



EMPLOYMENT TRIBUNALS

Claimant: Mr Nnamdi Orgu
Respondent: Roseberry Care Centres GB Ltd
Heard at: Newcastle Employment Tribunal
On: 9th, 10th, 11th March 2026
Before: Employment Judge Sweeney

Appearances

For the Claimant, in person

For the Respondent, Tom Muirhead, litigation consultant

Oral judgment with summary reasons having been given on **11 March 2026** and a request for those written reasons having been requested by the Claimant in accordance with Rule 60 of the Employment Tribunal Rules of Procedure 2024, the following reasons are provided

WRITTEN SUMMARY REASONS

The Claimants' claims

1. The claimant in these proceedings brings 2 complaints the first one is a claim of direct race discrimination within the meaning of section 13 of the Equality Act 2010. The second claim is 1 of wrongful dismissal.

Legal principles applied in the complaint of direct race discrimination

2. Section 13 Equality Act provides:

(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.*
3. For there to be direct discrimination, the treatment needs to be because of a protected characteristic. In considering this, motive is irrelevant. Where the reason for the treatment is not immediately apparent – or inherently discriminatory - it is necessary to explore the mental processes, conscious or unconscious of the alleged discriminator to discover the facts that operated on his or her mind:

Amnesty International v Ahmed [2009] I.C.R. 1450, EAT. However, the protected characteristic need not be the only reason or even the main reason for the treatment for it to be said to be 'on grounds of' or 'because of'. It is enough that the protected characteristic is an effective cause. The protected characteristic must be a significant influence of the treatment.

4. Person 'B' in section 13 is often referred to as 'the statutory comparator'. It follows from the wording of the section that the statutory comparator must not share the claimant's protected characteristic. In these proceedings, therefore, the comparator must be an individual who is not black or Nigerian or black Nigerian.

5. In addition to this, **section 23(1) Equality Act 2010** provides that:

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

6. This means that the comparator must be someone in the same position in all material respects as the claimant, save only that he is not a member of the protected class: **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] I.C.R. 337 HL. This does not mean that the circumstances of the claimant and the comparator must be identical in all respects.

7. Only those circumstances that are 'relevant' to the treatment of the claimant must be the same or nearly the same for the claimant and the comparator (see also paragraph 3.23 of the EHRC Code of Practice on Employment 2011).

8. This principle of material similarity applies whether the comparator is an actual or hypothetical comparator: **Shomer v B and R Residential Lettings Ltd** [1992] IRLR 317, CA. Where there is no actual comparator, it is incumbent upon the Tribunal to consider how a hypothetical comparator would have been treated: **Balamoody v United Kingdom Central Council for Nursing, Midwifery and Health Visiting** [2002] I.C.R. 646, CA.

9. Where a complainant relies on a hypothetical comparator, the 'circumstances' of the **comparator** must be constructed. When considering whether the employer would have treated the comparator any differently from the claimant, it may draw inferences from (among other things) the treatment of a person whose circumstances are not sufficiently similar to warrant them being treated as an actual comparator. Although not actual comparators, their circumstances may be sufficiently similar, and their treatment such, as to justify an inference that the Respondent would have treated a hypothetical comparator in similar circumstances to the claimant, more favourably.

10. Proving discrimination can be very difficult. To assist complainants in establishing discrimination, the Equality Act 2010 provides for a reversal of the burden of proof in certain circumstances.

11. Section 136 provides:

(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.

12. This lays down a two-stage process for determining whether the burden shifts to the employer. However, it is not obligatory for Employment Tribunals to apply that process. Whether there is a need to resort to the burden of proof provision will vary in every given case. Where there is room for doubt as to the facts necessary to establish discrimination, the burden of proof provision will have a role to play. However, where the tribunal is in a position to make positive findings on the evidence one way or the other, there is little to be gained by otherwise reverting to the provision: **Hewage v Grampian Health Board** [2012] I.C.R. 1054.

