EMPLOYMENT TRIBUNALS

Claimant: Mr G Singh

Respondent: Boots Hearingcare Limited

Heard at: Wales (in person & CVP) **On: 18 August 2025**

Before: Employment Judge Shotter (sitting alone)

REPRESENTATION:

Claimant: in person
Respondent: Ms G Rezaie

JUDGMENT having been sent to the parties on **5 September 2025** and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

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The hearing

1. This is a liability hearing. The first two days were in person, the third day via CVP at the claimant's request as he has difficulties attending the hearing. The in person hearing was converted to a CVP with the agreement of the respondent.

2. The documents that the Tribunal was referred to are in a main bundle of 251 pages, together with number of two Metadata documents submitted in evidence during the final hearing marked "R1" and "R2", the claimant's witness statement electronically signed and undated, and on behalf of the respondent, the witness statement of Steven Rudd also undated. In addition, the Tribunal has considered the chronology and oral submissions made on behalf of the parties.

The pleadings

3. The Claimant applied for three jobs with the Respondent in August 2024 as a Hearing Aid Dispenser. He was not appointed to any of the roles. Early conciliation started on 15 October 2024 and ended on 20 November 2024 by certificate R272935/24/95.The claim form was presented on 21 November 2024. The response and grounds of resistance were presented on 13 January 2025.

4. The claim is about direct discrimination. The Claimant says that he was not appointed to any of the roles because of his race and/or ethnicity. The Respondent denies that this was the case.

Comparators

5. The claimant relies on a hypothetical comparator who is a white British employee.

The agreed issues

6. The parties agreed the issues as follows. The numbering set out in the list of issues has been duplicated by the Tribunal and these are the issues decided after hearing all the evidence and oral submissions.

7. The claimant's witness statement deals with a number of allegations he had previously litigated over. The present complaint related to the detail in paragraph 46 of the particulars of claim onwards, dating from August 2024. Both parties confirmed that the list of issues agreed at the case management preliminary hearing on 25 February 2025 remained unchanged. I discussed with the claimant his lengthy witness statement contained a number of matters that was not relevant to the issues, and it was agreed the claimant would try, as best as possible, to keep cross-examination relevant to the agreed issues.

Direct race discrimination (Equality Act 2010 section 13)

1.1 The Claimant describes himself as a non-white person of Indian origin and is of Sikh heritage.

1.2 Did the Respondent do the following things:

1.2.1 ignore the Claimant's job applications made in August 2024?

1.2.2 fail to process the Claimant's job applications made in August 2024 properly?

1.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The Claimant has not named anyone in particular who they say were treated better than they were. The Claimant relies upon a hypothetical white comparator.

1.4 If so, was it because of the Claimant's race and/or ethnicity?

Remedy for discrimination or victimisation

2.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

2.2 What financial losses has the discrimination caused the Claimant?

8. 2.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

2.4 If not, for what period of loss should the Claimant be compensated?

9. 2.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

2.6 Should interest be awarded? How much?

Evidence

17 I heard oral evidence under oath from the claimant. The claimant made several serious allegations about fabricated documents provided by the respondent for the purpose of this litigation, without any basis. The contemporaneous documentation did not support the claimant's position and in order to circumvent this the claimant has made serious allegations against the regional manager, Julie Perry, described as a "white supremacist racist, " Elaine Moorehouse, department manager who was allegedly prepared to change a termination of employment form to ensure the claimant did not return working for the respondent because of his race at the request of Julie Perry, and Steven Rudd's rejection of the claimant's application at the instruction of Julie Perry. There was no evidence whatsoever, let alone any credible evidence, to support the claimant's assertions in this case. Had the claimant looked at the metadata included in original emails he was sent by the respondent it would have been clear to him the emails were sent on the date and time specified in 2021 and were not fabricated for the purpose of this litigation. The claimant's explanation that he had no IT skills and unable to find the metadata was not credible. It was incumbent on the claimant

to carry out a reasonable investigation before he made serious allegations concerning the fabrication of documents whose only purpose could be to mislead the Tribunal. It did not suit the claimant's case for the 2021 documents to be genuine and for Steven Judd to rely on coherent information when he decided not to interview the claimant. Instead, the claimant has built this litigation on supposition and exaggeration because to have done otherwise would have severely weaken any claim he may have had.

