



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Kawiliza

**Respondent:** (1) Mia Casa Care Ltd  
(2) Mr G Fox

**Heard at:** Manchester Employment Tribunal      **On:** 7, 8, 9 June 2022  
18 October 2022

**Before:** Employment Judge Dunlop  
Mr S Husain  
Mr A Clark

## Representation

**Claimant:** In person  
**First Respondent:** Mr R Ryan, counsel  
**Second Respondent:** In person (18 October 2022 only)

# RESERVED JUDGMENT

1. The claimant's claim of direct race discrimination (s. 19 Equality Act 2010) is not well-founded. That means it does not succeed and is dismissed.
2. The claimant's claim of harassment on the grounds of race (s. 26 Equality Act 2010) is not well-founded. That means it does not succeed and is dismissed.
3. The respondent made unauthorised deductions from the claimant's wages and is ordered to pay the claimant the gross sum of £235.00.

# REASONS

## Introduction

1. These claims arise out of a very short period of employment. Mr Kawiliza commenced work for the respondent on 11 September 2019 and his employment terminated on 1 October 2019. During that period he worked

as a live-in carer to a service user, whom we shall refer to as Mr T. In this role, Mr Kawiliza worked alongside the second respondent, Mr Fox. There were no other carers. Mr Kawiliza, who is a black man of Zimbabwean origin, claims that Mr Fox, who is white and of English origin, discriminated against him and harassed him due to his race. He says that this is what caused him to resign his employment. He also claims that he was not properly paid following the termination of his employment. The parts of the claim related to payments were conceded by the first respondent during the June hearing.

## **The Hearing**

2. Unfortunately, this case has suffered from procedural issues which have led to delay. Mr Kawiliza originally brought his claim against the first respondent (“Mia Casa”) only. At a preliminary hearing on 2 April 2020 they indicated that they may wish to rely on the statutory defence in relation to Mr Fox’s conduct. Subsequently, they received permission to amend their response to the claim on that basis and the Tribunal ordered that Mr Fox should be joined as an individual respondent. Due to an error on the part of the Tribunal, the claim was not served on Mr Fox (who lives in Spain and is no longer employed by Mia Casa).
3. The case came on for final hearing before Employment Judge Dunlop (sitting with different panel members) in December 2021. It was only at this point that the error was discovered. It was impossible to proceed with the hearing in circumstances where Mr Fox had no notice of the claim or the hearing. The case was therefore adjourned to a three-day listing on 7-9 June 2022.
4. In the meantime, the claim was served on Mr Fox and he entered a response. Mia Casa’s representatives established communication with him and a witness statement was served. We were told at the outset of this hearing that he was standing by to give evidence by video link, but that he did not intend to participate in the case other than to give his evidence. (Although Mr Ryan has been helpful in facilitating communication with Mr Fox, he is not instructed to represent him.)
5. During this discussion the Judge raised with parties the fact that the Tribunal is required to obtain the permission of a foreign state before taking evidence over video from a person located in that state (see Presidential Guidance on Taking Oral Evidence By Video or Telephone from Persons Located Abroad, 27 April 2022). Unfortunately, this had not come to light as an issue at the time of the previous abortive hearing, and so had not been drawn to the attention of the parties. No steps had been taken by Mr Fox or by Mia Casa (which wishes to rely on his evidence) to seek the required permission.
6. Permission was sought via the Foreign and Commonwealth Office at the outset of the three-day hearing, and we proceeded on the basis that Mr Fox’s evidence would be heard at the end of the other evidence (if permission was received) or that the case would be adjourned part-heard to allow his evidence to be heard at a later date. The latter course of action ultimately proved to be necessary as no response had been received by the

time the rest of the evidence had concluded. The hearing was therefore adjourned mid-morning on 9 June 2022.

7. During the first part of the hearing we heard evidence from Mr Kawiliza and admitted a supporting witness statement from Shekiwe Tachiveyi. Ms Tachiveyi did not attend and we explained to Mr Kawiliza that this meant that limited weight could be placed on her statement. Mr Ryan made no objection to the statement being admitted on this basis. We then heard from Mia Casa's witnesses who were Sally-Ann Cook, Sophia Harris and Zoe Ward. All the witness had provided witness statements, in the case of Ms Harris there were two statements, as described further below.
8. In terms of documents, we had regard to an agreed bundle of documents. The only addition to this bundle was an email from Mr Kawiliza to the Tribunal dated 20 May 2022, which is referred to further below.

