



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4110000/2021

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Held via Cloud Video Platform (CVP) on 25, 26 and 27 April 2022

**Employment Judge I McFatridge
Members S Gray and J Gallacher**

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Mr Peter Dobbins

**Claimant
In Person**

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Harhill Ltd

**Respondent
Represented by:
Mr Forrest -
Counsel [Instructed
by Lauren Wilson –
Solicitor]**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that the claimant was not unlawfully discriminated against on grounds of race by the respondent.

REASONS

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1. The claimant submitted a claim to the Tribunal in which he claimed that he had been unfairly dismissed by the respondent and that they had unlawfully discriminated against him on the grounds of race. His unfair dismissal claim was dismissed on the basis that the claimant did not have sufficient qualifying service to make a claim of unfair dismissal.

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2. The respondent submitted a response in which they denied the claim. They sought further particulars of claim. Three preliminary hearings took place for case management purposes and both the claimant and respondent submitted several documents providing further particulars of the claim and response. The final hearing took place over three days on 25, 26 and 27 April 2022 using the tribunal's online cvp system. Evidence was heard during the first two days and submissions on the third.

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3. The claimant gave evidence on his own behalf and also led evidence from Lesley Smith, a former colleague. Ms Smith attended under compulsion of a witness order. Evidence was then led on behalf of the respondents from John Logan, the manager of their Chez Nous guest house, and Mukul Bizwaz, HR/Finance Director. A joint bundle of documents was lodged. In addition to this, the claimant was permitted to add certain additional documents at the commencement of the hearing. The claimant also lodged a number of MP3 recordings. Transcripts of these recordings were provided in the joint bundle which were agreed to be accurate transcripts in advance of the hearing. Nevertheless, the claimant indicated that he wished the Tribunal to hear the recordings so that they might form a view as to the tone of voice used and the recordings were played immediately before the cross examination of Mr Logan who featured on many of these recordings.
4. On the basis of the evidence and the productions including the recordings, the Tribunal found the following factual matters relevant to the claim to be approved or agreed.

Findings in fact

5. The respondents operate four hotels in Glasgow which cater mainly for homeless people who are referred to them by Glasgow City Council. They are the Queens Park Hotel, the St Enoch Hotel, Hillhead Hotel and a guest house known as Chez Nous. Many of the residents who are referred to the respondent by the council have issues with drugs or alcohol. Some also have mental health issues and can have complex needs and be difficult to manage. The claimant commenced employment with the respondent as a hotel porter in or about 2020. The claimant had previously worked for the respondent as a porter at their Queens Park and St Enoch hotels for two periods in or around 2014-16.
6. The claimant initially responded to an online advert looking for a hotel porter without being aware that he was applying for a job with the respondents. Shortly thereafter he received a telephone call from Mr Biswaz who was the finance/HR director of the respondent who offered him a post.

7. The claimant began work at the respondent's Queens Park Hotel. The manager of this hotel was Leslie Smith.

8. The job description for the claimant's job as a porter was lodged (pages 123-126). The principle duties were:

- 5 • to maintain a visible presence in and around the hotel;
- to provide professional secure and friendly front of house access control service and reception service;
- to be the first point of call when dealing with emergencies e.g. fire medical police etc and to manage such emergencies appropriately including liaising with the police and other agencies to ensure the safety of the premises;
- 10 • maintaining manual and computerised records and monitoring CCTV systems;
- answering telephone calls, transferring callers and taking messages as required;
- 15 • ensuring the property is clean and tidy and carrying out inspections to the communal parts of the building;
- to take responsibility for completing all the requirements from the timeframe as directed by the management;
- 20 • to ensure that all required checklists in particular health and safety ones are completed for all duties; and
- to take responsibility for a continuous improvement in service delivery and working practices.

9. Shortly after the claimant commenced his employment, issues arose between him and Leslie Smith. Leslie Smith considered that the claimant was taking too close an interest in the residents' private lives. There were also arguments between the claimant and Ms Smith regarding specific issues.

