



EMPLOYMENT TRIBUNALS

Claimant: Mr M Boyd
First Respondent: Luxfer Gas Cylinders Limited t/a Superform
Second Respondent: Mr D Bosworth

Heard at: Manchester (in public; by CVP) **On: 27-30 September 2021**

Before: **Employment Judge Grundy**
Mrs A Ramsden
Mr PC Northam

Representatives

For the Claimant: Mr M Boyd in person (Mother present to support the claimant)

For both of the Respondents: Mr J Heath solicitor

JUDGMENT

- (1) The claimant's claim against the first respondent in respect of public interest disclosure detriment is not well founded and is dismissed.
- (2) The claimant's claim in respect of race discrimination by harassment contrary to s26 Equality Act 2010 against the first and second respondent is not well founded and is dismissed.
- (3) The claimant's claim in respect of victimisation against the first and second respondent contrary to s27 Equality Act 2010 is not well founded and is dismissed.

REASONS

1. These are the claimant's claims arising on the termination of his contract with the first respondent on 2 August 2019. The second respondent was named as such at the time of submission of the ET1, but he was never the individual alleged by the claimant to have made racist comments in the workplace.
2. An in person (pre- Covid measures) case management hearing took place before Employment Judge Sherratt on 18 February 2020 when case management orders were made for a final hearing in August 2020.

Unfortunately the hearing has been delayed by the pandemic and has now been convened remotely by CVP. The first respondent produced a trial bundle for the hearing containing over 250 pages. Over 4 days the Tribunal has managed to hear all the oral evidence, including evidence from some covert recordings made by the claimant and closing comments/submissions and to finalise its deliberations and conclusions. This was an ex tempore oral judgment following the evidence and submissions given on 30 September 2021, after which the claimant sought written reasons to be provided.

Brief history from that set out in the case management order of Judge Sherratt

3. The claimant was contracted to work on a self-employed basis as a panel beater from 1 July 2019. The claimant alleges his services were no longer required following a complaint to the second respondent -he asserts a protected disclosure about the night manager operating a vehicle on the shop floor whilst seemingly intoxicated by alcohol (as set out in the ET1).
4. The claimant suffered detriment when his contract was discontinued.
5. The claimant claims he was harassed in relation to race on the basis of racist conduct by Mr S Donnelly, which created an intimidating, hostile, degrading humiliating or offensive working environment. The claimant alleges that he complained about this behaviour and that the termination of his contract was also an act of victimisation.
6. The first respondent alleges that it dispensed with the services of the claimant because of his conduct. The respondents deny that the claimant was harassed in relation to race and deny that the claimant was victimised.
7. The first respondent alleges that the claimant only raised a potential public interest disclosure after his services had been terminated.
8. In response to a request for further and better particulars of the claims and in order to assist the Tribunal at the outset of the hearing, the factual matrix of the claimant's claims were identified in the first instance by the respondent's solicitor. The facts alleged were contained in the ET1 and were also taken from an email from the claimant at page 219 dated 8 June 2020.
9. When they were outlined orally, by the Respondent's solicitor, the claimant commented "that's fair." The factual matters in relation to the alleged protected disclosures considered by the Tribunal were therefore wider than simply being about Mr Michael Dade the night manager as alleged in the ET1. These were identified at the outset of the hearing and then considered by the Tribunal and agreed by all parties as follows:-
 - a. On 22nd July 2019 the claimant alleged he reported to David Bosworth that Michael Dade was operating a vehicle when intoxicated by alcohol.{ ET1}
 - b. In the second week in July 2019 reporting to David Bosworth and Michael Dade that airlines were set up in such a way to be dangerous to connect tools to as they had different connections, such that the claimant had injured his hand.{219}

- c. On an unreported date the claimant alleged he reported to David Bosworth and Michael Dade that the extraction was inadequate for multiple people and the filters constantly blocked for the 4 weeks of contracting.{219}
 - d. On an unreported date the claimant alleged he reported to David Bosworth and Michael Dade that the security gate at the front of the premises was set up in such a way it posed a risk of injury to a persons arm. {219}. (*Although it was noted later that the claimant says at 219 "this was rectified after it was raised in my time there"*).
10. In respect of the allegation of racial harassment the claimant alleged he heard racist language from Steven Donnelly. (As set out in the ET1 but not particularised at that time.) Later particularised as from 1 July 2019 to 8 July 2019, which included referring to ND as a " dirty smelly Paki rat who should fuck off back home".
11. The claimant relies on a text message in the bundle at page 53 which he sent to Steven Donnelly and Mr Donnelly forwarded to Dave Bosworth saying, "*just a word of warning if you fancy causing trouble for me, I'll take the multiple voice recordings of the racist shit you say at work to the relevent people and the person your talking about "*. This message was followed by a thumbs up and keep quiet emoji.
12. The claimant alleges his contract was terminated by Mr Bosworth, because he made a complaint of racial harassment and this amounts to victimisation. Mr Bosworth sent a text on page 58 ending his contract. " *Hello Martin Your company is no longer required at Superform Kidderminster. Thank you for your help and good luck in the future.*"
13. The First Respondent accepted that the claimant is a contract worker as defined by section 41(5) Equality Act 2010, and that he is "a worker" as defined by section 43 K (1) Employment Rights Act 1996.