### ***Preliminary issue - documents***

9. At the ineffective hearing in December 2021, Mr Kawiliza had made an application for further disclosure of care and financial records relating to Mr T. The respondent had submitted that those records would be irrelevant. Although the precise relevance was unclear, the Panel on that occasion were not entirely satisfied with the respondent's position and could see some force in Mr Kawiliza's argument. A detailed order was made requiring the respondent to identify and explain what records existed, and then to either disclose them or provide an explanation as to why they were not relevant, with a view to the matter being determined in correspondence in good time before this hearing.
10. It appears that that order was completely disregarded by the respondent and its representative. There was no explanation offered for this, beyond oversight. On the first day of this hearing, we ordered that the respondent therefore disclose in full any care and/or financial records that were in its possession or control and provide a witness statement from an appropriate person setting out the steps that had been taken to attempt to locate the documents.
11. The bundle already contained an extract from an electronic care recording system covering 3 September and 1 October 2019. A statement was produced from Ms Harries explaining that, due to various technical difficulties, those were the only dates from which records could now be recovered. The Tribunal accepted the genuineness of Ms Harries' account. However, it is concerning that records are not available for this period given the nature of the respondent's work. Whilst the records are unlikely to have been determinative of the issues of the case, they would have been very useful in helping to establish the chronology. The failure to engage properly with disclosure obligations in a timely way does no credit to the respondent or its representatives.

### **The Issues**

12. The following List of Issues was agreed following the postponement of the final hearing on 14 December 2021.

**Direct discrimination on grounds of race (s.13 Equality Act 2010)**

1. Did Mr Fox treat Mr Kawiliza in the following way:
  - 1.1 Subjecting Mr Kawiliza to verbal abuse on a daily basis, specifically by telling him to “fuck off” and calling him “an idiot”.
  - 1.2 Preventing Mr Kawiliza from ordering the food that he wanted and removing drinks belonging to Mr Kawiliza from the fridge in the property.
  - 1.3 Denying Mr Kawiliza access to the service-users medication, medical records and financial information by keeping these locked in Mr Fox’s bedroom.
  - 1.4 Failing to properly involve Mr Kawiliza in the service user’s treatment and care.
2. If so, was that treatment “less favourable treatment”, i.e. did the respondent treat Mr Kawiliza as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? Mr Kawiliza relies on hypothetical comparators.
3. If so, was this because of Mr Kawiliza’s race and/or because of the protected characteristic of race more generally?

**Harassment on ground of race (s.26 Equality Act 2010)**

4. Did Mr Fox subject Mr Kawiliza to the treatment set out at Issue 1 above?
5. If so was that conduct unwanted?
6. If so, did it relate to the protected characteristic of race?
7. Did the conduct have the purpose or (taking into account Mr Kawiliza’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating Mr Kawiliza’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Mr Kawiliza?

**Statutory defence**

8. Having regard to any findings made in respect of the above claims of discrimination and harassment, is the first respondent liable for the actions of Mr Fox? In particular, can the first respondent rely on the statutory defence at s.109(4) Equality Act 2010, that it took all reasonable steps to prevent Mr Fox from doing the thing which has found to be discriminatory, or from doing anything of that description?

**Discriminatory dismissal**

9. Having regard to the findings made in respect of the above claims of discrimination and harassment, is Mr Kawiliza to be regarded as constructively dismissed?
10. If so, does that dismissal amount to less favourable treatment on the grounds of race.

**Unauthorised deductions from wages**

11. Did the respondent make unauthorised deductions of £210.00 from the claimant’s wages?
12. Did the respondent make unauthorised deductions of £25.00 from the claimant’s wages, in respect of a taxi fare?