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10. Shortly before the claimant commenced work with the respondent, one of the residents at Queens Park had died in circumstances which the claimant understood were related to a drugs overdose.
11. The claimant formed the view that certain residents of the hotel were dealing drugs. The claimant sought to deal with his suspicions by collecting evidence. He obtained a police evidence bag and collected what he believed to have been packages which had contained drugs into this bag. Ms Smith felt that the claimant was behaving inappropriately in doing this. The claimant has no social work training. Ms Smith was aware that the circumstances of the death had been investigated. She felt the claimant was interfering in matters which should not concern him. Ms Smith discussed the claimant's behaviour with Mr Bizwas. She advised him that he believed he was going into residents' rooms. She advised him that she felt the claimant was behaving inappropriately and indicated that this was causing friction with her and also with other members of staff.
12. On various occasions, Ms Smith told the claimant to desist from this behaviour. On or about 6 July 2020, an exchange of text messages took place between the claimant and Ms Smith. A copy of these texts were lodged (page 127-129). The exchange began with Ms Smith wishing the claimant happy birthday since that day was his birthday. The claimant then asked about a particular female resident who he had encountered shortly before who had, in his view, suffered an adverse effect from ingesting street valium. The claimant then went to indicate that he wished to deal with individuals he believed to be dealing from the premises. He indicated that it was his intention to advise them of his suspicions and give them details on the dates on which people had put information in the diary and tell them that if they stepped out of line, again, they would be evicted. He said that he would threaten that he would go to the police and have the bags he had taken from their rooms fingerprinted and examined for drug residue. He expressed the belief that these individuals were linked to the death of the resident who had died shortly before his started work.

13. Ms Smith responded to this twice stating that this was inappropriate. The first time she said, "no I wouldn't be doing that as they have both had all the chances and they know better to leave it as is if anything should arise they will be done." She then went on to state:
- 5 "no peter the ones that are being troublesome to staff get a warning and if carried on asked to leave. It is not our concern as to what and why with 55 (the room number of the person who died) as that was dealt with and over. Nothing for us to get involved with as police already had the details. Let sleeping dogs lie as given enough rope they will do the damage themselves."
- 10 14. Despite this, the claimant indicated that he still intended to continue with his plan.
- 15 15. Ms Smith's position was that there were certainly issues with the residents in the hotel taking illegal drugs. She had a very good relationship with a community police officer and would discuss matters with the police. The police had been involved in the death which had occurred on the premises which had been investigated. She considered it to be totally inappropriate for the claimant to take on the job of the police and social work when his job was a hotel porter.
- 20 16. Ms Smith also became concerned that during his time at Queens Park, the claimant advised her that he was writing a novel and would spend considerable amounts of time when he at work apparently writing or revising the novel on his laptop. The claimant's role involved him working 12 hour shifts and for much of these shifts, not much was happening. Ms Smith was not particularly bothered about him writing his novel but did report this to Mr Bizwas.
- 25 17. A particular incident then occurred in Queens Park involving a resident, Ms L.
18. Shortly before this incident, Mr Bizwas had advised the claimant and other porters at the Queens Park Hotel that he was very concerned about residents causing noise in the street outside and within the vicinity of the hotel. The Queens Park Hotel was situated in a residential area and he advised that it
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was important that residents did not cause any disruption or inconvenience to neighbours. He said that if any of them were causing any disturbance or being noisy outside the hotel then they could be evicted.

19. On this particular occasion, the claimant was standing on the steps outside
5 the hotel talking to a resident. The claimant understood the resident had
recently been released from a lengthy prison term and was potentially violent.
Whilst this claimant and this resident were having a conversation, Ms L came
out of the hotel and attempted to go down the steps. She believed her way
was barred by the claimant and the resident and she asked the resident to get
10 out of her way using several derogatory expletives. The claimant warned her
that she should be quiet and that if she didn't, she would be kicked out. Ms L
was upset by this. She subsequently indicated to Lesley Smith that she had
made a complaint to her case worker and that the respondent could expect to
receive a formal complaint to Glasgow Council via the caseworker in respect
15 of the incident.

20. Ms Smith reported this to Mr Bizwas. Mr Bizwas was concerned about this
incident combined with the other complaints made by Ms Smith about the
claimant taking an undue interest in residents' affairs and going into their
rooms. He was aware that the claimant had been a good employee during
20 the previous occasions he had worked for the company and decided that
rather than dismiss him, he would try to keep his services and transfer him.
Mr Bizwas visited the Queens Park Hotel and spoke to Ms L. She advised
him verbally of her concerns about the incident. He did not obtain any written
statement from her at that time. In the event, the respondents never received
25 any formal complaint from Ms L's caseworker or from the council regarding
the incident. Ms L subsequently produced a statement setting out her version
of events which was lodged (pages 134-135). In addition to complaining
about the incident, she described the claimant's behaviour as rude and
abusive. She also complained about another occasion where the claimant
30 had insisted on opening doors and windows in the hotel to ventilate it and
when she complained had stated that he was entitled to a ventilated
workplace. In her statement, Ms Smith expressed the view that the claimant

was unsuited for his role. Mr Bizwas decided that he would move the claimant to one of the respondent's other hotels in order to deal with the matter.

