



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

1. **Mr Gavaskar Sutharmaseelan v Cargill Cars Limited**
2. **Ms Kulwinder Nagpal**

**Heard at:** Watford

**On:** 28 to 30 March 2017

**Before:** Employment Judge Henry

## **Appearances**

<b>For the First Claimant:</b>	Mr R Persaud – Employment representative
<b>For the Second Claimant:</b>	In person
<b>For the Respondent:</b>	Mr K Webster - Counsel

## **JUDGMENT**

1. The claimant Mr Sutharmaseelan was not constructively dismissed when he tendered his resignation on 13 April 2016
2. The claimant Ms Nagpal was not constructively dismissed when she tendered her resignation on 13 April 2016
3. The claimant Ms Nagpal has not been discriminated against on the protected characteristic of race
4. The claimants' claims are dismissed.

## **REASONS**

1. The claimants, by a claim form presented to the tribunal on 2 September 2016, presents complaints for constructive unfair dismissal in respect of Mr Sutharmaseelan, and constructive unfair dismissal and race discrimination in respect of Ms Nagpal, when they resigned from the respondent's employ on 13 April 2016.

2. The claimant, Mr Sutharmaseelam, commenced employment on 1 September 2010, the effective date of termination was 13 October 2016; Mr Sutharmaseelam having then been employed for five complete years.
3. The claimant, Ms Nagpal, commenced employment in September 2010, the precise date is not known. The effective date of termination was 13 April 2016, Ms Nagpal then having been continuously employed for five complete years.
4. It is here recorded that, at the outset of the hearing, the parties agreed to the tribunal being constituted by Judge sitting alone, hearing the matter without members.

## **ISSUES**

5. The issues for the tribunal's determination were set out by the case management summary sent to the parties on 4 November 2016, and agreed as follows:

### Unfair dismissal

- 5.1 Did the events of 11 to 13 April 2016 as claimed by the claimant in the statement of case (including, in relation to the second claimant, that which is claimed in paragraph 34 to have occurred) occur?
- 5.2 If not, what, precisely, did happen so far as relevant to those days.
- 5.3 Did what actually occur constitute a breach of the implied term of trust and confidence, namely the obligation not, without reasonable and proper cause, to act in a way which is likely seriously to damage or to destroy the relationship of trust and confidence which exists, or should exist, between employer and employee, as employer and employee?
- 5.4 If the answer to the preceding question is "yes", then it is accepted by the respondent that:
  - 5.4.1 the claimants were dismissed within the meaning of s.95(1)(c) of the Employment Rights Act 1996, and
  - 5.4.2 their dismissal were unfair
- 5.5 The only remaining question in relation to the claims of unfair dismissal will accordingly be what remedy, by way of compensation and basic award, should the claimant (or either of them) receive? (There is no claim by the respondent of contributory fault).

### Race discrimination

- 5.6 Was what is alleged in paragraph 34 in the statement of case to have been said by Mr Sivashankar actually said to him?

5.7 If so, then what was in his mind when he said it, i.e. Did he mean

5.7.1 That he did not want the second claimant to continue to be employed because the second claimant was not Tamil (in which case the respondent accepts that the second claimant was discriminated against because of her race, contrary to sections 13(1) and 39(2) of the Equality Act 2010), or

5.7.2 That he wanted someone who spoke Tamil to be employed, instead of the second claimant?

5.8 If the answer to the preceding question is that Mr Sivashankar simply wanted a Tamil speaking employee, ie the meaning stated in paragraph 5.7.2 above, then that will have been a provision, criterion or practice ("PCP") the application of which could have been indirectly discriminatory because of the second claimant's race. It would only not have been indirectly discriminatory if it was justified. Thus, the question would then be whether the application of the PCP was justified.

5.9 If the claim of discrimination contrary to the Equality Act 2010 is successful, then the question what compensation (or what additional compensation) should the second claimant receive in respect of that discrimination will arise.

## **Evidence**

6. The tribunal heard evidence from the claimants on their behalf, and from the following witnesses on behalf of the respondent; Mr Shivashankar Sathiyandarajah – Director, Mr James Yogandrarajah – Temporary book-keeper, and Mr Janahan Thirunvukarasa – Manager of Unicorn Transfers Ltd.
7. The witnesses' evidence in chief was received by written statements upon which they were then cross-examined. The tribunal had before it a bundle of documents Exhibit R1. From the documents seen and the evidence heard, the tribunal finds the following material facts.

## **Facts**

8. The respondent is engaged in the minicab industry. The business is a small business consisting of Mr Sathiyandarajah, Director, the claimants Mr Sutharmaseelam as Operations Manager, and Ms Nagpal as Administrator, and two further controllers.
9. It is however here noted, Ms Nagpal's evidence that, having been employed as an Administrator, she was subsequently promoted to the position of Business Development Manager. This is not accepted by Mr Sathiyandarajah of the respondent, who maintains that Ms Nagpal

retained the position of Administrator throughout the period of her employment. In this regard, it is Ms Nagpal's evidence that, whilst she had initially been engaged as an administrator, over time, she had become more involved in the business, for which she had suggested the change in title of her role, and whilst nothing had been formally agreed or put into writing, it was tacitly accepted. Mr Sathiyandarajah, does not accept this and maintains that there had been no change, but does not challenge Ms Nagpal's greater involvement in the business, which was a consequence of Mr Sutharmaseelam's and Ms Nagpal's working relationship.

10. The business operates on a 24-hour basis, for which during main office hours, within the office there would be one Controller together with the Operations Manager.
11. The business engages drivers on either a commission basis; whereby the driver pays the respondent 20% of any fares received, or a rent basis; whereby the driver pays a weekly sum of £150 and then keeps the total fares charged.
12. The customer base is made up of two categories; casual customers, from either walk-ins or via telephone bookings, and account customers. In respect of account customers, the fares are invoiced to the customer and payment made direct to the respondent from which the respondent will offset these fares as against the rent from the driver, or otherwise commission due. The allocations of fares to drivers are at the discretion of the Controller.
13. It is here submitted by the claimants that it is not an absolute discretion, and that the office operates a Cab Rank rule, however, where there are two drivers who have been waiting for fares, for the same duration of time, then they will operate their discretion in favour of those drivers on rent.
14. The respondent maintains that the Controller retains total discretion in allocating fares, which forms the basis for suspicions being raised as to the conduct of the business by the claimants. However, for the determination of the issues before this tribunal, it is not material for a determination hereon, otherwise than to note that the respondent believed the claimants held that degree of discretion, which has not been challenged.
15. On controllers taking bookings, the particulars are entered on a computer software programme called "Cordic", which records inter alia, the fares, the particular drivers and relevant payments. This system can then be interrogated to furnish reports as to; the drivers, their fares, payments via commission or otherwise, and receipts to the company.
16. With regards the Cordic system, the Controllers and Ms Nagpal, would input information into the system but they were then not able to retrieve reports there from. Access for this purpose was with the Director and Operations Manager.