**Findings of Fact**

13. We set out below our findings of fact on the background to this claim. Our findings as regards the specific allegations in the List of Issues are set out later in the Judgment.
14. Mr T is a double amputee who requires a high degree of physical care. He has full mental capacity. This care was provided (at least during the period we are concerned with) by two live-in carers employed by the respondent agency. Mr T's family liaised with the respondent and were directly involved in some matters – for example in relation to providing financial support to the household. The respondent is a fairly small and (at that time) new organisation. Most of its carers worked on a domiciliary basis – visiting clients in their own homes. The arrangement to provide live-in carers was an unusual one.
15. Mr Fox commenced work for the respondent, caring for Mr T, on around 20 August 2019. He had been recruited in Spain and the respondent arranged from him to travel to England to take up the appointment. Mr Fox was living as an ex-patriate in Spain, he is of white English ethnicity.
16. Alongside Mr Fox, there was a second carer, Shekiwe Tachiveyi. We were not told whether she commenced work at the same time as Mr Fox, or was already in post. Ms Tachiveyi was black. We were not given information as to her nationality.
17. Another carer 'Adelaide', who was also black, had been employed at some earlier point.
18. Ms Tachiveyi left her job shortly before Mr Kawiliza was employed. It is clear from her own statement, and from the respondent's evidence (including contemporaneous emails and notes), that she was unhappy about working with Mr Fox. She has asserted that Mr Fox "was walking in [Mr T's] house indecent half naked". She was also concerned that Mr Fox did not have a DBS check (the respondent asserts that he did) and made general complaints about the way he approached the role. The respondent says that Ms Tachiveyi's husband was unhappy about her living in a household where the other carer was male, and that this was her reason for leaving.
19. We have not made findings on the competing arguments in relation to Mr Fox and Ms Tachiveyi, as these matters are disputed and we do not consider it necessary to do so in order to reach conclusions in Mr Kawiliza's case. It is relevant to record, however, that Ms Tachiveyi's statement does not include any allegation of any overtly racist comments or actions by Mr Fox, nor has she made any such complaint (or at least not one which has been brought to the attention of the Tribunal).
20. In view of Ms Tachiveyi's departure, there was a vacancy for a second carer to work with Mr Fox.
21. Mr Kawiliza, who is a black Zimbabwean man, had previous experience of work in the care sector. During the case, the respondent introduced evidence (in the form a publicly-available Judgment) that the claimant had

brought a Tribunal claim against his previous employers (although not one based on race discrimination).

22. Mr Kawiliza was alerted to the possibility of employment with the respondent through his Pastor. He is a member of a church which caters (at least in part) to an African immigrant congregation. The Pastor is active in trying to assist the members of the church to secure employment opportunities. Ms Tachiveyi attends a church run by the same Pastor, but in a different location.
23. Mr Kawiliza had a telephone interview with Patrick Gibson of the respondent on 10<sup>th</sup> September 2019, during which he was offered the job. Mr Gibson was, at the time in question, the respondent's Training Manager. He has since left employment and was not available to give evidence in this case, which was unfortunate as he appears to have been the manager most directly involved in Mr Kawiliza's employment.
24. Mr Kawiliza arrived at the respondent's office in Mansfield on 11 September 2019. He completed various employment forms, and was provided with an employment contract which stated his employment would start on 12 September 2019. He did not sign this contract (and the respondent appears not to have chased for a signed copy).
25. Mr Kawiliza met Mr T and Mr Fox on 12 September 2019 when the carers went to visit Mr T, who was at that point in hospital. Mr Kawiliza moved into the house around the same time. The head office was nearby and Mr Kawiliza attended there to complete training until Mr T was discharged from hospital on the evening of 13 September.
26. Almost immediately, Mr Kawiliza displayed an antipathy towards Mr Fox. The respondent suggested that he must have had contact with Ms Tachiveyi and formed an impression based on conversations with her. Mr Kawiliza says that he did not know Ms Tachiveyi personally, but found notes made by her in the care records kept in the house. This included, he says reference to Ms Tachiveyi's belief that Mr Fox did not have a DBS check. We do consider it necessary to make a finding as to whether Mr Kawiliza had had direct contact with Ms Tachiveyi as the respondent believes. Even on Mr Kawiliza's case, that he formed his conclusion based on her notes it is clear that he accepted this allegation at face value, without seeking to check it with Mr Fox and or the respondent. Mr Kawiliza also formed a poor impression of the fact that Mr Fox had been recruited from Spain. He considered that it was suspicious that Mr Fox had no fixed address in the UK and that Spain was a refuge for British criminals and gangsters. Based on these matters (which disclose strong prejudices on his own part) Mr Kawiliza decided that he did not like Mr Fox.
27. This strong dislike seems to have influenced the view which Mr Kawiliza took of Mr Fox's conduct. For example, he alleged that he was "subjected to a second interview by Mr Fox" having already obtained the job. We find that discussions that Mr Fox and Mr Kawiliza had were simply the normal discussions that one would expect between a newcomer to a role and an established employee about what the role involved. In his interpretation of this as a "second interview" Mr Kawiliza demonstrated his profound

suspicion of Mr Fox and his difficulty in maintaining a professional relationship with him.