13. In cases where the tribunal is not in a position to make positive findings, s136(2) means that if there are facts from which the tribunal could properly conclude, in the absence of any other explanation, that the respondent had directly discriminated, it must so conclude unless A satisfies it otherwise. In considering whether it could properly so conclude, the tribunal must consider all the evidence, not just that adduced by the Claimant but also that of the Respondent. That is the first stage, which is often referred to as the 'prima facie' case. The second stage is only reached if there is a prima facie case. At this stage, it is for A to show that he did not breach the statutory provision in question. The Respondent must show a non-discriminatory reason for the treatment in question. It is not required to show that it acted reasonably or fairly, although unreasonable and unfair treatment is not irrelevant. Therefore, the Tribunal must carefully consider any explanation for the conduct or treatment in question: **Madarassy v Nomura International plc** [2007] I.C.R. 867, CA; **Igen Ltd v Wong** [2005] I.C.R. 931, CA.

Legal principles in the complaint of wrongful dismissal

14. If an employee is dismissed with no notice or in adequate notice in circumstances which do not entitle the employer to dismiss summarily, this will amount to a wrongful dismissal and the employee will be entitled to claim damages in respect of the contractual notice.

15. An employer is entitled to terminate a contract without notice in circumstances where the employee has committed an act of gross misconduct. It is for the employer to prove on the balance of probabilities whether the employee has committed gross misconduct. Whether an employee has committed gross misconduct entitling the employer to terminate summarily is a question of fact in each case.

16. There is no rule of law that stipulates the degree of misconduct that will justify a summary dismissal and there will inevitably be grey areas. Where disobedience is concerned it has been held that the disobedience must at least have the quality that it is wilful – a deliberate flouting of the essential contractual conditions: **Laws v London Chronicle Ltd** [1959] 2 ALL ER 285. The employee must, by his conduct, have shown that he is disregarding the essential conditions of the contract of employment.

17. **In Neary v Dean of Westminster** IRLR [1999] 288 (para 22). Lord Jauncey of Tulichettle stated that the conduct 'must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment'.

Direct race discrimination

Did the Respondent treat Mr Orgu less favourably than it treated Jennifer, a white British care assistant?

18. My conclusion on this is that it did not.

19. Firstly, Jennifer was not specifically referred to at the time by Mr Orgu and there was nothing to suggest to Mrs Rees, Mrs Ward or Miss Williams that her conduct should be investigated.

20. Secondly, on a comparison of her case with that of the claimant, there were material differences between them:

20.1. There is simply no evidence that she tended alone to a patient who required 2-1 care and this was no more than a guess on the part of Mr Orgu.

20.2. There was no suggestion or allegation against her that she had struck a resident, as there was in the case of Mr Orgu.

21. Therefore, the comparator was not in a similar position in all material respects as the Claimant. That leaves the question of a hypothetical comparator.

Did the Respondent treat Mr Orgu less favourably than it would have treated a white person or white British or British person in materially similar circumstances?

And if so, was the less favourable treatment on grounds of race?

22. My conclusion on these questions is 'no'. The principle of materially similar circumstances applies equally in the case of a hypothetical comparator. The hypothetical comparator in this case is a White or British or White British care assistant against whom an allegation of striking a resident had been made and that

the care assistant had completed 1-1 personal care on the resident contrary to the resident's care plan which required 2-1 care.

23. In considering whether the Respondent would have treated a hypothetical comparator more favourably, I do not consider it legitimate to draw inferences from the treatment of Jennifer. That is because her circumstances and those of the claimant are so materially different that it would not be proper to do so. There is simply no evidence of her caring for a patient on a 1-1 basis where she should have been on a 2-1 basis. An inference cannot be justified.

