# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Thomas

**Respondent:** Team Care Support Ltd

**Heard at:** London South Tribunal (Croydon)
**On:** **3rd, 4th, 5th and 6th October 2023**
**And on 1st December 2023 in Chambers**

**By:** Hybrid (face-to-face and CVP)

**Before:** **Employment Judge Clarke**
**Mrs J Jerram**
**Ms N O'Hare**

**Representation:**
Claimant: Mr J. Tambyapin (solicitor)
Respondent: Mr D. Deeljur (Counsel)

# RESERVED JUDGMENT

(1) To the extent that the ET1 includes a complaint that the Respondent made an unlawful deduction from the Claimant's wages, that claim is struck out pursuant to Employment Tribunal Rules 37(1)(d) and (e) as it has not been actively pursued and it is no longer possible to have a fair hearing in respect of it.

(2) The complaint of unfair dismissal is well-founded. The Claimant was unfairly dismissed.

(3) The complaint of direct race discrimination is not well-founded and is dismissed. This means that the Claimant was not discriminated against by the Respondent because of his race.

# REASONS

## Introduction

1. The Claimant was employed by the Respondent, an organisation which is engaged in the provision of supported living and domiciliary care services to adult male and female clients within a supported living environment. He was employed as a Support Worker, from 3rd January 2019 until his employment was terminated with effect from 29th March 2021.

2. The Claimant first notified ACAS under the early conciliation procedure on 29th June 2021 and a certificate was issued on 1st July 2021. The claim form was presented on 3rd July 2021 and sought compensation for race discrimination and for unfair dismissal.

3. The Respondent resists the claims denying that the Claimant was discriminated against and asserting that he was dismissed because of redundancy and/or for some other substantial reason, namely a business reorganisation and that his dismissal was fair. The Respondent also asserted that the Claimant's continuous service did not commence until June 2019.

4. Numerous preliminary hearings have taken place.

5. On 16th November 2022 [**56-66**] the claims and issues were discussed with the parties and a list of issues was included in the case management order [**60-65**]. Directions for further information, a further preliminary hearing to determine continuity of service, and the final hearing were also given.

6. On 31st March 2023 the scheduled preliminary hearing was adjourned as the parties were not ready to proceed and had not complied with the case management orders. The hearing was converted to a case management hearing and further orders were made, including setting a further preliminary hearing to determine employment status, time limits and a strike out application made by the Respondent. The hearing also determined, and refused, the Claimant's application to amend to include a claim for discrimination based on religious belief, a victimisation claim based on the support the Claimant provided for his daughter in raising a grievance, and to amend to add further particular allegations of discrimination in respect of mocking and taking of photographs. Detailed further information about the Claimant's claim was also recorded [**69 – 77**].

7. On 6th July 2023 the preliminary hearing to determine employment status, time limits and a strike out application made by the Respondent was again unable to proceed due to difficulties with the bundle, which was incomplete and in places illegible. The preliminary hearing was again rescheduled, with the rescheduled hearing also to include an application by the Claimant for specific disclosure. Further case management directions were given [**78-83**].

8. The preliminary hearing finally took place on 7th and 8th September 2023. Determinations were made that the Claimant's employment commenced on 3rd January 2019 and that he therefore had 2 years qualifying services, that the allegations concerning dismissal and P45 errors were brought in time and that the other allegations of discrimination formed part of a continuing course of conduct that were linked to the dismissal and P45 and were therefore in time. The Respondent's application to strike out the claim was refused. Further case management orders were made, including an order that the Respondent provide further disclosure and an order that parties file and serve updated witness statements [**84 – 88**].

9. The claims were listed for a 4-day final hearing to deal with liability and remedy between 3rd and 6th October 2023.

10. At the start of the hearing several issues emerged. The Claimant had various medical problems and was undergoing chemotherapy treatment. It was noted that he would require regular additional breaks. Additionally, although the Claimant's written evidence was given in English and he was to give oral evidence in English, English is his third language, and the Tribunal was told he may need information simplifying and time for processing (because of both language and medical difficulties).

11. Additionally, the documentation for the hearing remained in a poor state of preparation with multiple bundles prepared by the Claimant (which were not paginated) in addition to that prepared by the Respondent. Further, there were insufficient hard copies of all documents and witness statements and there was concern about the inclusion of potentially privileged documents within the Respondent's bundle.

12. The Tribunal also noted that the original ET1 claim included a Wages Act claim which did not appear on the list of issues but did not appear to have been withdrawn or otherwise determined.

13. The first day of the hearing was therefore taken up by with resolving the Wages Act claim issue (on which the parties each provided oral submissions and a short oral judgment was given). This part of the claim was struck out. Also, discussing and amending the list of issues, resolving the problems regarding documentation, and the Tribunal's pre-reading.

14. Enquiries were also made as to the availability of a Mauritian Creole interpreter to assist the Claimant for the remainder of the hearing, but none could be found. Following discussion with the parties, and after consideration of the history of the claim including that a 2-day preliminary hearing with evidence had taken place without an interpreter, the Claimant's repeated assertions that an interpreter was not required, and the overriding objective, the Tribunal did not consider it appropriate to adjourn the hearing until an interpreter could be located.

15. As a result of delays incurred by reason of the matters above, and both parties lack of preparedness to consider remedy in any event (both parties having failed

to include documents or evidence related to remedy), although the hearing was listed for merits and remedy, following discussion with the parties, the Tribunal agreed to deal with merits only. Accordingly, this judgment deals with merits only and does not touch upon remedy.

16. Nevertheless, at the conclusion of the 4 listed days, there was insufficient time remaining for submissions or for the Tribunal to complete their deliberations. Judgment was reserved and directions were given for written submissions from the parties. A remedy hearing was listed for 11th March 2024 in the event that it was required.

17. Subsequently, the Tribunal received written submissions from both the Claimant (44 paragraphs plus attachments) and the Respondent (126 paragraphs plus the case report of ***Scott & Co -v- Richardson UKEAT/0074/04***) and sat in chambers on 1st December 2023 for their deliberations.

**The Issues**

18. The final list of issues, as discussed with the parties and amended, is appended to this judgment.

**The Evidence**

19. The Tribunal considered a bundle comprising 731 pages. References in this document in bold within square brackets are to the pages of the bundle. The bundle included a cast list [**6**], brief chronology [**7**] and witness statements [**536 – 580**]. The Tribunal was also referred to, and considered, additional witness statements from the Claimant and from Ms Devine Pakium and Mr Kher Rajkoomar.

20. Each witness who gave oral evidence had provided a statement(s).

21. At the hearing, the Claimant was represented by Mr Tambyapin and gave sworn evidence. Melanie Thomas also gave sworn oral evidence on behalf of the Claimant.