17. It is also here noted that, Ms Nagpal would generate internal accounts which were a simplistic format, being a handwritten table identifying the driver's number and payments to them, a copy of which is at R1 page C182, which she would prepare on being presented, by the operations manager, with a printout form the Cordic system, of the individual driver's summary.
18. In or around early February 2016, this method was amended by a newly appointed Accountant/Book-keeper, Mr Yogendarajah, who furnished a template for the purpose of recording and reporting the relevant information together with further relevant accounting particulars, a copy of which is at R1 C183. Against this document, financial reconciliations were then to be made.
19. I pause here, to consider the role of the claimant Ms Nagpal, as above stated, the respondent maintaining that the claimant Ms Nagpal, remained an Administrator throughout her employment. It is Ms Nagpal's evidence that whilst she was not formally promoted it had been recognized that she was performing a number of duties above that of Administrator such as dealing with client accounts, bringing in new business, and preparing the internal accounts etc, for which, it was agreed that she would be called the "Business Development Manager" and for which she states she received a small increase in salary. There was nothing put in writing to record such a change; Ms Nagpal stating that, it had been agreed with both the Operations Manager and the Director. The Director Mr Sathiyandarajah, however, maintains that he had not been involved in such agreement and that he was not aware of what the Operations Manager may have agreed.
20. In giving consideration to the circumstance and operations of the business, I accept Ms Nagpal's evidence that, she was undertaking work senior to that of an Administrator, being the consequence of there being a small workforce, and she undertook tasks as the business required. Ms Nagpal in giving her evidence to the tribunal has exhibited a high level of intelligence and confidence, such that her ability would have been readily evident and utilised. I also accept that, by the nature of the business operations and the character of Ms Nagpal, she would have proffered the title of Business Development Manager, which would not have been refused by Mr Sathiyandarajah or Mr Sutharmaseelam at the material time, and that the title would have been used by the claimant in the knowledge of all parties. However, exactly what the duties of such a position then entailed, the parties had not directed their minds which was acknowledged by Ms Nagpal and confirmed, that the change/amendment to her role had not been formally done.
21. I also make the observation at this juncture that, up until January 2016, there was a cordial and friendly relationship between the parties without material incidents. There is no question of there having been any issues arising in respect of relations between the parties. Indeed, as regards Mr Sutharmaseelam, he held a 20% shareholding in the company and was considered a friend of the Director, Mr Sathiyandarajah.

22. It is equally not in dispute that, it was a concern of Mr Sathiyandarajah that, the company, since its inception, had not been particularly profitable and had become increasingly concerned as to the profitability of the company, for which in January 2016, he raised issue with the Operations Manager, questioning why the company was not making any money, stating that the company should be making profits as it had, up until this point in time, been operating for five years. It was Mr Sutharmaseelam's evidence that, during a meeting concerning this issue, Mr Sathiyandarajah "seemed frustrated" for which Mr Sutharmaseelam showed him the internal accounts as above referred, (prepared by Ms Nagpal) stating that, whenever the business account was in credit, Mr Sathiyandarajah would take money out. Mr Sutharmaseelam further gave evidence that Mr Sathiyandarajah became hostile towards him in that meeting from which he withdrew.
23. Mr Sathiyandarajah denies becoming hostile with Mr Sutharmaseelam, but accepts raising the issue as to the company not being in profit.
24. I am satisfied that the discussion was had and that Mr Sathiyandarajah would have exhibited his concern, which may well have been received as hostile. However, in stating this, I am conscious of Mr Sutharmaseelam's further evidence that he had seen this behaviour as out of character, after which things went back to normal, and there were no further incidents of this nature, and he had not taken it to have in any way affected their working relationship which continued cordially until 11 April 2016, when the following events occurred, for which the claimants maintain breached the implied term of mutual trust and confidence and for which they resigned their employment on 13 April.
25. Between the period January to April 2016, it is not challenged that Mr Sathiyandarajah had growing suspicions as to irregularities in the management and operation of Cargill Cars from information being furnished to him from a number of sources, for which he engaged the services of Mr Yogendrarajah, accountant, to interrogate the company's accounts for any irregularities.
26. In respect of his suspicions Mr Sathiyandarajah equally discussed his concerns with friends and was informed that as part of any investigations, he should install CCTV throughout the office. CCTV coverage having been had throughout the premises save for the office used by Mr Sutharmaseelan, arrangements were made for CCTV coverage of that office. Installation was arranged for 11 April 2016.
27. Between February and April 2016, Mr Yogendrarajah, together with the assistance of Ms Nagpal and Mr Sutharmaseelan, reviewed the company's accounts. Mr Yogendrarajah was unable to reconcile the internal account records prepared by Ms Nagpal with the account records generated by the Cordic system.
28. With regards the differences between the internal accounts prepared by Ms Nagpal and those generated by the Cordic system, Mr Yogendrarajah was

asked to further investigate, which he undertook to do on his weekly visit, but owing to his being unable to attend on his usual day, he proposed that he tend the offices on 11 April, for which Mr Sathiyandarajah asked Mr Sutharmaseelan to remain at work to assist Mr Yogendrarajah.

29. It is Mr Sutharmaseelan's evidence that, at this time he "noticed that Siva was behaving in a hostile manner to me. He was being short with his responses to me and acted as if he was generally irritated. He told me that James (the accountant) would be in that evening and that he wanted me to stay behind to do some work with him"
30. Mr Sutharmaseelan in turn, asked Ms Nagpal to equally stay behind after work to assist Mr Yogendrarajah.
31. Sometime after 5pm on 11 April, Mr Sathiyandarajah attended the office with an engineer to install the further CCTV camera, for which Ms Nagpal asked why the extra camera was being installed, asking Mr Sathiyandarajah whether he was prepared to discuss the installation with her and Mr Sutharmaseelan, which was refused by Mr Sathiyandarajah who instructed the engineer to complete the installation. In respect of this encounter, it is the claimants' evidence that on being approached by Ms Nagpal, Mr Sathiyandarajah accused Ms Nagpal of "shaking" and having something to hide. This is denied by Mr Sathiyandarajah.
32. It is Mr Sutharmaseelan's evidence that in respect of the installation of the camera, "... I was really surprised that he had decided to do this without talking to me and I felt the installation of this camera was a breach of my privacy. I not only worked in that office but often had to sleep on the floor in that office when there were staff shortages and I had to cover 24 hour shifts. If Siva felt it was appropriate to now install a camera in that same room, it was very insulting. I have worked so hard for the company and felt strongly that this camera indicated that my dedication and hard work was not at all valued." Mr Sutharmaseelan has not raised any of these issues with Mr Sathiyandarajah
33. It is Ms Nagpal's evidence to the tribunal, of the installation of the CCTV camera, that:

"I felt that if he had a reason to install the camera, he should have discussed it with Gavin and myself. He should have explained why he wanted the camera, when it will be installed and what it will be looking at. I felt terrible for Gavin as he has frequently had to live out of that office to cover 24-72 hour shifts at times of staff shortage. Siva was now placing a camera in that office compromising Gavin's privacy if ever he was required to do that for the company again."
34. The claimants further here submit that, they felt the CCTV camera had been installed because Mr Sathiyandarajah did not trust them, and of Mr Sathiyandarajah's change of heart towards them, this had come about on account of their addressing with him, his practice of randomly taking money out of, and putting money into, the company accounts, for which agreement was subsequently reached that, Mr Sathiyandarajah would stop the

practice, and that during the period January to April 2016, the business then showed a small profit, Mr Sutharmaseelan's evidence being that:

"I thought that Siva would be thrilled to learn that the company was operating independently. However, he seemed (sic) Siva seemed irritated each week when I no longer went to ask him to pay the staff wages. I could instead pay them from the companies own money. He seemed irritated if I pointed out to him how well the company was doing.