21. Prior to moving the claimant, Mr Bizwas met with the claimant to discuss the issue with him. He told the claimant that he believed the claimant had acted wrongly. He did tell the claimant at the time he had spoken to Ms L. He did not put any of the matters complained of by Ms L to the claimant or give the claimant the opportunity of putting his version of events. The claimant's version of events did not coincide with that of Ms L.
22. Mr Bizwas was particularly concerned that the respondent deals with homeless people and naturally people who are homeless are extremely sensitive about threats to "kick them out". The respondent on occasions do have to evict residents who do not comply with their rules but he was concerned that the claimant had not gone about matters properly and had used inappropriate language when threatening Ms L. He told the claimant that he wanted the claimant to start at the Chez Nous Guesthouse and that this would be a clean start for him.
23. The claimant had been unaware that he was being moved to Chez Nous until very shortly before the move but the Tribunal accepted that his conversation with Mr Bizwas did take place prior to the move to Chez Nous.
24. The claimant started working at Chez Nous in late July/early August 2020. He worked four 12 hour shifts and then had four days off. The respondent's policy was that there were two porters on duty at all times. Often this would be the hotel manager, Mr John Logan, but on other occasions, the claimant would be on duty with another member of staff.
25. Like Ms Smith, Mr Logan had extensive experience working for the respondents. He had worked for them at various homeless hotels for around 34 years.
26. The respondent's managing director is Mr Iqbal Hussain. Mr Iqbal Hussain was the manager principally concerned with the Chez Nous Guesthouse. He would speak to Mr Logan at least every day. In addition to this, Mr Bizwas

would speak to Mr Logan around 2 or 3 times per week. Mr Logan complained to Mr Bizwas and Mr Hussain that the claimant took too much of an interest in the residents' personal affairs and becoming too involved with them. He also complained that the claimant was spending a lot of time on his laptop and mentioned that he was writing a novel which would make him millions. Mr Logan expressed the view that the claimant was spending too much time doing this and was therefore not concentrating on his job. He believed that the claimant had little interest in the role at Chez Nous and Mr Logan said he would often have to remind him about completing tasks at work. He felt the work on his novel was distracting him and in addition, the claimant would also watch martial art videos on his laptop about cagefighting.

27. Mr Logan also became concerned about practice which Mr Dobbins had of placing telephone calls for the residents and then arranging to put the call through to their room. This meant that the call would be paid for by the respondents. The respondents provided a payphone for residents to use and in addition the expectation was that many residents would use their own mobile phone. Mr Logan's view was that based on his experience, he felt that many of the residents took advantage of the claimant's good nature by getting him to make calls they should be making themselves. He believed that some residents would prefer that the claimant placed a call for them rather than use their own phone so that they could keep their own money to buy drugs with. Similarly, the claimant was in the habit of providing milk and sugars and sometimes coffee sachets to residents. Mr Logan would also provide these but the expectation was that this was something which was unusual and exceptional. Mr Logan's view was that many of the residents knew that the claimant was a "soft touch" and would ask him for sugar rather than buying their own.

28. The claimant for his part formed the view that Mr Logan had become somewhat cynical and jaded and set in his ways as a result of the length of time he had been doing the job. He formed the view that Mr Logan did not care for the residents as much as he did and indeed that he did not like them at all.

29. One of the other porters employed at the same time as the claimant was Scottish. He will be referred to as H. In addition to working for the respondents, this individual also worked at a charitable community involved with providing help to the homeless in Glasgow two days per week. He also had some qualifications in social work and was studying for further qualifications in the area.
30. This individual would try to assist residents where possible by referring them to a resource centre which was operated by the charity he worked for. This charity would provide various services to the homeless in Glasgow including assisting them with completion of forms and dealing with bureaucracy etc. On occasions, this individual would use his own telephone to make calls on behalf of the residents and allow them to use that. Mr Logan was not concerned about this other individual because this other individual was using his own telephone and was not using the respondent's telephone to make calls for residents and thus causing the respondents to incur expense.
31. Despite Mr Logan speaking to the claimant on various occasions about making telephone calls on the respondent's phone, the claimant persisted in doing this. His view was that the costs would be minimal and that he would try to be helpful to people who were down on their luck.
32. Mr Logan also became concerned that the claimant began to exhibit the same behaviours as he had at Queens Park in that he sought to investigate various residents who he considered were dealing drugs. On one occasion, the claimant was noted being seen on camera listening outside residents' rooms.
33. Mr Logan duly reported all of this to Mr Bizwas and Mr Hussain during his regular conversations with them.
34. At some point around the end of April 2021, Mr Hussain and Mr Bizwas had a conversation between themselves and the other manager, Mr Adam Hussain, about the claimant. All were aware of the issues which had occurred at Queens Park. They also believed that on the basis of what Mr Logan was telling them, there were regular issues with the claimant at Chez Nous in respect of leaving reception, writing his novel while he was at reception,