22. Neither Bradley Thomas nor Marjorie Thomas, who had each provided witness statements, were called to give evidence.

23. The Respondent was represented by Mr Deeljur, who called sworn evidence from Ms Devine Pakium, Mr Rajen Chumun and Mr Kher Rajkoomar.

**The Submissions**

24. The Tribunal received, and considered, written submissions from both the Claimant (assisted by Mr Tambyapin) and from Mr Deeljur on behalf of the Respondent as set out above. No oral submissions were received.

## Law:

### Standard of Proof

25. The party who bears the burden of proving the claim, or any element of the claim, must do so on the balance of probabilities.

### Unfair Dismissal

26. Section 94 of the Employment Rights Act 1996 ("the 1996 Act") confers on employees the right not to be unfairly dismissed. Enforcement of that right is by way of complaint to the Tribunal under section 111.

27. The Claimant must show that he was dismissed by the Respondent under section 95 but in this case, there is no issue regarding the dismissal. Both the Claimant and Second Respondent accept that the Claimant was dismissed by the First Respondent on 16th March 2020. It is for the employer to show the reason, or principal reason, for dismissal.

28. Section 98 of the 1996 Act deals with the fairness of dismissals. There are 2 stages that the Tribunal must consider. Firstly, the Respondent employer must show that it had a potentially fair reason for the dismissal within section 98(2) or that it dismissed for some other substantial reason ("SOSR") of a kind such as to justify the dismissal of an employee holding the position which the employee held (s.98(1)).

29. A potentially fair reason for dismissal under s.98 of the 1996 Act is redundancy.

30. Redundancy is defined by s139(1) of the 1996 Act and occurs where the business or workplace closes or where the employer's requirement for an employee to carry out a particular kind of work ceases or diminishes or is expected to cease or diminish.

31. The test for redundancy is set out in ***Safeway Stores plc -v- Burrell [1997] ICR 523, EAT***. And endorsed in ***Murray & Anor -v- Foyle Meats Ltd [1999] ICR 827, HL***. The Tribunal must consider:
    (i) Was the employee dismissed?
    (ii) If so, had the requirements of the employer's business for employees to carry out work of a particular kind diminished, or were they expected to cease or diminish?

(iii) If so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution?

32. The terms of the employee's contract (including whether the employee could be required to do other work) is relevant only at stage (iii) when determining, as a matter of causation, whether the redundancy situation was the operative reason for the employee's dismissal. This is a question of fact.

33. The s.139 test requires the Tribunal to take a holistic view of two linked variables: the employees and the work. There will be a redundancy situation either where the employer requires fewer employees to do the same amount of work or where the number of employees stays the same but the amount of available work of a particular type is reduced, but not where there is the same amount of work for the same number of employees - ***Packman t/a Packman Lucas Associates -v- Fauchon [2012] ICR 1362 EAT*** (a decision of the President of the EAT and preferred over the conflicting EAT decision in ***Aylward and ors -v- Glamorgan Holiday Home Ltd t/a Glamorgan Holiday Hotel EAT 0167/02).*** In ***Servisair UK Ltd v O'Hare and ors EAT 0118/13*** the relevant question was summarised as being 'whether there has been a relevant reduction in FTE headcount'.

34. Whether a business reorganisation has resulted in a redundancy situation must be decided on its own facts.

35. There is no need for an employer to show an economic justification (or business case) for the decision to make redundancies if the facts clearly show that the role had disappeared– ***Polyfor Ltd -v- Old EAT 0482/02***.

36. In cases of SOSR, the reason needs to be both substantial and genuinely held (see ***Harper -v- National Coal Board 1980 IRLR 260 EAT***).

37. If the business reorganisation does not result in a redundancy, the business re-organisation may nevertheless amount to an SOSR. The Tribunal must consider the employer's reasons for the business reorganisation and whether the employer considered there was a sound (that is, more than trivial, unworthy or whimsical) business reason for the re-organisation. It must not substitute its own view as to whether there was a sound business reason ***Scott & Co -v- Richardson UKEAT/0074/04***.

38. Secondly, having established the reason for the dismissal, if it was a potentially fair reason, or SOSR, the Tribunal must consider, without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason.

39. Section 98(4) of the 1996 Act deals with fairness generally and provides that the determination of the question of whether the dismissal was fair or unfair, having regard to the reason shown by the employer:

(a) depends upon whether in the circumstances (including the size and administrative resources of the employers undertaking) the employer

acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee; and

(b) shall be determined in accordance with equity and the substantial merits of the case.

40. There is a neutral burden of proof in relation to the general test of fairness.

41. There is also well-established guidance for Tribunals on the fairness within s.98(4) of redundancy dismissals in ***Williams -v- Compare Maxam Limited [1982] IRLR 83***. In general terms, the Tribunal will consider:

(i) whether the employer gave as much warning as possible to employees of impending redundancies.

(ii) whether the employer consulted the employees about the decision into the matter to reach the conclusion that the employee was underperforming.

(iii) the processes and alternatives to redundancy; and

(iv) whether the employer took reasonable steps to find alternatives to redundancy such as redeployment to a different job.

42. Procedural reasonableness is usually assessed by reference to the ACAS Code and unreasonable failure to follow the Code may result in an adjustment of compensation under S.207 and s.207A of the Trade Union and Labour Relations (Consolidation) Act 1992.

43. The Code may not be applicable to all SOSR dismissals. Where the substance of the dismissal falls within the intended remit of the Code (misconduct or capability) and in cases where the employer relies upon the breakdown of mutual trust and confidence (in particular where the employer had initiated disciplinary proceedings relating to conduct prior to the dismissal) the ACAS Code will apply but it may not be appropriate to impose a sanction for failure to comply (see ***Hussain -v- Jurys Inns Group Ltd EAT 0283/15 EAT, Phoenix House Ltd -v- Stockman 2017 ICR 84, E*****AT** and ***Lund -v- St Edmund's School, Canterbury 2013 ICR D26***).

44. In any event, the ACAS Code is be had regard to but is not a prescriptive list of actions which must be followed in all circumstances. The ACAS guidelines themselves specifically indicate that that the Tribunal may take the size and resources of the employer into account and that it may not be practical for all employers to take all the steps set out in the Code.

45. In considering all aspects of the case, including those set out above, and in deciding whether the employer acted reasonably or unreasonably within section 98(4) of the 1996 Act, the Tribunal must decide objectively whether the employer acted within the band of reasonable responses open to an employer in the circumstances. This applies not only to the decision to dismiss but to the procedure adopted by the Respondent – ***Sainsbury's Supermarkets Limited –v- Hitt [2003] IRLR 23; [2003] ICR 111, CA***.

46. It is not the function of the Tribunal to decide how the employer's business should be managed. It is immaterial how the Tribunal would have handled events or what decisions the Tribunal would have made. The Tribunal must not substitute its own view for that of the reasonable employer – ***Iceland Frozen Foods Limited –v- Jones [1982] IRLR 439***, ***Sainsbury's Supermarkets Limited –v- Hitt [2003] IRLR 23; [2003] ICR 111, CA***, and ***London Ambulance Service NHS Trust –v- Small [2009] IRLR 563***.