He was most irritated when I asked him to return the money he "borrowed" from the Cargill Cars Business Account..."

and that the company being profitable was the underlying reason for Mr Sathiyandarajah's antipathy towards them and treatment of them thereafter, in April 2016.

35. Following the engineer completing the installation, on Mr Yogendrarajah subsequently attending the office, and on his having brought to the claimants' attention, a discrepancy of £4,000 between money generated and amounts banked, seeking an explanation, the claimants explained that Mr Yogendrarajah's search had been incomplete and that there was no discrepancy.
36. It is the claimants' evidence that, they both felt as if they were being accused of stealing and that an investigation was then underway, but that they had at no point been made aware of this and had been given no notice of any such investigation.
37. In respect hereof, it is Ms Nagpal's evidence that, being on social terms with Mr Yogendrarajah, she had asked him what he was looking for, explaining that were he looking for records to support the theory of missing cash, then he would not find any as there was nothing to be found, Ms Nagpal stating that Mr Yogendrarajah thereon denied that he was looking for proof of missing cash and that he was simply doing his job.
38. This evidence is not challenged by the respondent, although Mr Yogendrarajah's evidence is that, on Ms Nagpal speaking to him, she had asked him not to raise the discrepancy with Mr Sathiyandarajah. This discussion is denied by Ms Nagpal.
39. On Mr Sathiyandarajah subsequently attending the office, on his observing Ms Nagpal talking to Mr Yogendrarajah, the claimants submit that, in Tamil he stated words to the effect "*do not discuss matters of my business with her, Gavin is my business partner, this has nothing to do with her,*" which whilst Ms Nagpal does not understand Tamil she was subsequently informed thereof by Mr Sutharmaseelan, but exactly when, the tribunal has not been informed of. The respondent does not accept that such a statement was made. On a balance of probabilities, in circumstances where Mr Sathiyandarajah held concerns over business operations and tasked Mr Yogendrarajah specifically to interrogate the accounts, on his having asked only Mr Sutharmaseelan to assist Mr Yogendrarajah and on



Ms Nagpal's da facto management in operations, it is more likely than not that, had Mr Sathiyandarajah witnessed Ms Nagpal talking to Mr Yogendrarajah at this time, comments of this nature would have been made.

40. By Mr Yogendrarajah's enquiries, he found variants between the Cordic system and the internal accounts of £2,488, £2,267, £2,576 for the months of December 2015, January 2016 and February 2016 respectively. He informed Mr Sathiyandarajah that further enquiries of the Cordic system needed to be undertaken, but for which he was not competent, and that an expert should be engaged.
41. On the morning of 12 April, it is Ms Nagpal's evidence that on arriving at work, Mr Sathiyandarajah being in the office, he did not speak to her, the inference being that there was something untoward thereby. The tribunal has received no evidence of there being a common practice of Mr Sathiyandarajah greeting Ms Nagpal when they met, so as to read anything therein therefrom, but to the contrary, the evidence presented to the tribunal is that there was very little relations between Ms Nagpal and Mr Sathiyandarajah; contact with Ms Nagpal being had through Mr Sutharmaseelan and that where contact was had between Ms Nagpal and Ms Sathiyandarajah, this was the product of Ms Nagpal approaching Mr Sathiyandarajah to address business matters, ostensibly on behalf of Mr Sutharmaseelan.
42. On Mr Sutharmaseelan attending the office sometime after 9am, he was asked to meet Mr Sathiyandarajah, whereon Mr Sutharmaseelan states he was informed that from thereafter, Ms Nagpal was no longer to deal with admin, but only to be a controller and that he should no longer handle any cash. Mr Sutharmaseelan's evidence being that, *"I was shocked about this; it was a core part of my role to handle cash and to deal with driver's rent and commission... I couldn't believe that he was changing my role without consulting me. He was effectively demoting me and it was clear to me that he was saying that he didn't trust me."* Mr Sathiyandarajah denies having this conversation and there is no evidence presented to the tribunal of Mr Sutharmaseelan challenging this instruction.
43. With regards Mr Sathiyandarajah informing Mr Sutharmaseelan that Ms Nagpal was no longer to deal with admin, it is not clear as to exactly what was said, Mr Sutharmaseelan giving further evidence to the tribunal that, the instruction he was given by Mr Sathiyandarajah was that *"He did not like her getting involved in business matters. That, he said he was happy for her to do the work and tell me and for me to then communicate it to him, but he did not like speaking with her directly."*
44. On the evidence presented to the tribunal and having regard to the record of conversations between Mr Sathiyandarajah and Mr Janahan Thirunvukarasa, later on 12 April, where in the transcript of the discussion being had between them, it is there recorded, Mr Sathiyandarajah advising Mr Thirunvukarasa of what he had informed Ms Nagpal, stating:

“Anna (brother) I need a help from you. For one or two weeks if you know anyone who knows Cordic, it would help to figure out on what’s happening .... She can be moved... I have already told her not to touch anything. I need someone who knows Cordic. Now.”

it is highly likely that the instruction, Mr Sutharmaseelan states he was given, regarding Ms Nagpal, was given in some form, the effect of which was that Ms Nagpal’s involvement in the business operations would thereafter be limited.

45. On Mr Sutharmaseelan returning to his office, he informed Ms Nagpal of what he had been told. Ms Nagpal’s evidence being that:

“...I was astonished. I had joined the company as an Administrator and had been promoted to Business Development Manager. I felt as if I was being demoted to a job that was lower than the one that I had even joined on six years previously.

.. I was very embarrassed at having to hear something like this from a colleague rather than from Siva himself. I was hurt that he appeared to be investigating me and Gavin, but I was further insulted by the fact that he refused to speak to me directly about what he was thinking and/or feeling.

I was used to Siva sidelining me when he wanted to talk in Tamil but to tell me that I had been demoted and to do so via my colleague was insulting, embarrassing and made me feel very small.

I felt that this was a verbal demotion and was almost in tears knowing that Siva did not even give the information directly to me.”

46. Ms Nagpal thereon went to Mr Sathiyandarajah and asked for a new contract that officially demoted her to the position of Controller

47. It is the claimant’s, Mr Sutharmaseelan’s evidence that, he overheard the conversation between Ms Nagpal and Mr Sathiyandarajah and that Ms Nagpal was instructed to do a handover of her admin duties to a new member of staff, for which she informed Mr Sathiyandarajah that she would not do so until she received a new contract for which she was then told: “*You will do as you are told, I am the boss, and it seems you are forgetting that*”, on which the conversation then moved in to Mr Sutharmaseelan’s office, Ms Nagpal’s evidence being that, she could see that Mr Sathiyandarajah was getting increasingly aggressive towards her, stating:

“I always respected him as my boss and have worked very hard for the company and that I felt the respect was not been (sic) mutual. Siva said to me something along the lines of “I know hard (sic) you have really been working, the company has been in operation five years now. If you had really been working hard I would have been living in Spain by now, but I am living in England. Where is my money Kim?”