18 On behalf of the respondent I heard oral evidence from Steven Rudd, Talent Acquisition partner, who had worked for the respondent since 1 May 2024, and I found him to have been a credible witness who was entitled to rely on the termination of employment form. It is notable the claimant's case is not that Steven Rudd was racist, but he was told by Julie Perry to reject the claimant's application. The claimant alleges Julie Perry instructed Steven Rudd to reject the application because of the claimant's race and ethnicity. Stephone Rudd was a credible witnesses who made admissions and gave straight-forward honest evidence. The claimant had no evidence Steven Rudd was under the instruction of Julie Perry to (a) ignore the claimant's application and (b) eventually reject it. Steven Rudd's evidence that he had no contact with Julie Perry at any stage over the claimant's application and was not under instruction by her was credible. Steven Rudd was an experienced recruiter and responsible for recruiting throughout the respondent's business, and having heard oral evidence from him, it is not credible that Steven Rudd would accept a racist instruction from any manager. I do not accept the claimant's statement that the respondent has two unwritten rules, the first being "English [white] people are superior," and the second "white people unreservedly defend and protect each other without exception." Taking into account Steven Rudd's oral evidence I was satisfied that he did not work under the two unwritten rules, and was not subject to such rules by any other employee within the respondent's business, including Julie Perry.

19 The claimant in his witness statement invites the Tribunal to draw an "immediate adverse inference" of discrimination on the basis that the respondent failed to call Elaine Moorefield to give evidence. I have dealt with this below. It is notable the claimant confirmed Elaine Moorefield was not a racist, although his evidence was confused in that the claimant was relying on the respondent company's acts of racism but not the racist acts of any individual employees with the exception of Julie Perry, who had no connection with his recruitment in 2024.

20 I have considered the documents to which I was taken in the bundle, the additional documents produced during the hearing, and written and oral submissions, which I do not intend to repeat and have attempted to incorporate the points made by the parties within the body of this judgment with reasons, It has made the following findings of the relevant facts having resolved the conflicting evidence on the balance of probabilities.

Facts

21 The respondent is a private hearing care provider in the UK and a joint venture with Sonvoa Holding AG.

22 The respondent issued employees with an Equal Opportunities and Discrimination Policy dated June 2020 confirming its commitment to prevent discrimination and promoting equal opportunity, including a provision for all employees "to challenge all 'potential breaches' of the policy. Monitoring and reviewing arrangements require "Human Recourses" to ensure policy and procedure are kept under review and "colleagues…are encouraged to contact Human Resources…" There is no evidence, apart from the claimant's say so, that Julie Perry, a "white supremacist" according to the claimant, was instrumental in keeping the area she managed "Caucasian" by refusing to employ applicants who are from different ethnic backgrounds and race, such as a non-white person of Indian origin and Sikh heritage.

23 The claimant has applied for employment with the respondent on several occasions.

24 The claimant holds the professional qualification of a Hearing Aid Dispenser referred to as a "HAD" . The claimant is registered with the Health and Care Professionals Council ("HCPC"). A HAD's role is to test hearing, sell hearing aids and carry out administrative tasks. The HCPC acts as a regulator for a HAD.

25 On the 27 October 2020, the claimant successfully applied for and was appointed to role of hearing aid audiologist based at the respondent's store in Camberley.

26 The claimant resigned from the respondent's employment on 14 June 2021 with the effective date of termination being 30 June 2021. The claimant was moving to a competitor for more money and Elaine Moorhouse, the claimant's line manager who has since left the employment of the respondent, spoke with the HR director to try and negotiate an increase in his salary.

27 On 18 June 2021 Elaine Moorehouse texted the claimant to the effect that the HR director had "gone off to talk to the MD…I'll update you…If you haven't already signed anything for…pls hold on until early next week until in case we can give you what you need. Feel better soon.." This communication is evidence that (a) Elaine Moorehouse wanted to retain the claimant in the business and (b) she was not prevented from attempting to seek an increase in the claimant's pay to achieve this by Julie Perry, regional hearing care manager in region 2. This is a key point, given the way the claimant puts his case, which is that when Elaine Moorehouse completed the claimant termination form dated 21 July 2021 it was at the instruction of Julie Perry with a view to avoiding the claimant returning to work in the business. It is apparent as at 18 June 2021 Elaine Moorehouse wanted to retain the claimant and if possible, was prepared to agree a salary rise in order to do so, thus undermining any suggestion she was racist towards him.