**Direct Race Discrimination**

47. S.13 of the Equality Act 2010 ("EA 2010") confers on employees the right not to be discriminated against on the grounds of race. Enforcement of that right is by way of complaint to the Tribunal under section 120 EA 2010.

48. The Claimant must show that he was subjected to less favourable treatment by the Respondent and that such less favourable treatment was because of his race.

49. Under section 9 EA 2010, the protected characteristic of race includes colour, nationality and ethnic or national origins and a racial group is a group of persons defined by reference to race and is a reference to a racial group into which the person falls. By section 9(4) the fact that a racial group comprises 2 or more distinct racial groups does not prevent it from constituting a particular racial group.

50. In determining whether there has been less favourable treatment, there must be no material difference between the circumstances of the claimant and the comparator – s23(1) EA 2010. It is a question of fact and degree whether someone whose circumstances are not precisely the same can be an appropriate comparator - ***Hewage -v- Grampian Health Board [2021] UKSC 37***. The tribunal can consider a hypothetical comparator if there is no actual comparator, or as well as any actual comparator but it may be easier to consider "the reason why" the employer treated the Claimant the way it did and then consider whether it was less favourable treatment because of the protected characteristic – ***Shamoon -v- Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11; [2003] IRLR 285*** and ***Aylott -v- Stockton on Tees Borough Council [2010] IRLR 994 (CA).***

**Burden of Proof in Discrimination claims**

51. S.136 EA 2010 sets out a two-stage burden of proof for claims brought under the Act which has been subject to clarification and guidance, in particular in ***Igen -v- Wong [2005] EWCA Civ 142; [2005] IRLR 25*****8**:

Stage 1: The prima facie case
There must be primary facts from which the tribunal could decide, in the absence of any other explanation, that discrimination took place. It is not necessary that a

tribunal would definitely find discrimination, only that reasonable tribunal properly concluding on the balance of probabilities could do so.
The burden of proof is on the Claimant: ***Ayodele -v- (1) Citylink Ltd (2) Napier [2018] IRLR 114, CA.; Royal Mail Group Ltd -v- Efobi [2021] UKSC 22*** and the tribunal must take into account all of the evidence adduced (not only that of the Claimant) and any argument made by the Respondent (e.g. that a comparator is not truly comparable). The tribunal should not take into account any explanation for the treatment given by the Respondent.
A difference in status and treatment is not sufficient to shift the burden of proof – ***Madarassy -v- Nomura International plc [2007] ICR 867*** and there must also be something to suggest that any difference in treatment was due to the relevant characteristic – ***B -v- A [2010] IRLR 400***.

<u>Stage 2: the burden shifts</u>
The Respondent must prove that it did not discriminate against the Claimant by proving that the treatment was in no sense whatsoever because of the protected characteristic. Cogent evidence is expected to discharge the burden of proof.

52. In ***Hewage -v- Grampian Health Board [2021] UKSC 37*** the Supreme Court said of the burden of proof provisions that “They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is on a position to make positive findings on the evidence one way or the other.”

53. Provided that the protected characteristic/protected act had a significant influence on the outcome, discrimination is made out even if the discriminator was unconsciously motivated – ***Nagarajan -v- London Regional Transport [1999] IRLR 572, HL***.

54. The tribunal may draw inferences from the primary facts found, should consider not merely each separate incident but the global cumulative effect of the primary facts found and must be mindful that discrimination may be unconscious – ***King -v- The Great Britain-China Centre [1991] IRLR 513 (CA), Anya -v- University of Oxford [2001] IRLR 377 (CA)*** and ***Nagarajan -v- London Regional Transport [1999] IRLR 572, HL.***

55. Less favourable treatment is an objective test. The Tribunal should consider whether the reasonable employee would consider the treatment to be unfavourable. There is a neutral burden of proof in relation to this element.

## <u>Relevant Findings of Fact and Associated Conclusions:</u>

*The Witnesses*

56. The Claimant required very simplified questions but then gave largely appropriate answers. Nevertheless, he still struggled to give complete and consistent evidence and was not always entirely coherent. The Tribunal’s assessment was that this was not primarily a language issue, and his own case

was that he lacked has slow cognitive understanding and processing of information [**542 at para 2**]. His representative indicted that he had low intellect and had other conditions affecting his understanding. Further, the Tribunal found him to be suggestible and easily influenced by others. Both his representatives and his family sought to prompt him during his evidence, and he looked to them for support.

57. His oral evidence to the Tribunal included evidence of events which had not previously been referred to despite the lengthy history of this case and the number of times the nature of the case had been explored in detail at preliminary hearings. Some of his evidence appeared to contradict previous accounts he had given and/or disingenuously concealed relevant material (such as his response to a photograph published on Whatsapp – see paragraph 92 below).

58. Additionally, his recollections appeared to be heavily influenced by his perception of having been treated badly, although the reasons he gave for the perceived poor treatment varied significantly, with him sometimes attributing his treatment to race, but more often to his precarious immigration status (e.g. [**527**] at para12, [**540**] at para 43 and [**545**] at para 22) and/or his support for his daughter (e.g. [**539**] para 28) and/or his religion (e.g. [**538**] para 28 and his application to amend the claim to include religious discrimination). Accordingly, the Tribunal did not find him to be a reliable witness and found it difficult to distinguish between what was his own direct evidence and where he had been influenced by others.

59. The Tribunal did not consider the evidence of Melanie Thomas, the Claimant's daughter, to be credible or reliable, particularly as regards her lack of involvement in the early stages of the Claimant's claim. That evidence was in parts substantially contradicted both by her own witness statement (para 6 on [**549**]), by the Claimant, and by the written evidence of Bradley Thomas and contemporaneous documents.

60. No account was taken of Marjorie Thomas' evidence as she was not called as a witness and her written evidence was too vague and irrelevant to be useful. Similarly, Bradley Thomas's evidence was largely disregarded. The Tribunal found its only value was that it supported the Claimant's evidence as to Melanie Thomas' involvement in the early stages of the Claimant's claim and therefore contradicted the evidence of Melanie Thomas.

61. The Tribunal found Mr Chumun's evidence to be straightforward and reasonably reliable but of limited assistance. The Tribunal did not find Ms Pakium to be an independent witness considering her longstanding family connections to Mr Rajkoomar, and her evidence was of limited value due to her lengthy absence from the UK between September 2020 and April 2021, which covered much of the relevant time. Further, at times she was evasive.

62. The Tribunal found that Mr Rajkoomar was also not a wholly reliable or convincing witness in light of his continued insistence that the Claimant was not employed as a care support worker from January 2019 despite the Tribunal's

preliminary findings and the contemporaneous documentary evidence to the contrary.