28. As the two men continued to live together in house, it is clear that their relationship deteriorated further. We find that they were very different characters and that neither was particularly tolerant of the other. In contrast, both got on well with Mr T; a rivalry developed as to who was the favoured carer and/or who could administer to Mr T's needs more effectively.
29. We pause here to consider one particular allegation that gained a lot of prominence during the Tribunal hearing. It was agreed that Mr Fox did most of the shopping for the household. Mr Kawiliza alleges that returning from one shopping trip Mr Fox indicated that he had bought bananas and made a racial comment in relation to them, saying something along the lines of "I know you will like those".
30. Mr Ryan cross-examined Mr Kawiliza on the basis that the comment described was a much more overt and obvious example of racist behaviour than the specific matters that Mr Kawiliza had raised in his claim. It was not credible, Mr Ryan suggested, that this would never have been mentioned to the respondent and never raised in the claim or at any previous hearing, only to be raised in the claimant's witness statement. This was particularly so, said Mr Ryan, given that Mr Kawiliza was a claimant with previous experience of Tribunal litigation.
31. Mr Kawiliza argued strongly that he had raised it prior to his witness statement and it was eventually established that he had made the allegation in an email to the Tribunal dated 20 May 2022 (so very shortly before the exchange of statements). Although he had attempted to copy the email to the respondent's then representative, an error in the address meant it had not been received by them. The email was printed off from the Tribunal file and added to the bundle of documents during the hearing.
32. Mr Fox's evidence was that the 'banana incident' did not happen. We had to decide who's account we preferred. Although this was not an allegation included in the list of issues we considered it was important to determine it as, if true, it would cast much of Mr Fox's conduct in a different light and would heavily assist the claimant in shifting the burden of proof for the purposes of his discrimination claim.
33. Ultimately, we preferred the evidence of Mr Fox. We found that both accounts were essentially credible in themselves. Faced with two credible accounts, we did place weight on the fact that Mr Kawiliza had not raised this incident during his employment or shortly after (despite making various complaints about Mr Fox orally and in writing) and had not relied on it for the purposes of his claim until very late in the day.
34. On 17 September there was an incident between Mr Kawiliza and Mr Fox where Mr Kawiliza accused Mr Fox of being racist (although no specific allegations appear to have been raised). This resulted in both employees providing written complaints to Zoe Ward. These complaints focus on the perceived inadequacies of each other as carers to Mr T, rather than on direct conduct toward each other. Again, the relationship further

deteriorated. Ms Ward persuaded the two men to 'call a truce' and required them to create a rota for domestic duties to avoid arguments around responsibility for these.