listening at guests' bedrooms and also going into guests' bedrooms and taking too much of an interest in their affairs. They felt that this conduct was unacceptable and decided that they would dismiss the claimant.

5 35. Despite Mr Bizwas describing himself as the respondent's HR director, Mr Bizwas decided that since the claimant did not have two years' service, he did not require to go through any formal procedure. The respondents do have a formal disciplinary procedure which they had previously used to dismiss employees but, in this instance,, they decided not to use it at all. The managers agreed that they would wait before telling the claimant of their
10 decision. He was shortly due to start a four day period where he was on shift and they resolved to wait until these four days were over and then tell him after he had completed his four days work. They did not convey this decision to Mr Logan or any other member of staff at that time.

15 36. Mr Bizwas aware that they would require to alter the staffing rota so as to deal with this following his dismissal. Mr Bizwas was usually helped in compiling the rota by a member of staff called D. Mr Bizwas' view was that he and D were very used to having to juggle things about at the last minute due to staff absences or unexpected appointments and he could see no reason to inform D of his decision in advance.

20 37. In the meantime, not having any knowledge of this, the claimant continued to attend work. His last day of work was 5 May. Although 5 May was the claimant's last day at work, being the final day of his four day period on duty, it was Mr Logan's first day. Mr. Logan was unaware of the decision which had been made to dismiss the claimant.

25 38. A day or so previously the claimant had been on duty with another porter. Whilst the claimant and the other porter were together, a resident had come in and told the other porter that he was expecting an important phone call from his sister and to simply put it through to his room when it came in. Although the claimant was present, he had not paid attention or realised what was being
30 said. Shortly thereafter, the other porter was away from the desk when a phone call came in which was from that resident's sister. The respondents'

standing orders to staff are to be extremely cautious about giving out residents' details to callers on the telephone. Some of their residents are fleeing domestic violence. Staff are warned that sometimes people will tell convincing stories in order to wheedle information out of them and that they should be quite firm about not giving out any personal information. Although this caller identified herself as the sister of a resident, the claimant was not prepared to confirm that the resident was in the hotel or put the call through. The caller became tearful and hung up. When the claimant's colleague returned to the desk, the claimant advised him of the incident and was then reminded that the resident had said he was expecting this call. The claimant was upset with himself for having dealt with the issue badly.

39. Sometime after this, someone came into the hotel (who the claimant said was a well-dressed man) and handed in two telephone numbers which he asked to be given to that resident so that the resident could contact family members. The claimant had passed on these numbers to the resident and on the morning of 5 May, the resident had come down and asked the claimant if he could put the call through for him. The claimant had then telephoned the number using the respondent's phone at the desk and told the resident that he would put the call through to his room. Mr Logan remonstrated with the claimant and said that he was concerned about what would happen when the respondent's manager got the phone bill. He said that he was very uncomfortable working with the claimant and that he would be applying for a transfer for himself. During this conversation, he referred to the other porter (H) doing the same. He said "[H] does the same".

40. Following this exchange, the claimant became concerned that if Mr Logan (who had worked for the respondent for 35 years) expressed the view that he was not prepared to work with the claimant and was wanting a transfer, then there was a fairly high likelihood that rather than allow Mr Logan to be transferred away from the Chez Nous, the respondent would simply dismiss the claimant. The claimant therefore decided to make various recordings on his phone for the rest of the day.