*The Claims*

63. The Respondent is a small enterprise with no human resources department, outsourced accountancy services and limited internal resources. It is essentially an owner and director (Mr Kher Rajkoomar) run and family centric business which employs the owner, his wife as company secretary/office staff, his son (Druv Rajkoomar) as a care worker, 2 longstanding family friends who are registered nurses with roles akin to consultancy (Mr Chumun and Ms Pakium) and others. The business operates 3 supported living sites with a total capacity of 25 occupants [**524-526**]. At no material stage were the sites fully occupied. The 3 sites are known as Rye Lodge, Brook Lodge and Mole House.

64. Total staff numbers have varied between about 10 to 15, not all of whom work full time, with an average of around 11 to 12.

65. The occupants of the supported living sites are mixed sexes on one site (Rye Lodge) and single sex male on the others. The Respondent has a need for both male and female care workers as it is generally considered appropriate to provide female occupants with female care workers, although female care workers can also support male occupants.

66. The care worker's role is varied but requires them to be on site and support the occupants (also known as clients). This may include making drinks or tea, assisting with cooking, assisting with medications, cleaning the kitchen and communal areas, and sometimes assisting with personal care such as bathing and dressing. Clients may also need accompanying when they leave the home to go into the community. This may include visits to shops, hairdressers, the GP and hospitals. On daytime shifts in particular there was a need for care workers to build rapport with the clients and to be able to escort them as required to medical and other appointments. This latter requirement necessitated good processing and communication skills.

67. The care workers employed by the Respondent were predominantly male at the 2 sites with male only occupants and female at the mixed sex site. Most, if not all, were of Mauritian descent.

68. The Claimant is of Mauritian heritage. The Claimant gave evidence that the Mauritian community comprised 2 distinct groups: the Hindu/Muslim Community and the General Community/Creole who follow Christian values. He identifies as Mauritian Creole (part of the General Community/Creole group) and has both African and Asian ancestry.

69. The Respondent's owner and director, Mr Kher Rajkoomar is also of Mauritian heritage. He identifies as Creole. He does not speak Hindi and celebrates a wide mixture of both Christian and Hindu religious festivals. Although the Claimant

claimed that Mr Kher Rajkoomar was from a different racial group from the Claimant, Mr Kher Rajkoomar denied it and the Tribunal found insufficient evidence that he was from a different racial group from the Claimant.

70. The Claimant commenced his employment with the Respondent on 3rd January 2019 [**84**] after being given training in December 2018. Prior to this he had no experience in the care sector but had worked as a painter and decorator.

71. His employment contract was not signed until 1st June 2019 [**318-323**]. His terms of employment did not guarantee him any minimum number of hours of work and his hours were stated to be flexible as per the published rota and would fluctuate according to the needs of the business. Essentially it was a “zero hours” contract. Although the Claimant said that he was entitled to a minimum 48 hours per week as a full-time contract because he was employed, this appeared to derive from some misunderstanding of employment law. No evidence supported his claim, and the Tribunal did not find this to be the case. The contract also contained a clause which reserved the Respondent’s right to introduce short time working or a period lay off without pay to avoid redundancies or where there was a shortage of work [**323**].

72. The Claimant’s standard hourly rate of pay was £8.23 per hour, payable monthly. However, “sleep-in” shifts were paid at a flat rate of £35.00 for the whole shift. A “sleep-in” shift is an 8pm to 8am overnight shift where sleeping provision is provided, and the employee is not expected to be awake throughout the duration of the shift.

73. The contractual entitlement to annual leave was 5.6 weeks (including public holidays) paid at the normal rate of pay. The leave year ran from 1st January to 31st December and the Claimant was not permitted to carry over accrued annual holiday from one year to the next save in exceptional circumstances at the Respondent’s discretion, and only then if at least 4 weeks holiday has been taken in each holiday year. The Claimant was also required to submit holiday requests as early as possible and usually at least 1 month in advance. Annual leave could not be taken in December or at Easter except at the discretion of the Respondent.

74. At the commencement of his employment, the Claimant was undertaking “sleep-in” shifts at Brook Lodge. The number of shifts he undertook varied from month to month.

75. The rotas were generally set on a calendar month basis and completed a week in advance of the start of the month. The rotas were set by Mr Kher Rajkoomar. Factors which influenced the shift scheduling included the number and type (including gender mix and needs) of the clients, the activities of those clients, seasonal variations and whether staff with particular knowledge or experience were required.

76. The rotas were then printed and placed into the kitchens of the 3 supported living sites where they could be seen by all staff, visitors and occupants. The parties were agreed that although the shift rotas were prepared in advance, they were

subject to some change (such as for illness etc) but were a true indication of the Respondent’s intentions when drawn. Timesheets were also maintained by the Respondent’s employees, and it is accepted by the parties that the timesheets provided an accurate record of what shifts/hours were actually worked. The Tribunal was not however referred in detail to the Claimant’s timesheets by any party.

77. The Tribunal was not provided with a complete copy of the rotas for the whole of the Claimant’s employment but had all the rotas between January 2019 and December 2020 plus the rota for February 2021 [**186- 213 & 631 -634**].

78. Throughout 2019 the only care worker shifts the Claimant was rostered for were sleep-in shifts. He did not undertake any daytime shifts. Initially, in January, February and March 2019 he was working between 10-15 sleep-in shifts per month however in April 2019 this dropped to 4 sleep-in shifts and from April 2019 to January 2020 the Claimant had between 4 and 6 sleep-in shifts per month with the exception of August 2019 when he undertook 12.

79. In June 2019 the Claimant asked the Respondent for more shifts as he needed more income to fund an immigration application for himself and his family for permanent leave to remain. Rather than provide the Claimant with more care work shifts, Mr Kher Rajkoomar gave the Claimant a loan [**537 at para 8**] and in July 2019 offered him some building work at his home address and then some further building and decoration work at 142 Mountstone Avenue. In due course, following renovations, 142 Mountstone Avenue became Mole House, which was relocated from a rented property where it was operating prior to 2019 to 142 Mountstone Avenue which had been acquired by the Respondent’s sister company, Teamcare Properties, in 2019 but required works to make it suitable for occupation. The Claimant undertook this work in addition to his sleep-in shifts.

80. In November 2019 the Claimant and his family moved from their previous accommodation to 52 Delabole Road, a property owned by Teamcare Properties, and rented to them by Mr Kher Rajkoomar (who is also a director of Teamcare Properties) at substantially less than market rate. The Claimant and his family continued to occupy this property at the date of the Tribunal hearing.