24. Mr Orgu submitted that there was sufficient evidence to enable the tribunal to draw the inference that race played a part in his treatment. In other words, he says he has established a 'prima facie' case of direct race discrimination. In support of this, he contended:

- 24.1. The investigation into him was flawed and incomplete. There was no evidence of injury, which given the seriousness of the allegation, is significant. No interview of Akeel, the nurse in charge and Jennifer.
- 24.2. Important contextual evidence was ignored. This was a reference to the vomiting. He referred to page 291 and 292-297. This, he says demonstrated that it was a pressurised night which affected staff and the nurse was unavailable which compounded the issue.
- 24.3. The outcome was, he submitted, disproportionate yet there was weak supporting evidence; further, given the seriousness of the allegation and the short period between 28 May and 30 May (the date of the decision) raised questions as to whether genuine consideration was given.
- 24.4. Mr Orgu submitted that there was a presumption that he completed personal care whereas the evidence shows he only entered the room alone and there was no evidence that he actually completed personal care alone.
- 24.5. In June 2023, he had reported an incident of racial harassment by a resident to Charlotte Sheils, which was not meaningfully addressed and not fed back to him.

25. Before any inference can be drawn in any case, it is necessary to identify the key factual findings. I find the following primary facts to be established:

- 25.1. The claimant is Black Nigerian.
- 25.2. He was summarily dismissed.
- 25.3. There was a single witness (Akeel) to the allegation that he had struck

resident RH three times on her hand.

- 25.4. The resident displayed no bruising.
- 25.5. Akeel reported the matter to Rachel Philip about 51 hours after the incident (page 122 of the bundle).
- 25.6. The investigating officer, Vicki Rees, did not interview Akeel, the only witness to the alleged incident.
- 25.7. The disciplinary officer, Sandra Ward, did interview Akeel after the disciplinary hearing but did not take a note of what he said and did not afford the Claimant the opportunity to respond to whatever it was Akeel said to her. This was in breach of the respondent's disciplinary policy at paragraph 6.6.
- 25.8. Contrary to the note of the disciplinary hearing, the Claimant did not say that he had not cared for the resident RH before. I did not accept that the Claimant said he had not worked with RH before. It makes no sense for him to have said that, when on 22 May 2024, he had made a point of amending the note of his interview with Vicki Rees on 21 May 2024, to add: "RH is so nice and I love to see her smile in the morning she is brighter on a morning after supporting her with personal care". Those notes were read and agreed by Mrs Rees and the Claimant. Further, he had been working in that home for about a year and had initialled personal hygiene records, positional changes records and fluid and diet intake records for RH. He would have known this and that the Respondent would know this to be the case. Therefore, I find that the Claimant did not say 'no' in answer to the question from Mrs Ward.
- 25.9. However, I find that Mrs Ward genuinely believed (albeit wrongly) that he had answered 'no', otherwise she would not have gone to examine the records to see whether he had provided care for RH in the past. That would have been a wasted exercise, to establish that he had cared for RH before if he had said that he had.
- 25.10. Unlike the notes of the investigation meeting, the disciplinary notes were not sent to the Claimant for his agreement. In fact, although R intended to do so, they did not send them at all. They were not attached to Mrs Ward's dismissal letter at page 134-135. I accept the Claimant's evidence that he did not receive them. That does not mean that the notes are inaccurate in all respects. The Claimant did not challenge all of the notes. The only challenge was to whether he said no to working with RH before. I find that in all other respects they are accurate.

- 25.11. The process that was followed prior to the decision to dismiss and prior to rejecting the appeal was not reasonable: (i.e. by Mrs Rees not interviewing Akeel, by Mrs Ward not telling the Claimant that she had done so, by Miss Williams not telling him that she had done so, by not taking statements or notes of those interview, by not going back to the claimant and affording him an opportunity to respond. This was not a reasonable process.
- 25.12. An incident of some sort regarding RH did occur on the night shift of 18th May. The claimant accepted that resident RH grabbed his arm. He accepted that he had to remove her grip. He accepted that he went to her room alone.
- 25.13. I find that the claimant did tend to the resident's care and that he did so alone believing it to be in her best interests. He said in his investigation meeting with Mrs Rees that RH could roll herself. He said in his appeal letter that he needed to address her needs in a timely way. He said to Miss Williams that her needs were urgent. At no point did he say he had not, knowing the allegation against him in that respect.
- 25.14. There was no differential treatment between the Claimant and Jennifer or anyone else in similar circumstances.
- 25.15. The claimant had been the subject of a racist remark by a resident back on 10 June 2023.
- 25.16. Charlotte Rees acted on this by serving notice on the resident. She did so because of the racist remark. The resident left the home. She did not feed back to the claimant that she had addressed the matter.
- 25.17. The claimant was aware that the resident left the home. He never raised the matter again with Mrs Shiels.