28 Managers were required to complete "Termination of Employment" forms "the same day an employee resigns." On the 18 June 2025 Elaine Moorehouse completed the claimant's form confirming he was leaving for "increased renumeration," she had discussed with "Sharon 18/6/21 to see if the business can offer anything to Gus so that he can stay with us…" and confirmed he was a loss to the business having achieved 5 B grades in various skills and a C grade for values and behaviours.

29 On the 22 June 2021 Elaine Moorehouse responded to the claimant forwarding a text message from a client thanking the claimant after a follow up appointment "Always good to hear the difference you've made!" and two smiling emoji. The claimant seeks to rely on this as evidence of his good performance bringing into question the updated termination form. Elaine Moorehouse also forwarded a financial audit result to the claimant on 1 July 2025 praising the claimant as follows; "well done!!! A 5 on your financial audit is pretty impressive." By this stage, the claimant had taken up his new employment and the communications reflect the good relationship between the claimant and Elaine Moorehouse post termination. Some three weeks later this changed.

30 After the effective date of termination Elaine Moorehouse updated the claimant's termination form on the 21 July 2021 and sent a copy to the human recourses department. The updated termination form recorded the respondent was unable to offer the claimant "anything comparable" to his new salary and in contrast to the last form, Elaine Moorehouse confirmed she would not re-employ. The reason given was "I would have to seriously consider whether to re-employ someone who has left so quickly after joining. A number of issues have also come to light since Gus left that are cause for concern so it would definitely not guarantee to re-employ him but might consider it based on circumstances….Gus appears to have stopped doing a lot of what he should have been doing towards the end of his time with us has impacted on other team members who are covering Camberley which is his store. They have had to stay behind in the evening and work at the weekend to get things back on an even keel." The claimant's scores were reduced to C for time keeping/reliability, C for work performance and C overall. He continued to achieve a B for attendance and B for knowledge and skill.

31 The claimant alleged that the updated termination form dated 21 July 2021 is a fabrication. It is either a physical fabrication by the respondent to deceive this Tribunal, or a fabrication by Elaine Moorehouse at the instruction of Julie Perry. The claimant further argued that had the complaints been genuine the respondent would have produced patient records and referred him to the HCPC. There is no issue between the parties that the claimant had not been referred by the respondent to HCPC. The claimant submitted that the respondent's failure to refer him is evidence the allegations are a fabrication and he had done nothing wrong. The claimant confirmed he has self-referred to the HCPC. There is no satisfactory evidence before me that the HCPC as a regulator would investigate the claimant's performance when he was working his notice, and the report that other team members had to work extra hours "to get things back on an even keel." Nobody knows what instances of underperformance Elaine Moorehouse was referring to, or how they had been reported to her by team members. On a straightforward reading of the updated termination form Elaine Moorehouse was disappointed the claimant had not continued to work at the same performance level he had pre-resignation and this had impacted others.

32 In oral evidence on cross-examination the claimant's evidence was that the updated termination form was fabricated for the purpose of legal proceedings, it was not genuine and the metadata produced by the respondent during this hearing in document marked "R1" did not change this. Having considered all the evidence, including the metadata, I was satisfied that the updated termination

form dated 21 July 2021 was produced on that day and forwarded to the human recourses department by Elaine Moorehouse, who left the respondent's employment in April 2024 (months before ACAS early conciliation) and could not have manufactured the existence or content of that document any later as alleged by the claimant.

33 On the 29 November 2021 an email was sent at 18.06 by Elaine Moorehouse to the human resources department regarding the claimant; "I've just had a text from this ex-member of my team saying that he's contacted by someone from Boots Hearingcare who asked if they could keep in touch with him in the future because he was held in high regard. Imagine my surprise considering the fact that I went to the trouble of amending his leaver form when I realised how much damage the person had wrought in our Camberley Store, how he had little time for customers and how much he upset nearly all his store colleagues. Leave alone complaints from customers and other members of the public. Please could someone advise who is making these calls and where they are getting their intel from because, based on this one at least, I fear the intel is incorrect. I would not have this person back because he is not trustworthy. "

34 The claimant alleged that this email was also fabricated after the event for the purpose of this litigation. The respondent produced the original email which it sent to claimant, and at this hearing the metadata was produced as ordered by me, given the claimant's serous allegations to the effect that the respondent was seeking to deceive the Tribunal. The Metadata shows the date and time when the email was produced, and it accords with the date and time on the email. I was satisfied that Elaine Moorehouse had sent the email referring to amending the claimant's leaver form in 2021, which reinforces the respondent's evidence that Elaine Moorehouse completed two leaver forms, amending the second as a result of the claimant's non-performance when he appeared to be working out his notice i.e. the period between resignation and termination of employment. There is no hint of the claimant's argument that Elaine Moorehouse acted in this way in order to stop the claimant returning to work for the respondent in Julie Perry's team, a "white supremacist racist" who wanted to keep her team white. It is notable that the 29 November 2021 email was not before Steven Rudd when he was considering the claimant's application for employment.