81. There was a dispute between the parties as to whether, on moving to 52 Delabole Road, the Claimant asked that any correspondence related to his employment continue to be sent to his previous address. No contemporaneous documentation assists to determine this issue. Having heard the oral evidence, the Tribunal preferred the evidence of Mr Kher Rajkoomar and found on the balance of probabilities that the Claimant did give that indication initially and did not at any subsequent stage ask for it to be changed. The Claimant had moved into 52 Delabole Road without having the benefit of a signed tenancy agreement and the Tribunal considered it likely that he subsequently forgot to ask that his contact details be updated and/or assumed they would be updated automatically as Mr Kher Rajkoomar was aware of his occupation of 52 Delabole Road.

82. The evidence shows that subsequent hard copy correspondence, including the Claimant's P60's and P45 were sent to his former address rather than to 52 Delabole Road.

83. When the Covid 19 pandemic began, and the UK went into lockdown in March 2020 it had an impact on the Respondent's business. The Respondent found even more difficulties in filling the vacancies that it was already carrying. Further, at least in the early months of lockdown, some of the care workers had to travel to get to work, which created additional risks of contamination with Covid 19. The building work at 142 Mountstone Avenue was not complete and the Respondent decided to finish the building work as soon as possible and use the property temporarily as free accommodation for staff so that they could stay and did not need to travel and increase the risk of contamination. Additionally, there was a need for additional safety measures, particularly extra cleaning, to keep residents and staff safe. The Respondent set up a Whatsapp group to communicate with staff.

84. After January 2020, the Claimant's working pattern changed somewhat. In February and March 2020 the Claimant had 8 sleep-in shifts per month [**188 & 632**]. However, in April 2020 at the start of lockdown, the Claimant, who lived locally, took on additional shifts including a total of 8 daytime shifts (at Brooke Lodge and Mole House) where he was always rostered with another staff member. He was also still undertaking building work at this time.

85. From May 2020, in addition to continuing to undertake building work for the Respondent, the Claimant began to do additional shifts (of varying duration between 30 mins and 2 hours) in the morning and/or in the evening that were solely providing cleaning services. This was to deliver the additional cleaning required for safety because of the pandemic. He continued to be allocated these cleaning shifts until December 2020, although the frequency and duration varied. There was a slight drop in the number of cleaning shifts from July 2020 and a significant drop in the number of cleaning shifts from November 2020 [**194 – 201**]. The Tribunal considered it likely that this drop resulted from the slowing of the Covid 19 pandemic and a lesser need for intensive cleaning as restrictions lifted.

86. Between May 2020 and August 2020, the Claimant was not undertaking any sleep-in shifts but was nevertheless working regularly between the cleaning shifts and building work. However, in September 2020 the Claimant began to be allocated sleep-in shifts again with 5 sleep-in September 2020, 13 in October 2020 and 12 in November 2020 as well as some occasional daytime shifts (which may have been solely cleaning), some of which appear to have overlapped with shifts undertaken by his wife.

87. In December 2020, the Claimant was only allocated 4 sleep-in shifts but had 12 days of annual leave. The building work had been completed and came to an end by December 2020.

88. Although no rota was available for January 2021, the shift details notified to the Claimant show that he was allocated 10 sleep-in shifts [**215**]. In February 2021

there are 2 different contemporaneous documents: a complete printed rota showing all staff and a handwritten notification to the Claimant from Mr Kher Rajkooma. These contradict. The handwritten rota shows that the Claimant had annual leave on 2nd, 3rd, 4th 10th, 11th 16th, 18th, 24th and 25th February 2021 and was additionally allocated 5 sleep-in shifts [**216**]. The public printed rota shows Annual leave on 1st 17th and 20th February 2020 plus 4 sleep-in shifts and 8x 2-3hr cleaning shifts [**633**]. The month for the complete printed rota however appears to be a mistype as the dates on the public printed rota in fact match the information given to the Claimant in a text message [**217**] about his March 2021 shifts. In March 2021, the last month before his employment terminated on 29th March 2021, the Claimant had annual leave on 1st, 17th and 20th and was allocated 4 sleep-in shifts in addition to several cleaning shifts [**217**].

89. Overall, after September 2020, the Claimant's level of allocated care shifts had therefore reverted to, or exceeded, the pattern of the usual pre pandemic care shift levels that he was undertaking between April 2019 and January 2020.

90. Although the Claimant complains that his hours were being cut, this was not reflected in his pay packet. As a result of the building work and cleaning work (which were paid at daily rates rather than as a single £35.00 payment for a sleep-in shift), the Claimant's highest earnings were between April 2020 and August 2020, at which time he was earning substantially more than at any other time [**240-241**].

91. Against this backdrop, a number of other circumstances arose that the Claimant complain about.

92. In August 2020, whilst the Claimant was undertaking building work and stood in a trench, Mr Kher Rajkoomar took a photograph of him and posted it to the WhatsApp group with the caption "Man caught burying his girlfriend". This was intended to be a humorous comment and the Claimant responded in kind with an emoji denoting laughter and "you plant some flowers for me hahaha…" [**761-762**].

93. The Claimant says that from the summer of 2020 the rotas stopped being put into kitchens so that he was unable to see what shifts other staff were rostered for. The Tribunal found little evidence to support this, and it was denied by Mr Kher Rajkoomar and Ms Pakium (although Ms Pakium was out of the Country from September 2020 to April 2021). All parties accepted that rotas were sometimes sent via the WhatsApp group (to which the Claimant was party) during the height of the pandemic in particular. When sent this way, they would be visible to all group members, including the Claimant.

94. Although the Claimant pointed to several handwritten or typed rotas provided to the Claimant which showed only his working hours [**215 – 217**] these rotas covered only the period January 2021 to March 2021. There was also one to his wife [**218**] in this period. Mr Kher Rajkoomar's explanation for these handwritten or separately typed rotas, which the Tribunal accepted, was that these were supplemental to the full printed rotas because on occasion the Claimant had

attended work when he was not rostered to do so, and Mr Rajkoomar was trying to assist and support the Claimant to know when he was due to attend.

95. The Claimant did not, most of the time, appear to have had any difficulty knowing when he was due to work. The Tribunal considered that, on the balance of probabilities, rotas were available, the Claimant received some rotas via Whatsapp or by viewing them in the residences and this was supplemented by the additional messages sent by Mr Rajkoomar containing only the Claimant's rotas. On some occasions if there were not rotas present in the residence kitchens, they may simply have gone missing. There was no compelling evidence that the Claimant was deliberately been excluded from viewing the full rotas or that anyone else received full rotas separately at times when the Claimant did not.

96. Until late 2020 the Claimant's daughter, Melanie Thomas, also worked for the Respondent. In October 2020 she became unhappy with her shift allocation, including a reduction in her shifts and that she was not rostered to work at the same time as the other members of her family (her Mother Marjorie Thomas, who was also employed by the Respondent and her father, the Claimant). Additionally, she had a number of personal issues. On 31st October 2020 she sent a message to the Respondent stating *"… if you could please cancel all my shift I can find another job or course to do*".