35. On the night of 20 September 2019 Mr T was admitted to hospital in the middle of the night. (Mr T was vulnerable to infections and was admitted to hospital on a relatively frequent basis). It is agreed that Mr Fox was alerted to Mr T's distress, tended to him, called the ambulance, and liaised with medical staff around the admission to hospital and that Mr Kawiliza remained in his own room throughout. There is an implication in Mr Fox's evidence that Mr Kawiliza must have been aware of the commotion and chose not to assist. Mr Kawiliza was never criticised for this, nor was any issue made of it. Mr Kawiliza's position was more difficult to understand; at times he seemed to say that Mr Fox should have alerted him to what was going on in order that he could assist, and that Mr Fox chose not to do so in a deliberate attempt to try to get him into trouble. At other times, Mr Kawiliza almost seemed to be suggesting that Mr Fox had somehow manipulated the entire situation in order to reflect badly on Mr Kawiliza.
36. We found that Mr Fox was a dedicated carer and that he would not wish to put Mr T at risk in any way. We accept that he was faced with a busy emergency situation and that alerting the claimant was, justifiably, not top of his priority list. The allegation that this was an attempt to somehow 'frame' Mr Kawiliza is impossible to accept. The fact that Mr Kawiliza has made such an allegation suggests to us that his perception of Mr Fox's conduct is lacking in objectivity.
37. Mr T remained in hospital from 20 to 29<sup>th</sup> September. Mr Kawiliza attended head office to complete some more training during this period, and also visited Mr T in hospital.
38. The matters raised by Mr Fox in relation to Mr Kawiliza included an allegation that, when drying Mr T after a wash, he had rubbed too hard causing Mr T's skin (which was fragile in places) to bleed. The respondent appears to have carried out some sort of investigation into this although it was not well documented (a matter which is concerning given the nature of the respondent's business).
39. In late September, Mr Kawiliza told Mr Gibson that he wished to resign. We find this was motivated by a concern about the internal investigation, as Mr Kawiliza considered that he had been wrongly criticized over safeguarding in his previous role. There was a discussion about the fact that Mr Kawiliza was obliged to give notice, enabling the respondent to ensure that Mr T was not left without care. When Mr Kawiliza subsequently told Mr Fox that he was leaving, Mr Fox made a comment to the effect that he would lose some wages. Mr Kawiliza took that to mean that Mr Fox would ensure that he lost wages. Mr Fox says that he was referring to the obligation to give notice and seeking to help Mr Kawiliza out by ensuring that he didn't inadvertently put himself in a position where he would lose wages. Again, we find that Mr Kawiliza's perception of this exchange was genuine but that it lacked objectivity. It was not reasonable to see Mr Fox's comment in these circumstances as a 'threat'. The fact that Mr Kawiliza did so demonstrates how jaundiced his view of Mr Fox was.



40. Following the end of Mr Kawiliza's employment there was communication about his final wages and sums owed to him. We need not set out the detail of this as the financial claims are now resolved.

## Relevant Legal Principles

### *Direct discrimination*

41. Section 13 of the Equality Act 2010 which provides that:

**"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."**

42. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee. It sets out various ways in which discrimination can occur, which includes by subjecting him to any other detriment.

43. Under Section 23(1) of the Equality Act 2010, when a comparison is made, there must be no material difference between the circumstances relating to each case. The requirement is that all relevant circumstances between the claimant and the comparator must be the same and not materially different, although it is not required that the situations have to be precisely the same.

44. Section 136 of the Equality Act 2010 sets out the manner in which the burden of proof operates in a discrimination case and provides as follows:

**"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**

**(3) But sub-section (2) does not apply if A shows that A did not contravene the provision".**

45. At the first stage, the Tribunal must consider whether the claimant has proved facts on a balance of probabilities from which the Tribunal could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination. This is sometimes known as the prima facie case. It is not enough for the claimant to show merely that he was treated less favourably than his comparator and there was a difference of a protected characteristic between them. In general terms "something more" than that would be required before the respondent is required to provide a non-discriminatory explanation. 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, the question is whether it could do so.

46. If the first stage has resulted in the prima facie case being made, there is also a second stage. There is a reversal of the burden of proof as it shifts to the respondent. The Tribunal must uphold the claim unless the respondent proves that it did not commit (or is not to be treated as having committed) the alleged discriminatory act. To discharge the burden of proof, there must be cogent evidence that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

47. In practice Tribunals normally consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, second, whether the less favourable treatment was on the ground that the claimant had the protected characteristic. However, a Tribunal is not always required to do so, as sometimes these two issues are intertwined, particularly where the identity of the relevant comparator is a matter of dispute. Sometimes the Tribunal may appropriately concentrate on deciding why the treatment was afforded, that is was it on the ground of the protected characteristic or for some other reason?
48. In most cases there is a need to consider the mental processes, whether conscious or unconscious, which led the alleged discriminator to do the act. Determining this can sometimes not be an easy enquiry, but the Tribunal must draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). The subject of the enquiry is the ground of, or the reason for, the alleged discriminator's action, not his motive. In many cases, the crucial question can be summarised as being, why was the claimant treated in the manner complained of?
49. The Tribunal needs to be mindful of the fact that direct evidence of discrimination is rare, and that Tribunals frequently have to infer discrimination from all the material facts.
50. The protected characteristic does not have to be the only reason for the conduct, provided that it is an effective cause or a significant influence for the treatment.
51. The way in which the burden of proof should be considered has been explained in many authorities. , including: **Barton v Investec Henderson Crosthwaite Securities Limited [2003] IRLR 332**; **Shamoon v Chief Constable of the RUC [2003] IRLR 285**; **Hewage v Grampian Health Board [2012] ICR 1054**; **Igen Limited v Wong [2005] ICR 931**; **Madarassy v Nomura International PLC [2007] ICR 867**; **Royal Mail v Efobi [2021] UKSC 33**. In **Hewage v Grampian Health Board** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong**, as refined in **Madarassy v Nomura International PLC**.
52. The explanation for the less favourable treatment does not have to be a reasonable one. Unfair or unreasonable treatment by an employer does not of itself establish discriminatory treatment: **Zafar v Glasgow City Council [1998] IRLR 36**; **Bahl v The Law Society [2004] EWCA Civ 1070**. It cannot be inferred from the fact that one employee has been treated unreasonably that an employee of a different race or sex or one who had not been on maternity leave, would have been treated reasonably.