48. It is Ms Nagpal evidence that she thereon asked Mr Sathiyandarajah if he was accusing her of stealing to which Mr Sathiyandarajah replied “*When*

*did I say you were stealing?”* Ms Nagpal stating that, she felt that if he was asking her where his money was, this was indeed an accusation, whereon Mr Sathiyandarajah walked away and went back into his office slamming the door shut. Ms Nagpal then returned to her office and continued with her work.

49. With regards Mr Sathiyandarajah informing Ms Nagpal to do a handover, Mr Sathiyandarajah denies having had this discussion with Ms Nagpal.
50. On the evidence before the tribunal, on a balance of probabilities, it is more likely than not that Mr Sathiyandarajah at some stage had informed Ms Nagpal as to his “being the boss and that she was forgetting that”, however, I do not believe the discussion as to a handover took place at this time, as the issue as to an alternative person undertaking Ms Nagpal’s admin duties did not arise until subsequent discussions between Mr Sathiyandarajah and Mr Thirunvukarasa later that day; the transcript of which discussion appears at R1 page D16-D36.
51. Later that day, during the claimants’ lunch period, Mr Sathiyandarajah informed Mr Sutharmaseelan, in Tamil, that he was going to bring a guest in to the office, instructing that he and Ms Nagpal should finish their lunch and vacate the office for approximately 10 Minutes.
52. It is Mr Sutharmaseelan’s evidence that, he was upset thereby and threw his food away and left the office. Ms Nagpal however remained.
53. Mr Sathiyandarajah subsequently attended the office with Mr Thirunvukarasa, the then manager of Hummingbird Limited, operating a similar business to that of the respondent, and experienced in the Cordic system, able to analyse data registered thereon.
54. On Ms Nagpal having been informed as to vacating the office, she enquired of Mr Sathiyandarajah whether she was to leave, being informed that she could stay, gesturing to a phone and indicating that’s he should answer calls.
55. Mr Thirunvukarasa was thereon logged on to the Cordic system who began his interrogation thereof. Mr Sathiyandarajah and Mr Thirunvukarasa held their conversations in Tamil.
56. It is Ms Nagpal’s evidence that, on discussions being had in Tamil, she felt very strongly that she was being talked about and decided to record the conversation on her phone for Mr Sutharmaseelan to translate thereafter.
57. The recorded transcript is at R1 page D16-D36.
58. Whilst Mr Thirunvukarasa interrogated the Cordic system and irregular practices observed, discussions were had between Mr Thirunvukarasa and Mr Sathiyandarajah as to the possible practices giving rise to the irregularities; whether by accident or design, the possible consequences,

the parties who were potentially implicated, and what actions could be taken to further investigate the irregularities.

59. Mr Sathiyandarajah anxious to understand the implications for his business, the following discussions were had and are here noted, as they are material to the claimants' reasons for their subsequent actions and resignation from the respondent's employ:

Siva: It's a big game (laugh)

Other: Yes

Siva: Big scam

You can't delete it, is it?

Other: If you delete ...

Siva: You know that P... and W

Other: Yes

Siva: You please change it

Other: Ok I will change it. He will have limited access to it.

Siva: Just stop him completely... Yes.

Other: I will give him limited access, because we also need to check other things.

Siva: Ok.

Other: It will be clear if we check everything. Can happen by mistake or negligence or by carelessness.

.....

Siva: If one doesn't know he will get confused.

Other: One by one.... The drivers....these lets look into these drivers.... This driver has done what you call jobs, but only 10 is shown... this is 1... yeah, in the same way I have to go through every driver... another one... same person, 2 statements...

Siva: Big dealings, Uhh? That day...

They confused him to that extent, isn't it? To the accountant.... He doesn't know... confused his mind... said the jobs are cancelled, this and that.

Other: Yeah.

Siva: She did that. The big one... she is the main reason or brain behind. She understood that we found out about them.

..... Yeah.

Siva: Shhhhhhh (exhaled deeply) This is a big game... This much...

.....

Siva: I should be living in Spain. I am living in England.

Other: (Count) ... This is a small mistake.

Siva: Why there are 2 entries? Why did they put in 2?...

Siva: Is that the rent driver? Or commission drivers?

Other: I think so. If you get hold of commission drivers it will be easy to understand. Any way lets look into this. You know what they would they do earlier.... They can cancel account jobs....

Siva: Ummmm.... (listening) Ok.

Other: That means... they will change the cash job to account job so we owe them money.

Siva: Yeah, that is how they projected or lied.

.....

Other: It is this.... It is shown as rent to you. He is charging them in commission.

Siva: I see.

.....

Siva: Ok, that means, if it is 10 drivers on commission he would tell me only 5 drivers on commission, is it?

Other: Yes, he will change it and write it down.... For those fixed for rent... gives them a chance... don't know who did they change to commission.

Siva: She has the habit of recording.

Other: What, all that we talk? How?

Siva: She will record and give it to him.

.....

Other: 046 did 2 jobs and has paid £115 rent.

Siva: How is that?

Other: (Laugh) That we need to investigate is it?

Siva: Mmmm

Other: He did jobs for £21 for £115 rent, ok? Do not speak to these people yet; you can talk after full investigation.

Siva: Something is definitely wrong, isn't it?

Other: Yes that is confirmed

....

Other: In the last statement, the same person has.... £101 and £140, Ok.... Nearly £200. With this the previous/old jobs should also match. Once the statements are given to them later, then he adjust and actually shows that to you.... He shows to you and says that is what actually happens.

If you look into each of the drivers, it is written in a way to match their commission. If you look in to the new ones it is increasing in amount.

Siva: Oh

Other: We do not know if they are doing it on their own or together.

.....

Other: They charge the driver the right commission but put less money in to your sheet. It is reduced here.

.....

Siva: So, this is what is going on, isn't it.

Other: Could be... possible.

.....

Siva: She knows everything.

Siva: Can that be changed.

Other: Can not change. Can not delete anything, it will still be seen.

Siva: It will be seen, isn't it?

Other: This... he has changed.

This also he changed.

What are you going to do? Are you going to leave it?

Siva: I do not want to do it straight away. I want to speak to him first. Overall what do you think? Do you think he is playing?

Other: What you should do is... when he is doing the statements ...

Siva: Yes.

Other: Go and look in to that, keep looking in to that... keep checking. Compare.

Siva: Anna (brother), I need a help from you. For one or two weeks if you know anyone who knows Cordic, it would help to figure out on what happening... she can be moved... I have already told her not to touch anything. I need someone who knows Cordic. Now.

.....

Siva: You see; I know someone who knows Cordic. But it will be nice to have one of our people. You very well know what is happening now. Experts would have caught hold of these long back.

Other: He will come to know that we came and checked everything. They will not keep their hands on anything now... look you can see there are more here... files, statements....

Siva: I do not know what he is doing. He is playing, isn't it?

Other: He does it or not.... It is confirmed that 033 does. You need to find out why it's done. There has to be some explanation.