97. The Respondent took this as a resignation and a meeting was subsequently arranged on 4th November 2020 to discuss it. That meeting was attended by Mr Kher Rajkoomar, Mr Chumun, Melanie Thomas and the Claimant. Although somewhat different accounts have been given of this meeting by all concerned and there are no contemporaneous notes of it, the Tribunal is satisfied that during the meeting Mr Kher Rajkoomar behaved poorly by aggressively asserting his right to arrange the rotas as he considered fit. Mr Chumun indicated that he did not consider that family members should be on shifts together. Melanie Thomas's employment with the Respondent formally came to an end in December 2020 at the conclusion of notice.

98. The Tribunal accepts that there were rational safeguarding, health and safety and regulatory reasons why it would be inadvisable to have only members of the same family on shift at a particular action at the same time and did not find that there was any compelling evidence that application of such a policy was due to discrimination. Although Mr Kher Rajkoomar and his son, Druv Rajkoomar occasionally worked together at one of the residential sites, this was not on scheduled shifts but rather because Druv Rajkoomar worked scheduled shifts and Mr Kher Rajkoomar was permanently overseeing all staff and on call should he be required. Mr Kher Rajkoomar's wife was generally office based but would sometimes accompany the clients on external trips. When she did so she was alone with the client. There was no convincing evidence that any other staff members (other than the Thomas') had familial relationships to each other or that family members other than the Thomas' were scheduled to work the same shifts together.

99. The Claimant also complains that he was placed on annual leave without his consent on various dates in February and March 2021 as set out in the List of Issues. As set out at paragraph 88 above, the Claimant was placed on annual leave in both February 2021 and March 2021. It was accepted by the Respondent that this was done without the Claimant's consent.

100. In the year 1st January to 31st December 2020 the only annual leave taken by the Claimant was in December, when he said he asked for only 4 days, although the rota indicates that he had 12 days of annual leave (see paragraph 87 above). Overall, the Claimant says he took only 5 days of annual leave in 2020.

101. Although the Tribunal was satisfied that the Claimant was placed on annual leave without his consent, due to the discrepancies regarding the February 2021 rota information (see paragraph 88 above) it cannot be satisfied as to precisely how many days, or on what dates that occurred, although it is likely, on the balance of probabilities, that he was placed on annual leave on at least 9 days, and more likely 12 days, in February and March 2021.

102. It was agreed by all parties that the Claimant was paid for the non-consensual annual leave dates.

103. The Claimant said he did not wish to be placed on annual leave as had been saving up his annual leave so as to travel to Mauritius for between 2 weeks and 1.5 months in 2021. He did not understand his contractual entitlement to annual leave or that he was not entitled to carry leave forward from one year to the next.

104. The amount of leave that the Claimant was non-consensually placed on in February and March 2021 exceeded his accrued entitlement in that period. Further, the Claimant had accrued more days of annual leave in 2020 than he had taken. Under the terms of his contract, that 2020 accrued but untaken leave was lost at the end of 2020, subject only to the Respondent's discretion. Mr Kher Rajkoomar gave evidence that he had placed the Claimant on annual leave in early 2021 even though he had not requested it so that the Claimant would not lose it. The Claimant confirmed that this was the reason that he had been given by Mr Kher Rajkoomar after he had queried why he had been rostered on annual leave that he had not requested. The Tribunal accepted that this was the reason for the scheduling of unrequested annual leave and that the Respondent was seeking to benefit, not to disadvantage, the Claimant.

105. The Claimant's main complaint appears to be that throughout his employment, but particularly after Summer 2020, care work was not fairly allocated between him and other care workers, such that other care workers received more shifts, and in particular more of the better remunerated daytime shifts, than he did. He says that this was as the result of racial discrimination. Although there were discrepancies in shift allocation between the Claimant and the other care workers, there was a clear and obvious explanation for these as set out at paragraphs 108 to 109 below. Further, the Claimant's wife and daughter, who are of the same racial group as the Claimant, were allocated both sleep-in and

daytime shifts throughout their employment with the Respondent. The Tribunal did not find any evidence that the discrepancy was because of race.

106. For the reasons set out at paragraph 69 above, the Tribunal was not satisfied that there was a difference in racial group between Mr Rajkoomar, who allocated the shifts, and the Claimant.

107. Further, the comparators named by the Claimant, Atil Veehur, Prakash Jhumun and Druv Rajkoomar were not true comparators. There was insufficient evidence as to their racial profiles. Also, their level of skills, in particular communication skills, and experience differed significantly from that of the Claimant and the Tribunal found that this, not any racial difference was the reason for the different allocations.

108. On balance, the Tribunal found that the Claimant was mainly considered to be the back-up care worker suitable mainly only for sleep-in shifts and as a utility man (undertaking maintenance tasks and cleaning). Mr Kher Rajkoomar wished to support the Claimant as much as possible but had to prioritise the needs of his clients. Accordingly, he gave the Claimant building/decoration works and additional cleaning shifts where available to supplement the Claimant's income, but the Claimant was only given day care work shifts if other care workers were unavailable.

109. The reasons for this were that these were the tasks that the Claimant was able to do effectively and competently. His communication and understanding limitations as detailed at paragraph 56 above, limited the effectiveness of his interaction with the clients and made him unsuitable to escort the occupants to important GP and hospital appointments. He was also slow to pick up new skills. The Claimant lacked insight into his difficulties in these areas and his obvious lack of suitability for the role of escorting clients to medical appointments.

110. The Tribunal also noted that it was agreed by both parties that after March 2021, despite the termination of his employment and that neither the Claimant's wife or daughter were working for the Respondent by this date, the Claimant and his family were offered covid vaccinations by the Respondent at a time when they were not readily available to the general public. Also, that the Respondent had indicated to the Claimant at termination that if things improved, he may be able to return to his former job. The Tribunal did not consider these actions of the Respondent, together with the other undisputed actions of Mr Kher Rajkoomar (namely providing a loan to assist the family and housing at less than market rate) were consistent with the account of the Claimant that he had been repeatedly subjected to less favourable treatment by the Respondent on a discriminatory basis.

111. Overall, the Tribunal found that Mr Kher Rajkoomar adopted a benevolent, if slightly paternalistic, attitude towards the Claimant and sought to support and help him where possible.

112. The Claimant also complains about his dismissal.

113. At the start of October 2020, the Respondent had at least 3 vacancies across its 3 sites [**524-526**]. Information before that date is incomplete but it is clear that at least 1 vacancy had existed from 2018 onwards.

114. Although one of the vacancies was filled in October 2020, in December 2020 one of the occupants died, and by late February 2021 the number of vacancies had risen to 4.

115. The Respondent was becoming concerned about finances as it had not been contacted for potential new service users, the costs of goods had risen, the staff pay had risen (due to minimum pay rises), there had been no rise in payments from purchasers and the Respondent was unable to raise any capital from other sources.