41. During that day, a minor altercation arose between the claimant and Mr Logan in relation to the claimant's attempts to assist a particular resident. The claimant's understanding of the position was that this resident was potentially suicidal having recently suffered two traumatic bereavements. He understood he had recently been released from hospital following a suicide attempt where he had walked in front of a bus. He was having some difficulty obtaining his prescription for drugs and was worried that if he did not obtain the prescribed drugs, then he would require to go cold turkey. The claimant wished to assist him and had spent some time over the previous days making calls on his behalf so as to make arrangements for him to obtain his prescription. Whilst Mr Logan dealt with the individual in a professional way, Mr Logan's view was less benign than the claimant. He knew that this particular resident (JM) had been a regular at various homeless hotels and had come across him before. In fact, the individual had only just been evicted from the respondent's hotel at Queens Park. Mr Logan had decided to give him another chance by allowing him to stay at Chez Nous. His understanding was that one of the bereavements had occurred many years before and that the incident with the bus had occurred whilst the resident was drunk and had simply walked in front of a bus.
42. Shortly after the incident where the claimant had given the telephone to the person whose sister had called, the resident (JM) came in. There was a conversation between him and Mr Logan about what had occurred where he confirmed that he had been drunk when he had been hit by the bus. All of the recordings made by the claimant were lodged both as sound files and as transcripts. The Tribunal having listened to the recordings was satisfied that the transcripts are accurate renditions of what is contained in the bundle at pages 74-75.
43. Two of the recordings were Mr Logan making enquiries into the circumstances of JM and how he may have dealt with this particular service user before. On one of the recordings, there is the sound of typing. The claimant sought to show that this was evidence that his typing was not something Mr Logan had a problem with. The Tribunal's view on the balance of probabilities was that

the sounds were of the claimant inputting data into the respondent's computer which made a noise rather than his own laptop which did not make a noise. Another recording simply records the claimant simply responding to a resident's apology for bothering him "we were just watching TV". Another recording records a short exchange between Mr Logan and a service user relating to free meals which were at that time being provided by a charity to residents in the hotel and were being dropped off for them. Mr Logan notes that the resident has been doing well out of the dinners and makes a jocular remark to the effect that he must be selling them. Another recording relates to a conversation which appears to be between Mr Logan and a member of the respondent's management about the occupancy levels for the coming night. Having listened to these recordings, the Tribunal was satisfied that they were in no way exceptional and also had absolutely no relevance to the subject matter of this claim.

15 44. In one recording, reference is made to a resident who is Chinese. Mr Logan makes a remark where he imitates a Chinese accent and then goes on to state that this particular resident seems to always want coffee sachets. In the final one another employee (neither the claimant or Mr Logan) uses an inappropriate word". What happened was that at the end of the shift, at 7pm, the nightshift staff come in. They relieve Mr Logan and the claimant. One of the nightshift staff who had just come in used the "P word" referring to a "new P... drug dealer". Neither the claimant nor Mr Logan make any reaction to this. The Tribunal was satisfied on the balance of probabilities that Mr Logan had not heard the remark. We accepted his evidence that having been on duty for 12 hours, his only concern when the night shift staff arise is to get his coat and to leave.

45. Although the claimant did not give or lead any direct evidence to this effect, the Tribunal accepted that the claimant was of English heritage. There was no evidence before the Tribunal of Mr Logan, Ms Smith or anyone else within the respondent organisation evincing any ill will towards the claimant on account of his English heritage nor indeed any evidence that this had any influence on them whatsoever.

46. The respondent's business caters to residents of all nationalities. Mr Logan had lengthy experience of dealing with people with different backgrounds and nationalities. He had been one of the first to deal with refugees and asylum seekers when they started being accommodated in Glasgow. There was no evidence of him ever having been accused of racism.

47. Although Mr Logan had an altercation with the claimant on the morning of 5 May over the use of the company telephone by residents, Mr Logan did not mention this either to Mr Hussein or Mr Bizwas on 5 May. On 6 May, the claimant was called by Mr Hussein and told that he was being dismissed. On 6 May Mr Logan and Mr Hussein had a brief conversation regarding this in which Mr Logan repeated many of his concerns about the claimant and also advised Mr. Hussein of the incidents the day before.

48. The claimant is a member of a social media grouping which provides a group chat facility used by members of the respondent's staff. Neither Mr Bizwas nor any member of the respondent's management is a member of this group and they have no control over what is posted. The claimant became aware of a chat taking place on the evening of 5 May. The chat began when D, who is the member of staff responsible for compiling rotas, stating:

"Guys. Mukul called me now. He will tell me the details tomorrow but somebody left the company so I need to make new rota. Kurva."