.....

Other: So, this can be handled in two or three ways. You can ask one of the drivers to bring the old statement. He would bring it. You can check and see if there are any changes. If there are changes you can clearly see them. But you may not know who are all involved in this directly.

Siva: He must have done all this... What I... controllers... we need to change the controllers... if there are some controllers who know Cordic....If you know some...

.....

Siva: I want to know who does this, who is behind. Need someone good and helpful. I am also prepared to sell it if needed, you see.

.....

Siva: She is the main person. She knows everything. She is very bright.  
.....

Other: So cleverly, instead of removing him.

Other: Can that old person do this? Let him come and learn everything without disturbing these two... and ask him to train this guy.  
.....

Other: Let them train him. You can meanwhile do a lot, like in the settings... He has to cross check.... After cross checking you can see and catch them. Then it can be explored deep.  
.....

Other: So cleverly, instead of removing him and incur loss, it is better to keep him and train someone.... Just be nice. I don't think he will do anything now... and train the new till he learns it well. Don't do anything with him now.

Siva: She is the one who does everything, I told her not to touch anything. These two are here together, all the time, covering each other every time, does all the potentially dangerous stuff. If only I get someone to replace them... our people.

Other: Yeah, our people.

Yeah, three people.

Yes, then you can keep checking... I think she knew already what is going on... Yes.

Siva: Yes, this business is mine. I have other business as well. If he does not give me any money, if this carries on like this I will come down to street. Sine six years it is a loss to me. I will see for three to four years, otherwise I will sell it to someone. No point in keep paying the wages to staff. If he is just covering the staff wages.

Other: (Laugh) Do it... Do it like that.

Siva: Let's go there... back."

60. In respect of this last exchange, it is Ms Nagpal's contention that reference to "*If only I get someone to replace them... our people...*" was a reference to Tamil speaking persons to replace her, and for which she claims race discrimination.
61. On Mr Sutharmaseelan returning form lunch, Ms Nagpal informed him that she had recorded the conversation between Mr Sathiyandarajah and Mr



Thirunvukarasa, and further that Mr Sathiyandarajah had acted in an aggressive manner in his conversation with Mr Thirunvukarasa.

62. It is Ms Nagpal's evidence that, when she subsequently played the recording to Mr Sutharmaseelan, he explained that Mr Sathiyandarajah and Mr Thirunvukarasa had accused him and her of fiddling admin records/rent money. Ms Nagpal further states that, she was told that Mr Sathiyandarajah had informed Mr Thirunvukarasa that he intended to get rid of her and replace her with someone who spoke Tamil, which she states she had not found surprising as she had often been made to feel inferior due to her different race and background, and her inability to speak Tamil; further stating that Mr Sathiyandarajah had made it clear to her that she was beneath him as she was not Sri Lankan and that he always held meetings in Tamil causing her to feel left out of matters.
63. The tribunal here notes that, of the respondent Cargill Cars, only Mr Sathiyandarajah and Mr Sutharmaseelan spoke Tamil.
64. It is Mr Sutharmaseelan's evidence that, in the evening of 12 April, Ms Nagpal played the recording of the discussions between Mr Sathiyandarajah and Mr Thirunvukarasa over the phone to him, but that he did not listen to the whole recording until weeks later.
65. The tribunal finds this material, in that the basis on which Ms Nagpal states she resigned, was as a consequence of the discussions between Mr Sathiyandarajah and Mr Thirunvukarasa, particularly those occurring at the end of their discussions, such that the information that Mr Sutharmaseelan would have been cognisant of, and therefore able to impart to Ms Nagpal on the evening of 12 April, would not have included that later information as to replacing Ms Nagpal or otherwise of Sri Lankan or Tamil speaking employees. What was imparted to Ms Nagpal on the evening of 12 April, was the discussion as to herself and Mr Sutharmaseelan being suspected of fiddling the accounts and how the respondent sought to investigate the same.
66. It is Ms Nagpal's submission and the cause for her resigning, that:

"I was so distressed by the way that I have been treated by Siva that I felt that there was no way that I could continue on with my job at the respondent company.

He had demoted me, he had prevented me from working as anything other than a controller, he had effectively accused me of stealing and had told another person that he wanted to get rid of me and replace me with a Tamil speaking person.

Siva specifically told Gavin that he did not like me getting involved in business matters, yet I was employed as the Business Development Manager.

When I went home that evening, I was in tears. I felt completely wronged and felt that I was not trusted by my employer and that I had been treated completely

unfairly. I was astonished that he had said that he wanted to get rid of me and replace me with a Tamil speaker. This was completely racist.

I felt that I had been mistreated enough and I typed up a short resignation letter for myself.”

67. The following morning, 13 April, Ms Nagpal on attending the office, handed in her letter of resignation to Mr Sathiyandarajah, the letter of resignation stating:

“Please accept this letter as formal notice of my intention to depart from the company.

As discussed during our meeting today (13 April 2016) – my departure from Cargill Cars will be effective immediately and my last day of employment will be tomorrow (14 April 2016).”

68. There is no evidence that any reason for her resignation was thereon given, Ms Nagpal stating that, Mr Sathiyandarajah stated that he was happy for her to leave immediately for which she asked him to sign a statement that she had prepared to confirm that fact, which Ms Nagpal states, *“Mr Sathiyandarajah stated he would show it to his lawyer before he signed it.”* The claimant was thereon asked to prepare a handover which she stated she would not do until he signed the document confirming he was happy for her to leave. Ms Nagpal returned to her office and continued working.
69. Subsequent thereto, Mr Sathiyandarajah approached Ms Nagpal regarding rent from a driver, producing a handwritten entry by Ms Nagpal stating that she had accepted rent from the driver. On Mr Sathiyandarajah making his enquiries he was informed by Ms Nagpal that the rent had been put in the box (a cash box for which Mr Sathiyandarajah and Mr Sutharmaseelan were the only individuals who could then access it). Mr Sathiyandarajah informed Ms Nagpal that the money was not in the box for which Ms Nagpal advised that, *“It must be in the box or he can ask Gavin as only they have keys to access the box”*.
70. Later that morning, Mr Sathiyandarajah made enquiries of Mr Sutharmaseelan for the missing rent. Mr Sutharmaseelan advised that he had not handled any cash, having been advised the day before not to do so. On enquiring why he was being so questioned, it is the claimants’ evidence that Mr Sathiyandarajah responded that Ms Nagpal had told him that he, Mr Sutharmaseelan (had taken it), which was immediately corrected by Ms Nagpal stating what she had informed him, Mr Sathiyandarajah, that *“It must be in the box or he can ask Gavin as only they have keys to access the box”*. There was no further discussion and Mr Sathiyandarajah left the office.
71. It is the claimants’ evidence that, Mr Sutharmaseelan then decided that he had also had enough and asked Ms Nagpal to prepare a resignation letter in similar format to hers, which was then presented to Mr Sathiyandarajah,

further asking him to sign a document confirming that he was happy for Mr Sutharmaseelan to leave; Mr Sathiyandarajah again stating that he would show the document to his lawyer and, if ok, would then sign.