116. The accounts for the year ending 31st December 2020 [**375 -380**] show that although the Respondent's assets had increased, debtors had also increased and cash at the bank had decreased despite a £50,000 bank loan (which was a government backed "bounce back" loan available as a result of the pandemic).

117. On 25th February 2021, at a meeting attended by Mr Kher Rajkoomar, Mr Chumun and Ms Pakium, the financial concerns were noted and that there was a risk that the workforce may need to be reduced and/or for working hours or hourly pay rates to be reduced. A plan of action was agreed which was to be executed by Mr Kher Rajkoomar. The plan included approaching staff individually to inform them of the Respondent's financial situation and the risks and discuss with staff if they want to reduce their hours or take redundancy. Also, formally warning the staff by letter of the risk of potential reductions in hours and/or redundancy. Thereafter Mr Kher Rajkoomar was to identify who would voluntarily reduce hours or take redundancy and if there were no volunteers, to apply the "last in – first out" rule [**593**].

118. A letter was drafted the same day [**592**] and provided to at least some staff. Mr Chumun confirmed that he received a copy. Mr Kher Rajkoomar gave evidence that he spoke to all staff, including the Claimant. However, there are no contemporaneous records which support this, and it was not mentioned in the grounds of resistance or Mr Kher Rajkoomar's witness statements. Further, he was unable to provide a detailed account of when and where he spoke to the Claimant.

119. The Claimant denies that Mr Rajkoomar spoke to him about redundancies or that he received the letter at [**592**]. Despite concerns about the reliability of other parts of his evidence, the Claimant was firm and consistent on this point and the Tribunal found him credible and reliable as to this.

120. On the evidence available to the Tribunal, it is unclear which staff were consulted but it appears that none offered to take voluntary redundancy as no other staff left around that time.

121. Mr Kher Rajkoomar said that all staff, including the company secretary and the 3 registered nurses with specialist qualifications (which included himself), were initially considered to be at risk and that he had decided upon a set of selection criteria including the period of employment, experience and knowledge within the business, who he needed more and how clients react to the staff members.

122. The Tribunal did not find this evidence credible. It was not wholly consistent with the meeting minutes of 25th February 2021 which indicated a last in, first out approach would be adopted. Further, the Tribunal found it was unlikely that the Respondent truly considered all staff, even those with specialist qualifications and roles, to be at risk.

123. The senior staff (Mr Rajkoomar, Mr Chumun and Ms Pakium) all had specialist qualifications and were registered nurses in different relevant disciplines. Mr Chumun was in any event on a fixed rate contract which was not dependent upon the hours that he worked. The other care workers employed by the Respondent were both more experienced and more flexible than the Claimant as they were able to undertake day shifts, communicate effectively and accompany clients to medical appointments. Many of them had also been with the Respondent for a far longer period than the Claimant had. Those that had not were female staff who the Respondent required to assist with female clients, which was not a role that the Claimant (being male) could take.

124. Mr Kher Rajkoomar was unable to provide any documentation to evidence his thought processes or criteria or their application to his staff and there was no follow up meeting to that on 25th February 2021 where such matters were discussed. Although Mr Kher Rajkoomar asserted that he had discussed such matters with both Mr Chumun and his wife (the company secretary and other director) no minutes of such meetings exist and no other evidence supported this.

125. The Tribunal found that, although there was not a significantly reduced need for care worker and specialist staff, as occupancy levels had not dropped substantially by the end of February 2021, the need for cleaning had reduced and the building works had concluded. Further, there was a degree of reduction of care shifts and of business reorganisation, as demonstrated by the rotas which indicate changing shift patterns at the 3 site locations and that staffing levels generally, but particularly in Mole House, reduced and that Mr Kher Rajkoomar was starting to undertake care shifts in addition to being on call.

126. Although 2 new staff members were recruited after February 2021, both of these staff were female, and they were essentially the replacements for Melanie Thomas and Marjorie Thomas. They undertook work in locations with female clients that the Claimant, by virtue of his sex, was not appropriate to undertake.

127. For the reasons set out at paragraphs 108 to 109 above, the Claimant was considered to be a “back up” care worker only and was not regularly rostered to undertake daytime care shifts. Further, the reduced need for cleaning and building work affected the Claimant alone. As such, when the Respondent found

itself in need of cutting costs, the Claimant was the most dispensable member of staff.

128. On 19th March 2021 the Claimant was given notice of termination of his employment [**367**]. The notice explained that the reason for termination was the Respondent's poor financial performance resulting in a decision to lay off a percentage of staff. The Claimant was told he was given one week's notice albeit that his final date was expressed to be 29th March 2021. He was entitled to 2 weeks by law and pursuant to his contract as by that time he had 2 years continuous service.

129. Prior to this, the Claimant had not been consulted and was not aware that his employment might be terminated (see paragraphs 118 to 119 above). The Tribunal considered that the conversation that Mr Kher Rajkoomar described in evidence as having had with the Claimant, which included reference to the Claimant being able to return if things improved, most likely took place when he was given the termination letter, not a prior warning of redundancy.

130. Following his termination, the Respondent's accountant generated a P45 for the Claimant [**530**]. The P45 was addressed and sent to the Claimant's former home rather than his address at 52 Delabole Road. This was the same address that the Claimant's 2020 P60 had been sent to and was not therefore received by the Claimant. It contained other errors: The Claimant's title was recorded as "MS" and his sex as "female" [**300**]. The Tribunal is satisfied that these were inadvertent rather than deliberate errors by the accountant which were not picked up by Mr Kher Rajkoomar as he did not look at the document before posting it out to the Claimant. The accountant has subsequently apologised for the errors [**530**].

## Conclusions

*Unfair dismissal*

131. Both parties agree that the Claimant was dismissed. For the reasons set out more fully at paragraphs 113 to 127 above, the Respondent has satisfied the Tribunal on the balance of probabilities that the main reason for the dismissal was either redundancy and/or some other substantial reason, namely a business reorganisation. The Tribunal is also satisfied that there was a sound and genuinely held reason business reason for the Claimant's dismissal due to a diminution in the type of work undertaken solely by the Claimant, namely a reduction in building work and cleaning work, and the need to reduce business costs because of increased vacancies and the financial position of the Respondent.

132. This is a potentially fair reason for dismissal.

133. The Tribunal also considered the fairness of the dismissal. As set out at paragraphs 63 and 64 above, the Respondent is a relatively small undertaking with extremely limited administrative resources. Nevertheless, there was no reason why a basic process involving warning and consultation could not have been implemented, indeed the Respondent asserted that it did so, but the Tribunal rejected Mr Kher Rajkoomar's evidence in that regard and found that no warning or consultation had taken place. The Tribunal considered that no reasonable employer would have failed to consult or warn the Claimant of his potential dismissal before making a final decision, even an obvious one.