49. This post was then followed by various members of staff speculating as to who it was that had been dismissed.

50. On 6 May, the claimant received an email from Mr Bizwas enclosing a letter of dismissal. The letter of dismissal was lodged. It states:

"Dear Peter,

Termination of employment

I write to confirm my decision to terminate your employment with effect from 6 May 2021. The reason for this decision is that we do not think that you are suitable for the role.

You are entitled to one week's notice. You will not be required to work your notice and will instead be paid for this in lieu. You will also be paid any holidays you are entitled to which will be paid to you with your final salary payment.

5 *I will arrange for your P45 to be sent to you in due course and thank you for your efforts to date.”*

51. Following the termination of his employment, the claimant sought to obtain further information from Mr Bizwas about why he had been dismissed. Mr Bizwas refused to answer him or engage with him in the matter.

10 52. Following his dismissal, the claimant applied for certain jobs but did not keep a record of these. He applied for various jobs as a care support worker or support worker. He had one job offer and started as a personal assistant to an individual on 30 August 2021. He works part time. The claimant also applied for universal credit. During the period up to 30 August, he received
15 universal credit of around £700 per month. Following the commencement of employment, his universal credit reduced to £171 per month. The claimant has not taken any steps to obtain full time work since obtaining his current
part time position on 30 August 2021.

Observations on the evidence

20 53. This was a case where the claimant asked the Tribunal to draw a number of inferences from the evidence which the Tribunal did not consider justified. The claimant's position was that he believed that Mr Logan was a racist. He believed that this was established from the fact that Mr Logan could be heard on one of the tapes imitating a Chinese accent and on one of the other
25 recordings is not heard to intervene or object when another member of staff uses the "P word" in his presence. The Tribunal accepted that Mr Logan had imitated a Chinese type accent however accepted his explanation that whilst it was a mistake on his part and he regretted doing this, this did not mean he was a racist. We accepted his evidence that he had not heard the P word
30 and note that the claimant was also present and did not intervene or object. We also did not accept the claimant's contention that the fact that the member

of staff concerned used the P word in Mr Logan's presence demonstrated that Mr Logan used the P word himself. This is a leap of logic which we were not prepared to make. We did accept Mr Logan's evidence that he has been involved in a hotel housing the homeless for around 34 years and over this time has assisted people of many nationalities, races and religions. We accepted the evidence he gave that he was one of the first in Glasgow to welcome refugees and asylum seekers. We should say that on the evidence we heard, there is absolutely no justification for labelling Mr Logan a racist.

54. It was also the claimant's contention that he tended to be more helpful towards the residents than Mr Logan. Again, we did not find this established on the evidence. It may be that Mr Logan and the claimant have different approaches as to how to manage residents. We consider that the claimant was probably correct in believing that Mr Logan felt that the claimant was somewhat naïve in his approach. It did also appear to us however that on the basis of the evidence, Mr Logan was also helpful towards the residents so far as he believed was appropriate. The recorded conversations he had with a particular resident were certainly polite and not in any way exceptional despite the attempts of the claimant to paint them as such. It was common ground between the parties that there had been an argument on the morning of 5 May about the claimant making a call for a resident using the respondent's office telephone line. It was common ground that this followed on from other incidents where the claimant had similarly used the respondent's private telephone line to make calls for residents. Mr Logan confirmed that he had told the claimant not to do this because this was something which cost the respondents money.

55. There was a dispute between the parties as to whether during the conversation on 5 August, Mr Logan had used the words "H does the same" when referring to the claimant's comparator. The Tribunal considered that on balance, Mr Logan had probably said it. It appears to be something which stuck in the claimant's mind. It is entirely understandable that Mr Logan had forgot saying it. In any event, we were totally satisfied the remark did not have any of the significance which the claimant attached to it. We accepted Mr

Logan's evidence that H worked in a similar job to the claimant but whereas the claimant used the respondent's phone to make calls on behalf of residents, H used his own mobile telephone to make calls on behalf of residents and would also arrange for them to obtain further help from a charity which he was involved in.

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56. There was a fundamental dispute between the parties as to the timing of the decision to dismiss and, as one would expect, the reason for dismissal. The claimant's position was that something must have happened on 5 May which led to the decision to dismiss. He postulated that Mr Logan must have carried out his threat to tell the respondent's management that he was wanting a transfer because he did not want to work any longer with the claimant, that this had led to his dismissal. The claimant's sole evidence for this was the group messages starting at around 7pm on 5 May which indicated that the person who helped Mr Bizwas with the rota was only told about the need to make changes to the rota at around that time.