72. It is Mr Sathiyandarajah's evidence that both individuals presented their letters of resignation together. I prefer the evidence of the claimants on this point.
73. The claimants continued working that day.
74. On 14 April 2016, at approximately 9:30 am, Mr Sathiyandarajah attended the office with an individual named Ravi, which on Mr Sathiyandarajah advising that he would sign Ms Nagpal's document confirming the acceptance of her leaving; she began a handover to Ravi. It is Ms Nagpal's evidence of this event that, Ravi seemed to have been prep'ed by Mr Sathiyandarajah to learn about the accounts, driver rents and other topics relating to money.
75. It is the respondent's evidence that Ravi was the son of a friend of Mr Sathiyandarajah and assisted the respondent immediately after the claimant's departure for approximately two days a week. I accept the respondent's evidence on this point, that Ravi had not been employed, but merely helped out in the short-term until replacements for the claimants were engaged.
76. At approximately 10am, Mr Thirunvukarasa attended the office and after being introduced to Mr Sutharmaseelan, Mr Sutharmaseelan gave a handover to Mr Thirunvukarasa, Mr Sathiyandarajah and Ravi. On Mr Sathiyandarajah having set chairs to form a semi-circle around Mr Sutharmaseelan's desk by which the individuals' backs were then towards Ms Nagpal, Mr Sutharmaseelan found this offensive to Ms Nagpal, for which he then stood during the handover. The handover was conducted in Tamil, and where questions were needed of Ms Nagpal, Mr Sutharmaseelan addressed Ms Nagpal in English and then translated her answers in to Tamil for the further individuals.
77. With respect the chairs having been set in a semi-circle with their backs towards Ms Nagpal, Ms Nagpal has stated that she felt sidelined and made to feel like she was not there.
78. It is Mr Sutharmaseelan's evidence that, in giving his handover Mr Thirunvukarasa repeatedly congratulated him, telling him what an excellent job he had done to progress the company thus far in just five year, that the company had achieved a lot and was run in a very professional way, which reduced him, Mr Sutharmaseelan, to tears. This is not accepted by the respondent.
79. The claimants' employment terminated on 14 April 2016. On the claimants leaving the respondent's employ, their replacements neither speak Tamil or are of Sri Lankan nationality.

80. The claimants presented complaints to the tribunal on 2 September 2016.

### Submissions

81. The parties presented oral submissions which submissions have duly been considered.

### The law

82. The law relevant to constructive dismissal was set out by Lord Denning, MR in the case Western Excavating (ECC) Limited v Sharp 1978 ICR page 221, as follows:

*“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed.”*

83. On the contention that there was a fundamental breach of the contract of employment, by breach of the implied term of mutual trust and confidence, this breach has been considered in the case of Post Office v Roberts [1980] IRLR, page 347 at paragraph 45 per Talbot J, referring to Kilner Brown J. in Robinson v Compton Parkinson Ltd [1978] IRLR 61, that:

*45. ....“It seems to us although there is no direct authority to which we have been referred, that the law is perfectly plain and needs to be restated so that there shall be no opportunity for confusion in the future. In a contract of employment, and in conditions of employment, there has to be mutual trust and confidence between master and servant. Although most of the reported cases deal with the master seeking remedy against a servant or former servant for acting in breach of confidence or in breach of trust, that action can only be upon the basis that trust and confidence is mutual. Consequently, where a man says to his employer “I claim that you have broken your contract because you have clearly shown you have no confidence in me, and you have behaved in a way which is contrary to that mutual trust which ought to exist between master and servant” he is entitled in those circumstances; it seems to us, to say that there is conduct which amounted to a repudiation of the contract.”*

*46. In stating that principle, in our view Kilner Brown J does not set out any requirement that there should be deliberation, or intent, or bad faith.*

47. Finally, there are very important words in a part of the judgment in Palmanor Ltd v Cedron [1978] IRLR 303, the words appearing in the judgment of Slynn J at page 305. It is a short quotation and reads as follows:

*“It seems to us that in a case of this kind the tribunal is required to ask itself the question of whether the conduct was so unreasonable that it really went beyond the limits of the contract. We observe that in the course of the argument on behalf of the employee, it was submitted that the treatment that he was accorded was a repudiation of the contract.”*

*48.....We would agree .... that there may be conduct so intolerable that it amounts to a repudiation of contract. There are threads then running through the authorities whether it is the implied obligation of mutual trust and confidence, whether it is that intolerable conduct may terminate a contract, or whether it is that the conduct is so unreasonable that it goes beyond the limits of the contract. But in each case, in our view, you have to look at the conduct of the party whose behaviour is challenged and determine whether it is such that its effect, judged reasonably and sensibly, is to disable the other party from properly carrying out his or her obligations. If it is so found that that is the result, then it may be that a Tribunal could find a repudiation of contract.*

84. With reference the nature of the breach being of a final straw incident, this concept was considered in, London Borough of Waltham Forest v Omilaju [2005] IRLR, page 35 per Dyson L J, at paragraph 19, who addressed the questions in this fashion.

*19. ..“What is the necessary quality of a final straw, if it is to be successfully relied on by the employee as a repudiation of the contract? When Glidewell L J said that it need not itself be a breach of contract, he must have had in mind, amongst others, the kind of case mentioned in Woods at p531 where Brown-Wilkinson J referred to the employer who, stopping short of a breach of contract “squeezes out an employee by making the employee’s life so uncomfortable that he resigns. A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase “an act in a series “, in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.*

20. *I see no need to characterise the final straw as “unreasonable” or blameworthy conduct. It may be true that an act which is in the last in a series of acts which, taken together, amount to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy, but, viewed in isolation, the final straw may not always be unreasonable still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.*

21. *If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.*

22. *Moreover, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the acts as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee’s trust and confidence has been undermined is objective.”*

## **Conclusions**

85. It is not in dispute that the material facts giving rise to the claimants’ resignations occurred between 11 and 12 April 2016, in respect of Ms Nagpal and 11 and 13 April 2016, in respect of Mr Sutharmaseelan.
86. In addressing the material events for which the claimants tendered their resignations, the claimants do not claim a breach of any express term relying on breach of the implied term of mutual trust and confidence, and to which extent it is appropriate to determine to what extent the respondent, without reasonable and proper cause, conducted itself in a manner “calculated or likely to destroy or seriously damage the relationship of confidence and trust between the parties”, and as further set out by Mr

Justice Browne-Wilkinson in Wood v WM Car Services (Peterborough) Limited [1981] IR 666 EAT, that:

“To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: The tribunal’s function is to look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it”.