35 In 2023 the claimant made several applications for a role with the respondent as a Mobile Hearing Aid Audiology in the Northeast region. The claimant was not invited for interview.

36 On 16 February 2023, the claimant brought claims against the respondent for direct race discrimination which were settled under a COT3 on 29 February 2024.

37 On 28 August 2024, the claimant applied for three roles with the respondent at York Clifton Moor, Hartlepool, and Sunderland and Middlesborough. Steven Rudd was responsible for dealing with applications for employment for all roles required in the respondent's business, throughout the UK. Steven Rudd looked at the claimant's CV and noted he had been previously employed by the respondent, and emailed the claimant at 13.24 on the 28 August 2024 asking him when a good time would be to call. On the 2 September 2024 Steven Rudd emailed the

claimant. There were several email exchanges in the bundle between the claimant and Steven Rudd.

38 Steven Rudd and the claimant spoke on the 3 September 2024 about several matters, including the fact that there was a redeployment exercise to make the region more efficient. Unknown to the claimant (who was working for a competitor) there was a recruitment freeze in the respondent, although vacancies were advertised as it was anticipated the freeze would end in September. The claimant was informed "**we are currently looking at the redeployments, which should be finished by the end of September 2024 or October 2024 at the latest.**" [my emphasis] and after this he would have a better understanding of recruitment needs. Steven Rudd did not tell the claimant that he would forward the claimant's CV to Julie Perry, and in this respect I found the claimant's evidence to be less than credible. At no stage in the recruitment process was there any discussion between Steven Rudd and Julie Perry about the claimant's application or CV. Steven Rudd was the sole decision maker, and the claimant's allegation that Julie Perry was the real decision maker had no logical basis. The sole decision maker was Steven Rudd as evidenced in the email exchange, and nowhere in the claimant's pleaded case does the claimant mention Steven Rudd had told him he had forwarded the claimant's CV to Julie Perry. At para. 28 of the Grounds of Complaint the claimant alleged "it is clear to me someone [probably Julie Perry] has told Steven Rudd not to process the applications because of my race, ethnicity and skin colour." The claimant's oral evidence on cross-examination that Steven Rudd had discussed with him forwarding his CV to Julie Perry was evidence introduced by the claimant for the first time, and was key to the allegation concerning Julie Perry. The claimant was found to be an inaccurate historian in this regard. Had Steven Rudd told the claimant the CV had been forwarded to Julie Perry and given the claimant's allegation that Julie Perry had tried to "ruin my career opportunities" on the grounds of race, ethnicity and colour, the claimant would not have used the terminology "probably Julie Perry" and he would have mentioned the conversation earlier either in his pleaded case or lengthy witness statement.

39 Steven Rudd emailed the claimant on the 4 September 2024 referring to their previous discussion. He wrote; "as discussed, as soon as all redeployment have happened, and we know for sure what locations are in need of additional staffing (Hopefully by the end of September) I will reach out to you and we can proceed from there. If you have any questions in the meantime, please feel free to reach out." The email does not suggest in any way that Julie Perry was involved in the process, and the tenor is a positive one. Contrary to the claimant's oral submissions to the effect that Steven Rudd should have accessed and read the updated termination form at that stage in preparation for the next discussion, I preferred Steven Rudd's evidence that it was too early and not required. It is notable the claimant's email sent on 3 September 2024 makes no reference to Steven Rudd accessing the termination form or to it being forwarded to Julie Perry. The claimant confirmed the area in which he would like to work and "hopefully we can work something out."

40 Steven Rudd went on annual leave from 16 September to 27 September and was off absent on sick leave with Covid until 7 October 2024. When he returned to

work the claimant was not a priority for him as he was busy with other more urgent matters.