### ***.Harassment***

53. Section 26 of the Equality Act 2010 provides (as relevant) as follows:

(1) A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—

- (i) violating B's dignity, or
- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B

54. The leading case on harassment is **Richmond Pharmacology v Dhaliwal [2009] IRLR 336**. In particular, we took account of the guidance set out in paragraphs 13-16 of that decision as to how the Tribunal should approach harassment claims.

### **Submissions**

55. Mr Kawiliza's submissions were largely a repetition of his evidence. He submitted that Mr Fox's conduct was racist. He had driven out the previous black carer, Ms Tachiveyi, and done the same to Mr Kawiliza himself by means of his racist and unreasonable actions.

56. The respondent's case was that the allegations had, for the most part, not happened at all. To the extent that some matters contained a kernel of truth, Mr Kawiliza had either misinterpreted or deliberately misrepresented them. This case revolved around a personality clash in an intense working environment. Mr Kawiliza was to blame for that as much, if not more, than Mr Fox. Beyond that, nothing untoward had taken place.

57. Mr Ryan's written submissions also contained a helpful and (we consider) accurate and neutral summary of the principles and authorities relating to the burden of proof in discrimination cases. We were grateful for that and had regard to it.

### **Discussion and conclusions**

58. The following discussion proceeds with reference to the List of Issues.

#### **Direct discrimination on grounds of race (s.13 Equality Act 2010)**

**Did Mr Fox treat Mr Kawiliza in the following way:**

**Subjecting Mr Kawiliza to verbal abuse on a daily basis, specifically by telling him to "fuck off" and calling him "an idiot".**

59. We do not accept this allegation. The claimant's evidence on it was unclear and it was denied by Mr Fox, whose evidence we generally found to be more credible. That said, we are prepared to entertain the possibility that the language and general conduct between the two men became more heated at times than either wanted to admit (at least on their own part). However, even if we are wrong in our factual conclusion that the words were not said, we are satisfied that Mr Fox would have treated a co-worker of another race with whom he had a similar personality clash in the same manner. We are satisfied that this treatment (if it did occur) had nothing to do with Mr Kawiliza's race.

**Preventing Mr Kawiliza from ordering the food that he wanted and removing drinks belonging to Mr Kawiliza from the fridge in the property.**

60. We heard evidence from both carers about the process for ordering food. This was somewhat confused and we conclude that it may not have been clearly explained to Mr Kawiliza. However, we reject the allegation that Mr Kawiliza was actively prevented from ordering food he wanted. We accept that the only items he specifically asked to be bought (e.g. painkillers), were bought. The only specific item he complained about not being allowed to purchase was an iron. That is not a day-to-day item and we accept that Mr Fox insisted that that expenditure be cleared with Mr T's family. There was nothing wrong with him doing so, even if (as Mr Kawiliza says) it was part of Mr T's care plan that the carers should iron his clothes.

61. Mr Fox accepted that he "may have" removed Mr Kawiliza's drinks from the fridge if the fridge was full and he was unpacking fresh items from the shop. We find it is more likely than not that this did happen.

**Denying Mr Kawiliza access to the service-users medication, medical records and financial information by keeping these locked in Mr Fox's bedroom.**

62. There was a straight conflict of evidence as to this allegation, which seems surprising as it is a difficult matter to be confused about. We decided that we preferred Mr Fox's evidence as it would be unusual for such information to be kept in one carer's bedroom rather than elsewhere in the house, and we would expect this to be queried by visiting managers/medical staff. In addition, we broadly preferred Mr Fox's evidence as a whole. For those reasons, we reject this allegation.