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57. The Tribunal did not accept this. The Tribunal accepted Mr Logan's evidence that he had not in fact mentioned the dispute on the morning of 5 May to any of the respondent's management on 5 May nor had he at anytime indicated that he was putting in for a transfer to the managers although he did accept that he had said this to the claimant. We accepted Mr Logan's evidence that the first time he discussed the incident on 5 May was when he spoke to Mr Hussain the following day after the claimant had been dismissed.

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58. We accepted the evidence of Mr Logan and indeed Leslie Smith that both of them had made numerous complaints to the respondent's managers about the claimant taking too close a personal interest in resident's affairs. It was clear that both of them felt that he was behaving inappropriately towards residents. The Tribunal accepted the evidence of Mr Bizwas which was to the effect that he was concerned about the initial reports from Leslie Smith and in particular was concerned by the complaint which was made by resident L. We accepted his evidence that he met with resident L albeit this was disputed by the claimant who did not really have any basis on which to dispute this. There was a dispute between the claimant and Mr Bizwas in relation to how

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the claimant had been advised of his move to Chez Nous. The claimant's position appeared to be that he had not known about the move until he turned up at Queens Park and was told that he was working at Chez Nous. We preferred Mr Bizwas' version which was that there had been a conversation. We also
5 accepted Mr Bizwas' evidence that he had told the claimant of his concerns and made it clear to the claimant that he was giving him a further chance.

59. There was a dispute between the claimant and Ms Smith and Mr Bizwas about whether Mr Smith had reported to Mr Bizwas that the claimant was going through residents' belongings rather than simply going into their rooms and
10 looking for evidence of drug dealing. At the end of the day, Ms Smith indicated that all she had said was that the claimant was going into the residents' rooms and she did not know what he was doing there. Mr Bizwas had understood that Ms Smith complained that the claimant was going through residents' belongings. We did not consider this dispute to be in any way relevant to the
15 subject matter of the claim.

60. In general terms, very little of the claimant's case or his cross examination appeared to be directed at demonstrating that there was any discriminatory
20 motive whatsoever for his dismissal. Mr Bizwas was not asked if he even knew the claimant's nationality far less was it put to him that he had a prejudice against English people. The high point of the claim appeared to be that the claimant was dismissed whilst H who was not English was not dismissed.

61. As noted above, much of the claimant's cross examination of the witnesses was totally irrelevant. The respondent's representative did not object and it
25 appeared to the Tribunal that the direction of the cross examination simply observed to highlight the divergence between the opinion of the claimant and the opinion of the respondent in what was and was not appropriate behaviour on the part of a hotel porter. This served to bolster up the respondent's case which was that the respondent had simply decided that the claimant was not
30 suitable for the job. The Tribunal accepted Mr Bizwas' evidence that the respondent's directors had met privately and simply decided to dispense with the claimant's services for this reason. We accepted the evidence of Mr

Bizwas that this decision had been made around eight days prior to the decision being communicated to the claimant.

Discussion and decision

- 5 62. The sole claim being made by the claimant was one of race discrimination. It was his case that he had suffered a detriment by being dismissed. It was his position that his dismissal was on the grounds of his English nationality. He stated that he was generally helpful to residents as was comparator H. He stated that he was dismissed whilst his comparator H was not dismissed.
- 10 63. We should say at the outset that if this had been a case where the claimant had sufficient qualifying service to claim unfair dismissal there was little doubts in the minds of all three members of the Tribunal that the claimant would have succeeded in making a claim of unfair dismissal. The respondents followed absolutely no process whatsoever. The claimant was told that his dismissal was on the grounds of misconduct but was not told what the conduct allegations against him were. The claimant was given absolutely
15 no opportunity to put his side of things to the respondents before they made the decision to dismiss. Had they done so, for example, the respondents would possibly have discovered that Ms Smith was not in fact accusing the claimant of going through residents' belongings but of simply going into their
20 rooms.
- 25 64. The respondents' failure to follow very basic 21st century employment practices and their subsequent refusal to even discuss the reason for the claimant's dismissal means it is entirely unsurprising that the claimant has speculated that the true reason for his dismissal was a discriminatory one. The respondents may wish to reflect that they have entirely themselves to
30 blame for this situation. Had they carried out basic HR processes, then at least the claimant would have known the allegations against him and may not have required to speculate. Indeed if the respondents had done so, it may well be that the claimant would have accepted that the respondents wanted him to carry out his job in a different way from the way that he was doing it and he would not have been dismissed.