41 Despite being informed that the reorganisation issue may “hopefully” be resolved by the end of September, the claimant wrote for an update on the 22 September and 1 October 2022. Clearly, as Steven Rudd was on holiday followed by a sickness absence they could not be dealt with.

42 On the 7 October 2022 the claimant sent Steven Rudd a WhatsApp query requesting an update at 15.47, which Steven Rudd responded to at 15.48 “apologies for the delay. I was on AL and then off with Covid. I am just catching up and will drop you a call this week to update you as to where we are at.” Steven Rudd did not call the claimant due to pressure at work and being on a training session for 2-days. I find on the balance of probabilities that Steven Rudd did not contact the claimant at the time because of these reason only, and a hypothetical comparator would not have been treated any differently in the same circumstances.

43 Seven days later on the 15 October 2024 the claimant raised a case with ACAS for race discrimination and made a subject access request despite the fact that (a) he was fully aware the recruitment process was linked to a reorganisation that was ongoing until at least the end of September 2024, hence the use of the terminology “hopefully” by Stephen Rudd when he was keeping the claimant updated, and (b) Stephen Rudd had been out of the organisation on holiday and signed off sick as per the update. Given the positive tenor of the communications between Stephen Rudd and the claimant during this period, it is difficult to understand why the claimant believed a serious act of race discrimination had taken place in connection with this application to join the respondent again, when a decision was yet to be made.

44 On the 8 October 2024 Steven Rudd had a discussion with an employee from the human recourses department about the claimant’s application and was told that Elaine Moorehouse had highlighted on his termination form that she would not re-employ him. She explained on the initial termination from completed 18 June 2021 Elaine Moorehouse had said she would employ the claimant again and the amended termination form only was sent to Steven Rudd. On reviewing the typed content of the updated form only, which gave reasons for not re-employing the claimant again, Steven Rudd decided to reject the claimant’s application. Steven Rudd was the only decision maker, and the sole reason he rejected the claimant’s application was the contents of the amended termination form. In oral submissions the claimant argued that there is a contradiction in the amended termination form as Elaine Moorehouse confirmed she would not re-employ and in the reasons why referred to the first time to “someone left so quickly after joining” which was not inserted in the first termination form. Steven Rudd’s interpretation of the amended termination form, the only termination form in front of him, was that the claimant had stopped doing work and this impacted on other employees who stayed behind and worked weekends to catch up. Taking the amended termination form as a whole, it was objectively reasonable for Steven Rudd to reach this interpretation untainted by any race discrimination, and conclude the claimant was not suitable for interview.

45 There was a delay from 8 October 2024 to 12 November 2025 when Steven Rudd could have contacted the claimant and inform him his application had been unsuccessful. He did not contact the claimant because the employment review was ongoing.

46 Steven Rudd was required to use a template via the Sonova ATS system which was not fit for purpose about which he had complained previously. Under the system a rejected applicant is sent an automatic email that has a narrow drop down list which gives four reasons for the rejection, including the phrase "…after careful review we've decided to move forward with candidates whose experience and skills more closely match the needs of the position." I accept Steven Rudd's credible evidence, given the factual matrix in this case, that experience and skills were not determining factors for him. The only reason the claimant's application was rejected were the negative comments about his performance in the amended termination form. The Sonova ATS system did not have a description for this in the drop down menu.

47 The redeployment review finished on the 28 October 2024.

48 The proforma email was sent to the claimant on the 12 November 2024 at 12.02.

49 A personal email from Steven Rudd to the claimant was sent on the 12 November 2024 at 12.08, 6 minutes later. Steven Rudd wrote "I am writing to inform you that we will not be taking your applications any further…As discussed during our initial call on 3 September, we have been reviewing redeployment needs to clarify our recruitment requirements. This took slightly longer than I anticipated…the only role that remains open is at our Hartlepool and Sunderland stores. **After receiving confirmation on 28 October in relation to our recruitment requirements, I reviewed your information again and, based on the feedback following your previous employment with the company, we will not be inviting you for an interview"** [my emphasis]. I considered the reason for the delay between 8 October 2024 and then 28 October to 12 November 2024. I found on the balance of probabilities, taking into account Steven Rudd's conscious and unconscious mental processes, that a number of factors operated on his mind; he was catching up on work, was waiting for the redeployment to be finalised before getting back to the claimant as indicated to the claimant in earlier communications and he did not consider the claimant to be a priority in his workload. The claimant in oral evidence confirmed Steven Rudd was not racist, and he attributes the way he was treated and decision made rejecting the application to be down to the "white supremacist" Julie Perry. There was no evidence of this, and I find as a matter of fact that had Steven Rudd been considering the application of a hypothetic comparator with a " typical Anglo-Saxon name," someone who did not have "my Indian name" his decision would have been the same based on the information set out in writing by Elaine Moorehouse in circumstances where there is no hint of race discrimination and/or Julie Perry instructing Elaine Moorehouse and Steven Rudd to commit serious acts of race discrimination.