87. In giving consideration hereto, I turn first to Ms Nagpal’s claim in respect of discrimination, and its relevance to her decision to resign, and deal with this briefly in that, the reference to “Tamil” speaking and “Sri Lankan” nationals, and on which Ms Nagpal’s claim for discrimination is based, is referenced from the recording of the 12 April 2016. This recording however, had not been translated in full by Mr Sutharmaseelan on the evening of 12 April, where reference to Tamil speaking and Sri Lankan nationals was only had at the end of the recording, which he had not listened to until weeks later. Accordingly, the information regarding Tamil speaking and Sri Lankan nationals would not have been communicated to Ms Nagpal as of 12 April when she penned her resignation, or otherwise when she subsequently tendered her resignation on 13 April 2016, and could not then have been a factor in her decision to resign.
88. Turning to a consideration of the further acts of which the claimants complains, developing over 11 and 14 April, I find as follows:

### **CCTV**

89. I find that the installation of the CCTV camera in Mr Sutharmaseelan’s office was a preliminary step in Mr Sathiyandarajah investigating the practices within the office. I do not accept that the installation of the CCTV camera on 11 April was the consequence of the general fitting out of CCTV coverage of the business premises, as advanced by the respondent; Mr Sutharmaseelan’s office then being the only remaining office not so covered.
90. I do not however, find that the mere fitting of CCTV coverage of Mr Sutharmaseelan’s office, being an office of general work and not an office where privacy was necessary, or otherwise circumstances warranting privacy, was an objectionable act. In stating this, I do not accept that Mr Sutharmaseelan’s presence in the office for lengthy shifts were sufficient to acquire such privacy, and there is no evidence that his role required his sleeping on the premises, such that the act of installing CCTV coverage would then in itself, be a breach of any right to privacy that Mr Sutharmaseelan had, and as such, I do not find this to be an act such as to amount to a breach of mutual trust and confidence as regards Mr Sutharmaseelan.
91. The position regarding Ms Nagpal is somewhat different; the installation in itself not being objectionable, but the manner in which the process took

place, in that she had not been consulted, and for which she broached the subject with Mr Sathiyandarajah.

92. I deal with this matter briefly, in that, it is Ms Nagpal's case that, she had principally raised the issue with Mr Sathiyandarajah on account of sympathy for Mr Sutharmaseelan in having his privacy compromised, thereby attaching herself to Mr Sutharmaseelan and an obligation to discuss such installation out of courtesy. It is not suggested that there was any obligation to specifically discuss the installation of CCTV coverage with Ms Nagpal, the obligation being to Mr Sutharmaseelan.
93. With regards Ms Nagpal, it is however material in considering a breach of the implied term of mutual trust and confidence, to consider the response that Ms Nagpal received from Mr Sathiyandarajah having raised the issue with him. In giving consideration to Mr Sathiyandarajah's response to Ms Nagpal, it is material to note the particular role of Ms Nagpal, that of Business Development Manager, which did not extend to considerations of CCTV coverage within the office for which she would have been entitled to be consulted, where the installation did not interfere with the performance of her functions; the installation being undertaken at a time when the claimant would not then have been in the office, and was only then on the premises on Mr Sutharmaseelan requesting her presence for the meeting with Mr Yogandrarajah with regards the company accounts. The refusal of Mr Sathiyandarajah to discuss the installation of CCTV with Ms Nagpal was not an act in those circumstances, to challenge the mutual trust and confidence within the employment relationship.
94. Turning to the question of consultation with Mr Sutharmaseelan regarding the CCTV installation, it is material that Mr Sutharmaseelan did not raise this with Mr Sathiyandarajah, being the Operations Manager and the person who was principally affected by the installation and the responsible officer for the management of the premises, on learning of the installation, which is indicative of the then prevailing circumstance that, there was no major objection thereto, and at the material time was not a cause for concern of Mr Sutharmaseelan so as to amount to a breach of the implied term of mutual trust and confidence.

### **Demotion**

95. In considering the question of demotion, I look first at the circumstances relating to Mr Sutharmaseelan.
96. Mr Sutharmaseelan advances his demotion on two grounds; First, being informed on 12 April 2016 not to handle cash, and subsequently at the meeting between Mr Sathiyandarajah and Mr Thirunvukarasa on having his access to the Cordic system restricted. It is here relevant to note that the restriction did not impede his ability to perform his functions; the restriction being to the wider functioning and operation of the Cordic system.
97. I find this fact material in that, the restrictions to Mr Sutharmaseelan's access to the Cordic system was not meant to impede on his ability to



perform his role. By the transcript of the recording, it is evident that restrictions were arranged to enable Mr Sutharmaseelan to perform his role unhindered and Mr Sutharmaseelan has not argued before this tribunal that his access had been limited to the extent that it affected his ability to do his role; Mr Sutharmaseelan able to fully function as the Operations Manager. I do not see as a consequence any demotion to the claimant's role thereby.

98. Turning to consider Mr Sutharmaseelan no longer being permitted to handle cash, in the absence of any alternative arrangements being put in place for the handling of cash, where Mr Sathiyandarajah was not placed within the business to handle day-to-day affairs, I am unable to understand how it is alleged the business could then function. Indeed, in these circumstances, it would beg the question from Mr Sutharmaseelan as to how the business was to operate on his no longer handling cash? There is no evidence of Mr Sutharmaseelan making such enquiries, such that on a balance of probabilities, I prefer the evidence of Mr Sathiyandarajah that he had not given such instructions. I do not find circumstance to support Mr Sutharmaseelan's claim that he was so instructed, and were I wrong that such instruction had been given, in the absence of Mr Sutharmaseelan challenging such instruction, this is evidence of the manner in which it was received by him, namely that it would not have impacted on his ability to do his role or affect the business' operation. In these circumstances, I do not find that the instruction was given as alleged or otherwise that if it was given, then it was not seen by Mr Sutharmaseelan as impacting on his role as Operations Manager and would not thereby have been a demotion.
99. With regards the instructions given to Ms Nagpal, alleged to amount to a demotion, that she "will no longer deal with admin" as further qualified in evidence to the tribunal that Mr Sathiyandarajah did not want Ms Nagpal to be involved in business matters, without further, it is difficult to understand how this in itself amounts to a demotion. There is no reference to Ms Nagpal's "post" being changed, or what particular tasks she could or could not do, although I note Ms Nagpal's evidence that by removing admin duties from her this was tantamount to making her a controller. From the statements attributed to Mr Sathiyandarajah, Ms Nagpal then being a controller is not a natural consequence.
100. I further find that reference to "not dealing with admin" and "not to be involved in business matters", without more is meaningless, where no action is taken to define what the reference to admin or business matters actually refer to.
101. Further, observing the lack of precision in Ms Nagpal's role as Business Development Manager, reference to admin and business matters had no parameters so as to be able to identify the nature of any breach, so as to amount to a breach of the implied term of mutual trust and confidence.
102. I also find that, as the claimants were, at the material time, aware that Mr Sathiyandarajah was engaged in investigating financial irregularities, made clear by Mr Yogendrarajah's and Mr Thirunvukarasa's involvement, it

is not outside the bounds of reasonableness that any changes to their roles would only have been temporary, or at least such as to cause the claimants to make enquiries as to the extent and duration of the curtailment of their duties. Without more, it was premature for Ms Nagpal to arrive at the conclusion that she did when she did, and to act thereon in terminating her employment relationship without further enquiry, or development in circumstance, e.g. physically being stopped from undertaking tasks which would then evinced the extent of any reduction in her role.