26. I had to consider whether, from those facts, I could conclude that the Respondent in dismissing Mr Orgu had treated him less favourably on grounds of race than it would have treated the hypothetical comparator described above. In my judgement, I could not so conclude. The facts reveal an unreasonable investigation and a failure to feedback about an unrelated complaint made by the claimant regarding a resident some 10 or 11 months earlier.

27. I considered the case of Glasgow City Council v Zafar [1998] IC.R. 120 where the House of Lords approved the words of Lord Morison, who delivered the judgment of the Court of Session, that '*it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee, that he would have acted reasonably if he had been dealing with another in the same circumstances*'.

28. Thus, the unreasonableness of the investigation and procedure alone is insufficient to enable a tribunal to say that it could conclude unlawful discrimination had taken place. I considered the unreasonableness of the investigation together with the previous complaint from June 2023 which had not been fed back to the claimant. However, these things taken together were insufficient to shift the burden. I had regard to the fact that the claimant's complaint was about the conduct of a third party (a resident) and that it was in fact acted on by the Respondent, albeit the outcome was not fed back to the claimant.

29. In any event, I was satisfied from the evidence as to the grounds on which Ms Ward dismissed. To that extent, it may be said to be academic as to whether there is a prima facie case of discrimination. I was satisfied that the Respondent did not dismiss Mr Orgu or reject his appeal on grounds of race, by which I mean it has satisfied me that race played no part whatsoever in its treatment of the claimant. He was dismissed solely because Mrs Ward believed he had done what was alleged in the disciplinary invite letter:

30. As to the first allegation against the claimant:

30.1. Although I agree with the claimant that the investigation was unreasonable and that the process followed was unreasonable, the respondent had a rational reason for dismissal. It had some material and basis on which to base its decision on both allegations, namely the statements from Akeel and the explanations given by the claimant.

30.2. Akeel clearly witnessed something – as the Claimant accepted that he had entered the room, that the resident had grabbed his arm and that he had to physically release her grip.

30.3. Mrs Ward genuinely believed that the claimant had struck the resident three times. She reached that conclusion by the following route:

- She genuinely, albeit mistakenly, believed the claimant to have said that he had not cared for RH before (otherwise she would not have looked through records to see if he had)
- Even if she misinterpreted it, she genuinely believed the claimant's description to her of how he released resident RH's grip to differ from that which he gave to Mrs Rees.
- She genuinely believed there to be no reason why Akeel would spy on the claimant (as the claimant had suggested to her but for which he gave no reason at that stage why Akeel would spy on him, page 131)

- She genuinely believed there to be no reason why Akeel would make up an allegation of this sort (and the claimant himself did not and could not suggest any reason Akeel might do so, either at the investigation meeting (page 116) or at the disciplinary meeting (page 132)).

31. As to the second allegation, I am satisfied that:

- Mrs Ward genuinely believed the Claimant had tended to personal care of RH that night based on what he told her. That was not only a genuine belief but a reasonable conclusion in the circumstances. Mr Orgu did not at any point during the disciplinary hearing say that he did not carry out any personal care alone, nor did he say this at his appeal hearing. His letter of appeal very much gives the impression that he did, as upon discovering the resident to be soiled, he considered it to be urgent and that she needed to receive 'timely care' in her best interests.
- The claimant had not read RH's care plan, which states that she 2 carers should carry out any care (The claimant accepted he had not read the care plan on page 116). However, he was aware of this requirement in any event (page 116, by second hole punch).
- She was sceptical of the claimant's explanation that many residents were vomiting in the lead up to the incident. I do not accept that the contextual evidence about vomiting was ignored as submitted by Mr Orgu. It was considered but rejected by Mrs Ward. Her rejection of this was genuine and reasonable given the date and time of the alleged incident and the date and timings of the handover sheets – the page references relied on by the claimant relate to a different 24-hour period. In any event, the claimant's position was that he did not strike the resident, that the allegation was made up and that he did not undertake personal care. That there may have been an outbreak of vomiting does not explain or assist his position on these two allegations, which was that they did not happen. He is right that it was regarded as a credibility issue by Mrs Ward. She genuinely believed there to have been no vomiting outbreak that night. This she considered as a credibility issue, and this added to her genuine suspicions that the claimant had not been altogether truthful with her.