50 Finally, the claimant relies on a photograph in the bundle of some team members at a prize giving, in attempt to persuade the Tribunal that Julie Perry prefers white team members because there is only one person of colour in the photograph. There was no satisfactory evidence that the claimant's application was rejected

because Julie Perry recruits mainly white staff. The photograph does not assist the claimant, who did not dispute Steven Rudd's evidence that the respondent is "a very diverse company…diversity is part of our culture" and in Julie Perry's region 2 "almost one fifth of staff in her region" are non-white, 10 out of 47 are Asian, Asian Pakistani or Indian, and several of the team did not attend the optional awards night at which the photography was taken".

Law and conclusions

Direct discrimination

51 To assist the claimant Ms Rezaie produced a note on case law before oral submissions were made, and the claimant was given time to read the note, and more time after oral submissions made on behalf of the respondent, to consider his own submissions before delivering them. It is notable that the claimant throughout this process continued to argue that the respondent had fabricated documents, despite the metadata produced.

52 S.13(1) EqA provides that direct discrimination occurs where "a person (A) discriminates against another (B) if, because of a protected characteristic [race] A treats B less favourably than A treats or would treat others.

Was it less favourable treatment?

53 The test is objective.

54 An actual or hypothetical comparator is required who does not share the claimant's protected characteristic and is in not materially different circumstances from him. Para 3.23 of the EHRC Employment Code makes it clear that the circumstances of the claimant and comparator need not be identical in every way, what matter is that the circumstances "which are relevant to the [claimant's treatment] are the same or nearly the same for the [claimant] and the comparator." This is relevant to the comparator relied upon by the claimant who were not in the same or nearly the same circumstances as the claimant. The claimant's hypothetical comparator does not assist him as it refers to names and faces, the argument being if the claimant was a white person with a name like "John Smith" his application would have progressed. The claimant has omitted the most important part of the hypothetical comparator, which is the updated termination form dated 21 July 2021. On the evidence before me I concluded on the balance of probabilities a hypothetical comparator with the name John Smith who was a white person would have been treated exactly in the same way by Mr Rudd had they received the same updated termination form setting out identical criticism. Mr Rudd's practice was to access termination forms if a job applicant had previously been employed by the respondent. The termination forms were aimed at informing the respondent whether that employee was suitable for employment in the future. The contents of the updated termination form dated 21 July 2021 was the only reason Mr Judd rejected the claimant's application.

Determining the reason for treatment: the “reason why inquiry.”

80 Section 13 EqA requires not just consideration of the comparison (the less favourable treatment) but the reason for that treatment and whether it was because of the relevant proscribed ground. These two questions can be considered separately and in stages; or they can have intertwined: the less favourable treatment issue cannot be resolved without deciding the reason why issue. As was observed by Lord Nicholls in Shamoon Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL (referred to by Ms Rezaie) at paragraph 11: “…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 former, there will … usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable then was or would have been afforded to others.”

81 It was not necessary for the claimant to show that the respondent discriminated consciously. Subconscious discrimination or unconscious discrimination is also prohibited: "Those who discriminate on grounds of race or gender do not in general advertise their prejudices: indeed, they may not even be aware of them:" Glasgow City Council v Zafar [1998] IRLR 36 (HL)). "Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated" Nagarajan v London Regional Transport and others [1999] IRLR 572 (HL). "In some cases the discrimination will not be ill-intentioned but based merely on an assumption that a person would not "fit in:" King v Great Britain-China Centre [1991] IRLR 513 (CA). The Tribunal must therefore, it is suggested, enquire as to the conscious or subconscious mental processes which led the Respondent 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 as per IPC Media Ltd v Millar [2013] IRLR 707. I have carried out this task in respect of Mr Rudd.

82 The discriminatory reason need not even be the principal reason for the Respondent's actions; it only needs to have had "a significant influence on the outcome" as per Owen & Briggs v James [1982] IRLR 502 (CA) and Nagarajan (above).

