian employed by the respondent.

67. The respondent position is that there is no individual or employee of this name or identity with the respondent. The claimant maintains that he took the name of this individual before he left the site on 10 February 2021, although in evidence he accepted he may have taken an incorrect name. However he was adamant this individual was in employment with the respondent

68. The tribunal accepts the respondents' position as advanced that Layla is the wrong comparator, as there is no employee of this identity with the respondent. We therefore consider the allegations based on a hypothetical comparator. (p46 – Para 12.2(b))

Allegation 1

Did Mr Zychla refuse to permit the claimant to take a short break to use the toilet and get some fresh air and/or to get a drink.

69. The tribunal has preferred the evidence of Mr Zychla as stated above. We find the claimant was allowed a short break which the claimant refused as he insisted on taking a 30 minute break. Accordingly, the claimant has not shown a prima facia case on this allegation. Therefore the burden of proof does not shift to the respondent.

Allegation 2

The way that Mr Zychla spoke to the claimant in front of colleagues ranting and shouting

70. We find Mr Zychla did not rant or shout. He was calm and professional in his discussion. We consider that it was more probable the claimant acted in an unreasonable manner and raised his voice because he was not allowed the 30 minute break he insisted on taking.

71. The claimant has not shown a prima facia case. Therefore the burden of proof does not shift to the respondent.

Allegation 3

Mr Zychla repeatedly stating it was Amazon UK

72. Our finding is that Mr Zychla did not repeatedly state "Amazon UK". We find, Mr Zychla did not use these words, but the claimant did in reference to his asking, was this "Amazon UK or Amazon Africa". Again this complaint also fails as he has not shown a prima facia case.

Allegation 4

Requiring the Claimant to leave the respondent's premises in response to the claimant's refusal to return to work without any break despite the conditions making it inhumane not to take a break.

73. It is not in dispute that Mr Zychla asked the claimant to leave the site. We accept Mr Zychla's explanation for this. The claimant was asked to leave because he refused to carry on with his shift insisting he had his 30 minute break, which he wrongly believed he was entitled to.

74. We find that an employee not sharing the claimant's race in a similar situation, who refused to continue to work, would not have been treated any differently. Accordingly, we fail to see how requiring the claimant to leave, in these

circumstances, could amount to race discrimination. Accordingly, this complaint fails.

Harassment

75. In relation to the harassment complaint, the claimant relies upon the same allegations as made in the direct discrimination complaint.

76. Mr Zychla's refusal to give the claimant a 30 minute break and asking him to leave the site was unwanted conduct as perceived by the claimant. Mr Zychla has given his explanation for his actions as stated above. We therefore find such conduct was not related to the claimant's race.

77. The claimant believed these allegations were unwanted and related to his race. This belief is likely to have been because of his own personal view and perception, which he repeated in evidence, maintaining that Mr Zychla and Eastern Europeans are inherently racist. The tribunal was surprised and troubled by this view particularly as the claimant himself said that any form of racism is unacceptable and which was the underlying reason why he decided to pursue this claim before this Tribunal.

78. We are of the view the claimant's own perception is that he has been unfairly treated. Unlawful discrimination cannot be inferred from unreasonable or unfair treatment by itself. There has to be something more which is suggestive of a racist motive. On the facts, we found no evidence either direct or otherwise to show that the claimant's race was an issue or that it played any role in the incident of 10 February 2021.

Conclusion

79. For these reasons the claimant's claims fail and are therefore dismissed.

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Employment Judge Bansal

Date 22 June 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

03/07/2023

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J Moossavi

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FOR THE TRIBUNAL OFFICE