134. Further, there was no evidence that suggested alternatives to redundancy or termination had been considered, such as invoking the short time working or lay off without pay clause in the Claimant's contract of employment.

135. By failing to warn or consult the Claimant or consider alternatives to dismissal, the Respondent acted outside of the band of reasonable responses.

136. The dismissal was therefore procedurally unfair notwithstanding that there was a potentially fair reason for dismissal and accordingly, the claim for unfair dismissal is well-founded and succeeds.

137. However, having considered all of the evidence, the Tribunal concluded that given the proportion of the Claimant's work which derived from the cleaning and building work, the Claimant's lack of suitability for day care worker shifts and the Respondent's genuine belief in the need to cut costs, on the balance of probabilities, the Claimant would have been dismissed in any event had a fair process been undertaken. Accordingly, the Tribunal finds that, although the dismissal was unfair, the Claimant could, and would, have been fairly dismissed by the middle of April 2021.

*Race Discrimination*

138. As set out on the list of issues, the Claimant relies upon 7 things he says that the Respondent did which were less favourable treatment because of his race.

139. For the reasons above, the Tribunal is satisfied that the main reason for the dismissal was redundancy and/or a business reorganisation and that the main or sole reason the Claimant was chosen for redundancy or termination was the reduction in the need for building work and cleaning, the Claimant's unsuitability for day shift work and the need to make costs cuts due to increased vacancies and the Respondent's financial position. The Tribunal found no primary facts from which it could conclude that the Claimant's race had a significant, or any, influence on the dismissal.

140. The Tribunal found that compared to April 2020 the Claimant's rostered shifts from May 2020 onwards showed a reduction in the number of care shifts that he was allocated. However, April 2020 was an exceptional month for the reasons set out above and there was no significant reduction in the number of care shifts that the Claimant was allocated when compared to the majority of his

employment between January 2019 and March 2020. Further, this reduction was not detrimental to the Claimant as the cleaning and building work which he was undertaking during this period was more lucrative, being paid at daily rates rather than at flat "sleep-in" fee.

141. The evidence does not suggest that, save for the short exceptional period in April 2020, the Claimant ever undertook regular day care-worker shifts and there could not consequently be said to have been a reduction in his allocation of this type of work. There were clear and demonstrable issues with the Claimant's ability to undertake all the requirements of a day shift due to his communication and processing limitations and an obvious reason unrelated to race why he was treated the way that he was. His wife and daughter, from the same racial background, were allocated day care shifts. For the reasons more fully set out above, there was no evidence from which the Tribunal could conclude on the balance of probabilities that the reason for the reduction was racial discrimination.

142. Similarly, although the Tribunal found a reduction in the Claimant's allocation of cleaning hours in the later months of 2020, there was no clear evidence that, on the balance of probabilities, this was a discriminatory act because of the Claimant's race. The reductions were not substantial but incremental reductions and there were clear alternative reasons for the reduction as set out above. Further, the Claimant himself was unconvincing that any unfavourable treatment was because of his race. In fact, he repeatedly attributed what he perceived as unfavourable treatment by the Respondent to non-racial motivations, as set out in paragraph 58 above.

143. As per paragraph 104 above, the Tribunal was satisfied that whilst the Claimant was placed on annual leave without his consent. However, for the reasons set out above, the Tribunal was not satisfied that this amounted to objectively less favourable treatment of the Claimant. Under the terms of the contract, the alternative was that the Claimant would have lost his annual leave altogether and the reason for the placing the Claimant on annual leave without his consent was to avoid this adverse consequence for the Claimant. Nor was there any evidence from which the Tribunal could conclude that the reason for this treatment was the Claimant's race.

144. The Tribunal found that Mr Chumun, on his own admission, told the Claimant that family should not work together during the meeting which took place on 4$^{th}$ November 2020. However, as set out above, there were sound safeguarding reasons for his views and the comment was made in the context of the Claimant's daughter Melanie Thomas complaining about not being rostered to work the same shifts as her family members. There was therefore both a clear reason for the adoption of the principle and Mr Chumun's voicing of it which were wholly unrelated to the Claimant's race. The Tribunal found no other evidence that could lead the Tribunal to conclude, on the balance of probabilities, that the reason for this treatment was the Claimant's race.

145. For the reasons set out more fully in paragraphs 94 and 95 above, the Tribunal was satisfied that the provision of the Claimant's rotas to him in January, February and March 2021 in handwritten or typed format showing only his own shift patterns was an additional means of notifying the Claimant and was done to assist him. The Tribunal were not satisfied that it was objectively unfavourable treatment or that he was intentionally denied access to the full rota. Nor was the Tribunal satisfied that any other employees of the Respondent were treated differently, as there was no evidence to that effect.

146. Although the Tribunal found errors in the Claimant's P45, it was also satisfied on the balance of probabilities that the reasons for these errors were not discriminatory but simple typing errors on the part of the accountant which went unnoticed and/or were as a result of the Claimant's failure to request his address be updated after initially asking that it not be changed when he moved to the property owned by Teamcare Properties. There was no evidence which suggested that the errors were deliberate or because of the Claimant's race and it was not plausible or credible that the sex and salutation of the Claimant would have been deliberately changed for racially discriminatory reasons on a document that had been deliberately sent to an address it was known he would not receive it at.

147. The Tribunal also considered whether the Respondent might have unconsciously discriminated against the Claimant and looked at the global cumulative effect of the facts found. The Tribunal still found no evidence from which it could conclude, on the balance of probabilities, that the reason for the Claimant's treatment by the Respondent was race. There was no obvious reason for differential treatment to have been based on race as the actions alleged to have been discriminatory were those of Mr Kher Rajkoomar and for the reasons set out above, the Tribunal was not satisfied that he belonged to a different racial group than the Claimant and the Claimant's wife and daughter, who were of the same racial group as the Claimant were allocated day care shifts, which formed part of the Claimant's discrimination complaint. Further there were clear and cogent reasons that were non-discriminatory for each of the actions of the Respondent, and some of the actions complained of were not unfavourable to the Claimant. The circumstances of the persons the Claimant named as comparators were materially different from those of the Claimant and the Tribunal was satisfied that a hypothetical comparator whose circumstances were precisely the same as the Claimant would have been treated the same.

148. The Claimant did not therefore satisfy the Tribunal that there was a prima facie case of direct race discrimination, and the Tribunal determined that the claim for racial discrimination is not well-founded and will therefore be dismissed.

*Overall Conclusions*

149. The Tribunal having found that the Claimant was unfairly dismissed, the remedy hearing provisionally listed will be necessary unless the parties reach agreement as to remedy. A separate case management order deals with amended directions for this hearing which reflect the Tribunal's decision above.

Employment Judge Clarke
Date: 31st December 2023