83 Ms Rezie also referred to the more recent EAT decision in Gould v St John’s Downshire Hill [2021] ICR 1 EAT, the key issue being did the protected characteristic significantly influence the decision? I found that claimant’s race and ethnicity had no influence on Mr Rudd, before he decided the claimant’s application should go no further. As set out in the findings of fact above, I concluded that the Mr Rudd’s conscious and unconscious mental processes were such that the claimant’s protected characteristic played no part in the treatment of the claimant. The claimant has sought to argue that his allegations are against the respondent only and not Mr Rudd, which cannot be the case as it is individuals who commit acts of unlawful discrimination, acts which can be hidden from view. It was Mr Rudd who decided the claimant should not be interviewed, and had the

claimant succeeded in his claim (which he has not) the respondent would have been found vicariously liable for the actions of Mr Rudd.

Burden of proof

84 Section 136 of the EqA provides: (1) this section applies to any proceedings relating to the 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 provisions concerned, the court must hold that the contravention occurred. (3) Subsection (2) does not apply if A shows that A did not contravene the provisions. (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule."

85 In determining whether the respondent discriminated the guidelines set out in Barton v Investec Henderson Crossthwaite Securities Limited [2003] IRLR 332 and Igen Limited and others v Wong [2005] IRLR 258 apply, as affirmed in Ayodele v CityLink Ltd [2018] ICR 748. The claimant must satisfy the Tribunal that there are primary facts from which inferences of unlawful discrimination can arise and that the Tribunal must find unlawful discrimination unless the employer can prove that it did not commit the act of discrimination. The burden of proof involves the two-stage process identified in Igen. With reference to the respondent's explanation, the Tribunal must disregard any exculpatory explanation by the respondent and can take into account evidence of an unsatisfactory explanation by the respondent, to support the claimant's case. Once the claimant has proved primary facts from which inferences of unlawful discrimination can be drawn the burden shifts to the respondent to provide an explanation untainted by sex [in the present race discrimination], failing which the claim succeeds. The burden of proof has not shifted in Mr Singh's case, and if I am incorrect in this analysis, I would have concluded the account given by Mr Rudd was not tainted by race discrimination.

Conclusion – applying the law to the facts

86 The claimant compares himself to a hypothetical comparator. The circumstances of the claimant and comparator need not be identical in every way, what matters is that the circumstances "which are relevant to the [claimant's treatment] are the same or nearly the same for the [claimant] and the comparator:" Para 3.23 of the EHRC Employment Code. In short, a hypothetical comparator in the same or similar circumstances as the claimant who did not share the claimant's race or colour, would have been treated in the same way.

87 Turning to the specific allegations of less favourable treatment alleged, the Tribunal found the claimant has not discharged the burden of proof set out in section 136 of the EqA. The claimant has not satisfied the Tribunal on the balance of probabilities that there are primary facts from which inferences of unlawful discrimination can arise and the burden has not shifted to the respondent. Had the burden shifted, the Tribunal would have found the explanations given were untainted by race discrimination.

88 In determining whether any alleged treatment was because of the protected characteristic(s) the Tribunal must ask itself if the treatment was inherently discriminatory and I concluded it was not, what were the facts that the alleged discriminator considered to be determinative when making the relevant decision, and if the treatment was not inherently discriminatory what were the mental processes, conscious or subconscious, of the alleged discriminator and what facts operated on his or her mind; R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and ors [2010] IRLR 136, SC.

89 In conclusion, I found as follows for the reasons set out above:

1.2.1 Mr Rudd did not ignore the Claimant's job applications made in August 2024 and he dealt with it in the best way he could, given the particular circumstances ranging from annual leave, sickness absence, training, catching up on work and waiting for a re-organisation to complete, which took longer than expected.

1.2.2 Mr Rudd did not fail to process the Claimant's job applications made in August 2024 properly. The application was processed and rejected for the reasons given by Mr Rudd, which were untainted by race discrimination.

1.2.3 The claimant was not treated less favourably because of his protected characteristic of race and/or ethnicity and his claims of direct discrimination brought under Section 13 of the Equality Act 2010 are dismissed.

Approved by:

Employment Judge Shotter
9 September 2025

JUDGMENT SENT TO THE PARTIES ON:

19 September 2025

Katie Dickson
FOR THE TRIBUNAL OFFICE:

Notes.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-

tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved, or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/