



EMPLOYMENT TRIBUNALS

Claimant:

Mr E Umerah

Respondent:

v Alliance Care (Dales Homes) Limited

Heard at:

Reading

On: 4 September 2023

Before:

Employment Judge Anstis
Mr A Kapur
Ms C Tufts

Appearances:

For the Claimant: In person

For the Respondent: Mr D Piddington (counsel)

REASONS

INTRODUCTION

1. These are the reasons for the tribunal's judgment of 4 September 2023. They are prepared in response to the claimant's request for written reasons, also dated 4 September 2023.
2. The claimant is a nurse. He worked for the respondent's care home in Hungerford.
3. As a nurse, when on night shift he was effectively the most senior individual on duty and supervised other more junior members of staff.
4. Following case management and deposit orders from EJ Alliot, the claimant's claim has two elements. The first is a claim of direct race discrimination in being subject to a disciplinary process following an incident on 16 July 2020 and subsequently issuing him with a written warning. The second is a claim for notice pay on the basis that he was dismissed, rather than resigned, from employment.
5. As regards the second point, the claimant's witness statement mentioned constructive dismissal, but that had not been mentioned before and it is clear that he did not mean that in the technical sense. He also did not seek to make any "heat of the moment" argument. His point was that although he intended to, and had, resigned with immediate effect by way of a text message, this

resignation had not been accepted by the respondent and he had taken no steps to later resign in the way the respondent required.

THE FACTS

6. The claimant was on duty on the night of 16 July. The care home had a relatively new resident who was both vulnerable to falls and prone to walking around the upper floor of the building (where her accommodation was) at night. Concerned about the risks of the individual falling on the stairs, a care assistant, Lenuta Ionita, tied up the stair gate with a call bell.
7. This was discovered the following morning by a maintenance worker, who reported it to the home manager. It was immediately identified that this posed a risk to residents being able to leave the building in the event of a fire alarm at night. The regional support manager was instructed to conduct an investigation, and did so, interviewing the claimant, Ionut Oprea (another nurse), Lenuta Ionita, Laurentiana Vancea (the deputy manager), and Darius Kapelewski (another nurse).
8. The claimant accepted in the meeting that he had agreed to a proposal he said was made by Ionut Oprea and Lenuta Ionita for the tying of the gate. He was clear in his evidence that as the senior member of staff on site he was willing to take the blame for this. He was also clear that the disciplinary action and eventual final written warning were justified and were appropriate. If there was any race discrimination it was not that he had been treated too harshly, but that his colleagues (who were not Black African) had been treated too leniently.
9. The respondent submitted a witness statement by Alexandra Crew who had been responsible for the disciplinary process. She did not attend to give evidence, and we were given no explanation of that. We have read her witness statement, large parts of which were not in dispute or simply amount to references to documents. We have taken into account the undisputed facts and documents, but not the assurances from Ms Crew that none of this was race discrimination.
10. The claimant named Ionut Oprea as a comparator, but Mr Oprea was not in the same circumstances as the claimant.
11. Ionut Oprea was within his probationary period. He was invited to a probationary review meeting on 21 July. He resigned on 21 July shortly before the probationary review meeting. The respondent was therefore not in a position to discipline him. We understand the claimant objects to him working out his notice for a week or so, although it has never been suggested that the stair gate incident was sufficiently bad to require that someone no longer worked with residents – whether they were on probation or not.
12. As for the others, in the case of Lenuta Ionita, she was within her probationary period. She was invited to a probationary review meeting on 30 July. She

attended the meeting and an outcome letter was given to her concluding that she had failed her probation and would be dismissed with immediate effect. One of the reasons given for that was her tying the stair gate.

13. It is correct that she was not invited to a disciplinary meeting but she did not have to be as she was within her probationary period. She was dismissed in a probationary meeting (at least in part due to the stair incident) and the claimant (who only received a final written warning) was not less favourably treated than her.
14. Laruentiana Vancea accepted she knew of the problem with the resident, but not the solution adopted by Lenuta Ionita. She was on probation and her probationary period was extended by two months.
15. It was the claimant's case that the stairgate tying had gone on since 10 July and that Laurentiana Vancea was aware of it, but he accepts he did not say that in his disciplinary investigation.

CONCLUSIONS ON RACE DISCRIMINATION

16. We see nothing in these facts from which we could conclude that the claimant had been subject to direct race discrimination. The claimant's direct race discrimination claim is dismissed.

CONCLUSIONS ON NOTICE

17. In a conversation by text message on the afternoon of 7 September (when the claimant was working) with Rebecca Challenger (a regional support manager) the claimant said that he was resigning with immediate effect. He accepted that this was his intention. The last message he was sent by Rebecca Challenger ended with "*Your resignation please send to Alex Crew regional manager.*". Later that evening he sent an email to Alex Crew saying "*I wanted to tender my resignation but I have decide to put it on hold*".
18. It is the claimant's case that the response from Rebecca Challenger about sending the resignation to Alex Crew amounted to a rejection of his resignation, and that he never re-resigned to Alex Crew. It is the respondent's case that the claimant's resignation by text message was effective and the communication of that to Alex Crew was simply an administrative matter.
19. It is clear that the claimant did resign by text message, but the question is what the significance of the message saying that he should send it to Alex Crew was. This does not, on the face of it, seem to be Rebecca Challenger saying that he cannot resign. She would have no authority to do that, and if an employee makes clear their intention to resign there is no legal principle that we are aware of that would then permit an employer to refuse that resignation. It may be that there is a period of reconsideration where both sides agree to treat the individual as never having resigned, but there can be no unilateral refusal of a

resignation any more than there can be a unilateral refusal of a dismissal. The claimant's resignation was effective as of the date it was communicated to Rebecca Challenger, and could not later be withdrawn without the respondent's consent. The respondent did not consent to its withdrawal, so it took effect. The claimant is not entitled to notice pay.

**Employment Judge Anstis
20 October 2023**

Sent to the parties on: 31 October 2023.....

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For the Tribunal Office