65. The reverse burden of proof refers to all claims of race discrimination. This is set out in section 136 of the Equality Act 2010 which states:

“If there are facts on 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 provisions.”

66. The reverse burden of proof was discussed in the case of Igen Limited v Wong 2005 IRLR 258CA. This case was a claim of sex discrimination but the principles also apply to race discrimination cases. This case confirmed that:

a. *“it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts which the Tribunal could conclude on the absence of adequate explanation that the respondent has committed an act of discrimination against the claimant which is unlawful;*

b. *if the claimant does not prove such facts, he or she will fail;*

c. *it is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination even to themselves. In some cases, the discrimination will not be an intention but merely based on the assumption that he or she would not have fitted in;*

d. *in deciding whether the claimant has proved such facts, it is important to remember the outcome at this stage of analysis why the Tribunal will therefore usually depend on what inferences it is to draw from the primary facts found by the Tribunal;*

e. *it was important to note the word ‘could’ in section 136 (2). At this stage, the Tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of*

unlawful discrimination. At this stage, the Tribunal was looking for the primary factors before receiving what inferences of secondary factors could be drawn from them;

5 *f. in considering what inferences or conclusions can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts;*

...

10 *g. where the claimant has proved facts, conclusions could be drawn that the respondent has treated the claimant less favourably on the grounds of sex and the burden of proof moves to the respondent;*

h. it is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed that act; and

15 *i. to discharge that burden, it is necessary for the respondent to prove on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of sex since no discrimination whatsoever was compatible with the burden of proof directive.”*

67. In this case, the Tribunal was entirely satisfied that there were no facts from which we could conclude in the absence of adequate explanation that the respondent had committed an act of discrimination against the claimant. On
20 the basis of the facts, as established by the Tribunal, Mr Bizwas made his decision to dismiss the claimant around eight days before the conversation with Mr Logan on which the claimant founds that Mr Logan said “and H does the same”. The Tribunal was absolutely satisfied that the decision makers in this case were Mr Bizwas, Mr Iqbal Hussain and Mr Adam Hussain. Mr Logan
25 was not a decision maker and was not involved in the decision to dismiss the claimant which is the detriment alleged. Furthermore, it is a massive leap of logic to go from a manager complaining about an employee doing something which the manager disapproves of and saying “and X does the same” to a finding that an entirely separate decision maker was guilty of unlawful
30 discrimination. In any event, it was absolutely clear from the evidence that H

did not do the same as the claimant. There was no evidence to suggest that H did any of the things which the respondents based their decision to dismiss on; namely take an inappropriate interest in residents' comings and goings, listening at doors, entering their rooms and seeking to gather evidence that they were drug dealers. For this reason, the claimant's claim must fail.

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68. In order to cover all matters, the Tribunal would also wish to state that even if we had decided that it was possible for us to draw such an inference from the facts in this case, the Tribunal was entirely satisfied that the true reason for the claimant's dismissal was that given by the respondent. It was clear to us that the claimant had a very fixed idea that he was in the right and that it was correct of him to seek to gather evidence against residents. It was clear that having been told not to do this twice by Ms Smith, the claimant still considered that he was correct and would not desist.

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69. It is not for the Tribunal to determine whether the respondents were correct or incorrect in the way they wanted to run their business however it is absolutely clear that the respondents instructed the claimant that he was not to be playing detective or seeking to interfere unduly in the life of residents. We could certainly understand from the remarks made by Ms Smith and Mr Logan that the respondents already have established ways of bringing matters to the concern of the police. Most of their residents already have significant input from qualified social workers and the Tribunal could appreciate that neither the respondents nor any of the statutory bodies involved would be too keen on an untrained person like the claimant seeking to interfere. This means that even if the claimant had succeeded in passing the first evidential stage (which he came nowhere near) then at the second stage, we would have found in favour of the respondents in that they have provided an entirely non-discriminatory explanation for the way they have behaved.

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70. It therefore follows that the claimant's claim is dismissed. We should say that whilst we appreciate that the respondents may feel aggrieved at having to spend time and money defending a discrimination case which had virtually no evidential basis, we do repeat our remarks above to the effect that the respondents brought this on themselves by their complete failure to observe

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modern norms in employment and HR practice. Even where an employee does not have two years service it is almost always a good idea to follow the norms of natural justice in putting concerns to an employee and giving him or her the chance to respond before making a decision to dismiss on grounds of conduct.

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Employment Judge: Ian McFatridge

Date of Judgment: 12 May 2022

10 Entered in register: 12 May 2022
and copied to parties