103. I do not find that, at the material time, there was sufficient circumstance to amount to a demotion of Ms Nagpal.

#### **Recorded discussions**

104. With regards the recording of the discussions between Mr Sathiyandarajah and Mr Thirunvukarasa, as above stated, on the evening of the 12 April 2016, Mr Sutharmaseelan only heard a portion of the recording which portion addressed the irregularities in the Cordic system and the potential parties involved, which clearly implicated the claimants, but for which it was clearly stated that action was not to be taken until further enquiries had been made. Whilst the light of suspicion had been shone on the claimants, it was clear that an investigation was to take place. In these circumstances, I do not find the actions of Mr Sathiyandarajah by his discussions with Mr Thirunvukarasa, to have breached the implied term of mutual trust and confidence or otherwise was unreasonable conduct.
105. In stating the above, I am conscious that Mr Sathiyandarajah had sought to have his meeting with Mr Thirunvukarasa and the interrogation of the Cordic system conducted in privacy; the claimants having been asked to vacate the office for the purpose, but that Ms Nagpal chose to remain. On Ms Nagpal remaining, I am further conscious that the discussion then being had in Tamil, would have afforded a degree of privacy from Ms Nagpal which was then only made public on Ms Nagpal recording the conversation; the information of which the claimants complain, developing as the irregularities came to light as the Cordic system was interrogated.
106. Whilst I appreciate that the information would have been particularly alarming for the claimants in the knowledge that they were suspects, in circumstances where irregularities were only then coming to light and understood, for which proposals to investigate were then advanced, as above stated, I am unable to find that any sense of apprehension or rejection that the claimants may have felt, changes the nature of the respondent's conduct by which trust and confidence in the employment relationship was then challenged.

#### **Missing cash**

107. The question of missing cash has been raised in respect of two incidents; The first in respect of Mr Yogendrarajah raising issue as to discrepancies between the internal accounts and the Cordic generated accounts, querying

the same with the claimants; Ms Nagpal being nominated by Mr Sutharmaseelan to liaise with Mr Yogendrarajah, and secondly, the incident regarding missing money from the cash box in light of the entry on the Rent Sheet by Ms Nagpal.

108. With regards Ms Nagpal, it is not clear as to her contention in this regard, as, with reference the accounting discrepancy, this was an issue raised by the accountant in reconciling the accounts for which Ms Nagpal's evidence in addressing the issue with Mr Yogendrarajah, was that she had explained that the discrepancy identified was the consequence on an incomplete examination of the accounts, which was then clarified. Again, on Ms Nagpal's evidence being that, whilst Mr Yogendrarajah was carrying out his enquiries, she asked "*what he was looking for and explained that if he was looking for records to support a theory of missing cash, then he will not find it, as there is nothing to be found. – James denied that he was looking for proof of missing cash and claimed he was simply doing his job*" seeking to reconcile the accounts, in these circumstances, I can find no evidence whereby any accusations were being made against Ms Nagpal or otherwise Mr Sutharmaseelan.
109. With regards to the further incident, that of the missing money from the cash box. With reference Ms Nagpal, on the incident occurring on 13 April, after she had submitted her resignation, this could not have been a factor in her decision to resign and therefore irrelevant to the issues for this tribunal's determination.
110. Before leaving the issue of missing cash, relevant to Ms Nagpal's claim, for completeness, I address Ms Nagpal's reference to having been accused of stealing in respect of her conversation with Mr Sathiyandarajah, following her being informed that she was not to undertake admin duties, and on her addressing the issue with Mr Sathiyandarajah, informing him that she worked hard for the company and that he felt the respect had not been mutual, her stating that Mr Sathiyandarajah stated words to the effect, "*I know hard (sic) you have really been working, the company has been in operation five years now. If you had really been working hard I would have been living in Spain by now, but I am living in England. Where is my money Kim?*" for which Ms Nagpal states she asked Mr Sathiyandarajah if he was accusing her of stealing, the reply being "*When did I say you were stealing?*" On this account, I do not find evidence to support Ms Nagpal's claim that she was thereby being accused of stealing.
111. With reference Mr Sutharmaseelan, further to the issue addressed above with regards Mr Yogendrarajah, the further issue of missing cash arising was in circumstance where the only persons who had access to the cash box, in circumstances where Ms Nagpal had stated that, on her having received the monies she had then placed it in the cash box, on the monies then not being in the cash box, it was reasonable for Mr Sathiyandarajah to address the issue with the only other person then having access, Mr Sutharmaseelan, the circumstances of which having been explained. On Mr Sutharmaseelan explaining his position and on Mr Sathiyandarajah taking

no further action, I am unable to find any circumstance by which Mr Sutharmaseelan was then being accused of taking the cash.

112. In giving consideration hereto, I am conscious of Ms Nagpal's evidence of Mr Sathiyandarajah's approach to Mr Sutharmaseelan and of her clarifying the information she had provided to Mr Sathiyandarajah's, but I am nevertheless, unable to find any untoward conduct thereby, from which any challenge to the implied term of trust and confidence to Ms Nagpal can be found.

### **Race Discrimination**

113. I address the issue of race discrimination briefly, in that, the allegations of discrimination arise from the recorded conversation between Mr Sathiyandarajah and Mr Thirunvukarasa. In addressing this issue, I am not however assisted by the disjointed narrative as transcribed; whether the product of language used or of clarity in the recording for translation, the product is that a clear understanding of the discussion has not been possible from the recorded words alone, and as such, it has been necessary to draw on surrounding circumstance to qualify the words recorded.
114. It is clear from the purpose of the meeting, and the tenor of the discussions had, that of concern was the financial recording of activities and the operation of the cordic system, and discussions as to replacement of staff was in reference to an understanding of the cordic system. From the discussions had, I can find no reference to race being a consideration within those discussions, and there is equally no basis upon which an inference could be made as to considerations of race up until reference to "our people", which I subsequently address, and of which Ms Nagpal contends was a reference to like persons of Mr Sathiyandarajah and Mr Thirunvukarasa; being, Sri Lankan or otherwise Tamil speakers.
115. Turning to consider the expression "our people" I again deal with this briefly, in that, the subject of the passage of the transcript making reference to "our people" is not limited to Ms Nagpal, but references equally Mr Sutharmaseelan, a person who is of Sri Lankan nationality and speaks Tamil. Accordingly, the reference to our people, giving regard to Mr Sutharmaseelan, could not then be on grounds of Sri Lankan nationality or otherwise Tamil speaking. In these circumstances, whatever the expression "our people" referred to, it was not on grounds of race as alleged by the claimant Ms Nagpal, which in giving consideration to the rest of the discussions had, as set out by the transcript, it is more likely than not that the reference to "our people" was a reference to persons who shared Mr Sathiyandarajah's business interests, as advanced by the respondent, as opposed to considerations of race.
116. It is also relevant here to note that, on replacing the claimants, the respondent has not engaged persons of Sri Lankan nationality or otherwise Tamil speaking, which one would have expected, had the reference to "our

people” been as alleged; a reference to considerations of race. This has not been the case.

117. I do not find that the discussions had between Mr Sathiyandarajah and Mr Thirunvukarasa, had reference to considerations of race.

118. Accordingly, for the reasons above stated, I do not find the claimants to have been constructively dismissed and do not find Ms Nagpal to have been discriminated against on the protected characteristic of race.

119. The claimants’ claims are dismissed.

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Employment Judge Henry

Date: 15 September 2017.....

Sent to the parties on: .....

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For the Tribunal Office