32. There was in fact no disparity in treatment between the claimant and other white employees in similar circumstances and no evidence to justify an inference that the Respondent witnesses would have approached the matter any differently had the subject of the allegations been white or British.

33. Miss Williams, I am satisfied, dismissed the appeal because she too genuinely believed the claimant to have struck RH and to have tended to her personal care

alone. She rejected the suggestion that Akeel wanted the claimant's sponsorship. The suggestion by the claimant was speculative and, in any event, there was no evidence that Akeel required to be sponsored. Not only was it a speculative suggestion it was inherently improbable given the way that the sponsorship scheme operates and how the Respondent is given sponsorships. As the reason for dismissal and rejection of the appeal had nothing whatsoever to do with race.

34. Accordingly, the claim of direct race discrimination must be dismissed.

Wrongful dismissal

35. A claim of wrongful dismissal is different to unfair dismissal. I must say, had this been a claim of unfair dismissal, I would have found it to be unfair given that the investigation was not one that was within a reasonable band of responses. The consequences for Mr Orgu were severe. The allegation was serious; yet Mrs Rees did not interview Akeel because she felt she had enough having been given his statements. No one went back to the claimant to explain that they had spoken to Akeel. No statement was taken from him.

36. This is not an unfair dismissal claim. It is a wrongful dismissal claim. It is not enough to rely on a genuine belief. The respondent must prove that the claimant repudiated the contract of employment.

37. The Respondent has not established this. There is nothing other than the untested statement from Akeel as to the most serious of the two, namely the allegation of striking the resident. He was not called. No statement of what was said by him to Mrs Ward or Miss Williams was taken or put before the tribunal. The claimant has consistently from day one denied that he struck the resident. He has sought out explanations in his own mind as to why Akeel might say that. He landed on the wildly speculative 'sponsorship' theory. It is understandable that he would seek out an explanation because he has denied the allegation. There was no evidence of any mark or bruising on the resident.

38. In those circumstances, the respondent has simply failed to establish on the balance of probabilities that Mr Orgu struck resident RH. Further, although it has shown just about enough that Mr Orgu did tend to the Claimant's personal care in contravention of her care plan and that he had not read her care plan, that does not amount to repudiatory conduct. It does not show an intention not to be bound by the essential terms of the contract of employment. He acted in what he believed to be the best interests of the resident. He may not have read the care plan, but he was aware of the need for 2-1 care; on the night in question, I have no reason to doubt what he says about the nurse being unavailable, and she was never interviewed by the respondent.

39. It has not satisfied me on the evidence that Mr Orgu repudiated the contract of employment by committing gross misconduct. It is not enough to say that Mrs Ward lost trust and confidence in the claimant. The conduct must, considered objectively,

so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment. That has not been shown in this case, where no reliable evidence has been called to show any harm to the resident by tending to her care alone, or that the claimant intended to disregard the terms of his contract.

40. Therefore, Mr Orgu was dismissed in breach of contract and his claim for wrongful dismissal succeeds.

41. It is agreed that the claimant in those circumstances was entitled to four weeks' net pay. It was agreed that this equated to **£1,340.26**. That is the amount of damages to be paid to the Claimant.

Employment Judge Sweeney

Date: 20 March 2026

Note

Summary Reasons for the Judgment having been given orally at the hearing, written summary reasons will not be provided unless a request was made by either party at the hearing or a written request is received by the Tribunal within 14 days of the sending of this written record of the decision.

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