**Failing to properly involve Mr Kawiliza in the service user's treatment and care.**

63. This allegation was not properly explained in Mr Kawiliza's evidence. It is clear that the carers were in dispute about how to properly provide care and that, as the existing person in the role, Mr Fox had the 'upper hand' to some extent. Notwithstanding that, we consider there is insufficient evidence to conclude that Mr Kawiliza was excluded from Mr T's care. To the extent that this allegation was directed specifically at the events of the evening of 20 September (it was not clear to us whether that was Mr Kawiliza's intention) we reject the suggestion that Mr Fox acted deliberately to exclude Mr Kawiliza from involvement in that incident.

**If so, was that treatment "less favourable treatment", i.e. did the respondent treat Mr Kawiliza as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? Mr Kawiliza relies on hypothetical comparators.**

64. In respect of the matter we have found proven – that Mr Fox removed Mr Kawiliza's drinks from the fridge. We are satisfied that this was due to a lack of space in the fridge and that Mr Fox would have removed drinks being chilled by any other carer in the circumstances.

**If so, was this because of Mr Kawiliza's race and/or because of the protected characteristic of race more generally?**

65.No, as above.

66.More broadly, we are satisfied that any poor conduct which may have taken place was the result of personal antipathy rather than any racial bias all the part of Mr Fox.

**Harassment on ground of race (s.26 Equality Act 2010)**

**Did Mr Fox subject Mr Kawiliza to the treatment set out at Issue 1 above?**

**If so was that conduct unwanted?**

**If so, did it relate to the protected characteristic of race?**

67.We refer again to the factual conclusions set out above. It will be apparent that we have found that in most instances Mr Fox did not subject Mr Kawiliza to the treatment complained of. Specifically, in relation to the allegation of removing drinks from the fridge we find that that conduct did occur, and was unwanted, but have no difficulty in finding that it did not relate to the protected characteristic of race. The harassment claim therefore fails at this juncture.

**Statutory defence**

68.We note for completeness that the first respondent withdrew its reliance on the statutory defence during closing submissions.

**Discriminatory dismissal**

**Having regard to the findings made in respect of the above claims of discrimination and harassment, is Mr Kawiliza to be regarded as constructively dismissed?**

**If so, does that dismissal amount to less favourable treatment on the grounds of race.**

69.Having regard to the findings made above this claim must fail.

**Unauthorised deductions from wages**

**Did the respondent make unauthorised deductions of £210.00 from the claimant's wages?**

**Did the respondent make unauthorised deductions of £25.00 from the claimant's wages, in respect of a taxi fare?**

70.As noted at the start of this Judgment, these claims were conceded by the respondent during the June hearing. It is disappointing that, having no answer to this part of the case, the respondent failed to engage with the claimant about his assertion that he had been underpaid at an earlier point. It is even more disappointing that, having been conceded in June, those payments had still not been made in October. The Tribunal notes that in Mr Kawiliza's earlier case, against a different respondent, he was also awarded

small amounts in respect of outstanding payments, despite being unsuccessful in the substantive claim.

71. It seems to be too often the case that, through intention or negligence, companies employing staff in low paid roles in sectors such as care do not meet their obligations to pay those staff properly on termination. Those sums can be very significant to the employees involved. Whilst it is obviously preferable that such errors are avoided in the first place, it is also possible that an employer who engages constructively with a departing employee to try to understand their concerns, rather than ignoring them, might find that by resolving a small, legitimate pay dispute they avoid engendering a sense of grievance in an employee which could mushroom into a much larger and more complex claim.

## **Conclusion**

72. Mr Kawiliza has been unsuccessful in all of his claims, save for the money claims which are already quantified. There is therefore no need for a remedy hearing and the case will be closed.

**Employment Judge Dunlop**

Date: 10 November 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON  
15 November 2022

FOR EMPLOYMENT TRIBUNALS



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2400086/2020**

Name of case: **Mr R Kawiliza** v **1. Mi Casa Care Limited**  
**2. Mr Gordon Fox**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

**the relevant decision day** in this case is: 15 November 2022

**the calculation day** in this case is: 16 November 2022

**the stipulated rate of interest** is: **8% per annum**.

Mr S Artingstall  
For the Employment Tribunal Office

## GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:

[www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426](http://www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426)

If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.
3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.
4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.
5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.
6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.
7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.
8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.
9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.