Complaints and issues identified at the case management conference were as follows-

- 14. The Tribunal adopted the analysis of the Employment Judge at the Case Management hearing on 18 February 2020. The complaints pursued are in respect of public interest disclosure detriment, racial harassment and victimisation.
- 15. The issues to be determined by the Tribunal, (as provided by the respondent in the previous agenda document) and adopted herein , are as follows:

Public Interest Disclosure Detriment

- 1. Did the Claimant make one or more disclosures?
- 2. Were the disclosures in question qualifying?
- 3. If so, are those disclosures protected?
- 4. Did the Claimant suffer any detriment(s)?
- 5. If so, did the fact that he had made one or more protected disclosures significantly influence R1's decision to treat him in the manner alleged?

Racial Harassment

6. Did R1 or R2 engage in unwanted conduct towards the Claimant in relation to race which had the purpose or effect of violating his dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him?

7. Would it be reasonable for the Tribunal to find that the conduct in question had the prohibited effect, taking into account the Claimant's perception and the circumstances of the case.

Victimisation

8. Did the Claimant do a protected act?

9. If so, what was that act?

10. Did the Claimant suffer a detriment and if so, what was it?

11. Who subjected the Claimant to the detriment in question?

12. Was the Claimant's protected act a reason for the imposition of the detriment?

REMEDY : Compensation if appropriate.

EVIDENCE AND WITNESSES

16. The Tribunal was provided with an original bundle of documents collated by the respondent amounting to over 250 pages. Within the bundle the Tribunal had a copy of a number of written transcripts of recordings the claimant took of events over the month period he was at the respondent's premises and we listened at the claimant's behest to two extracts of the recordings and one at the behest of the respondents.

17. There were in fact over 100 hours (page 132) of covert recordings from this month period, which the claimant took without advising the respondent other than when he was the victim of an assault and sought to film the incident. To save time and to gain a flavour of the dispute and to try to proportionately use the time available, in the first instance, the Tribunal listened to two of the recordings identified in the claimant's statement in the hearing, as requested by the claimant, accepting the respondent had seen the transcript but not heard the recordings. (MB004 and Audio7part 2) The Tribunal ruled that it was disproportionate and irrelevant to listen to recordings concerning the "Nathan Irvine" assault episode in the knowledge that his services had been terminated shortly after by the first respondent arising from the incident with the claimant and the first respondent accepting Nathan Irvine had touched the claimant.

18. The respondents requested the Tribunal listen to a 6 minute recording in which it was suggested that the claimant was animated and loud in his presentation during that recording. The Tribunal also listened to this recording and accepts that was the presentation of the claimant. Bearing in mind all the recordings were covert, the Tribunal notes also that the claimant would be aware of the

recording but all other voices heard on the recordings would not.

19. The tribunal set out a template at the outset of the hearing for the evidence to be completed within the time allocated if possible to assist the parties and for judgment to be completed. The Tribunal took regular breaks given this was a hearing over CVP and gave time to the claimant to prepare and consider when requests were made given he is a litigant in person.
20. The Tribunal heard oral evidence from the claimant himself Mr Martin Boyd. The respondent called Mr David Bosworth- Manufacturing manager and Miss Sadie Tandy Gray- Human Resources Manager.
21. The Tribunal ruled that the statement of Mr Chris Lloyd should not be admitted in evidence as it dealt with matters pertaining to a previous period which on the claimant's account and Mr Lloyd's briefly perused statement, had ended with "some history" which both wished to put behind them. The full extent of Mr Lloyd 's statement was not agreed and he had been intimated to be a witness who would attend to give evidence, but then on day 2 the first respondent indicated he was not to be called. He was not the central witness to the issues now before the Tribunal and so his full statement was discounted and not admitted.
22. The claimant conducted himself appropriately at all times before the Tribunal although it was clear from the covert recordings he himself had made and his own analysis he could at times be a disruptive influence in the workplace and he caused conflict if he felt he was being criticised or under verbal attack. He had described his own conduct at the respondent's premises when working there in 2018 as "a nuisance".
23. The Tribunal had mixed views about the overall credibility of the claimant. The Employment Judge did not find the claimant to be a credible witness in particular because despite having told the respondents he had recordings of alleged racist abuse, none whatsoever have been produced, and because he made demonstrably wild and unsubstantiated allegations about a number of people- that Blake Bishop was a cocaine user-, (Mrs Tandy Gray said he was a good worker,) that Michael Dade had a drink problem- (not corroborated by any other evidence), that Mrs Tandy Gray was racist because she asked him not to swear, totally refuted by her.
24. Mrs Ramsden considered where the claimant's evidence conflicted with that of the respondent witnesses, that of the respondent witnesses was to be preferred and that the claimant was sometimes prone to exaggeration. On occasion the claimant did discuss his grievances with other staff as evidenced by the transcripts but Mrs Ramsden also takes account of the fact that there were no recordings/ transcripts of the claimant discussing matters alleged as central to the claims with the Managers.
25. Mr Northam found the claimant's evidence to have some aspects of credibility. In that he accepted the claimant had heard racist abuse although this ended prior to his contract being terminated and the claimant seemed preoccupied

with using it against Mr Donnelly rather than being insulted or upset by it.

26. Mr Michael Bosworth seemed a credible and straightforward witness who gave clear evidence about his dealings with the claimant.
27. Sadie Tandy Grey appeared approachable and showed a professional attitude to the claimant. The Tribunal accepted her evidence as truthful.

FINDINGS OF FACT

The Tribunal has set out in the previous paragraph dealing with evidence the background in relation to its view of the evidence of the witnesses and will now set out the chronology of its findings of fact in relation to the claimant's month with the first respondent and key events in issue. The Tribunal has not found it necessary to determine every issue of fact that has been put before it but those issues upon which it is necessary to determine in order to reach conclusions as to the claimant's claims.

28. The first respondent manufactures body panels for the automotive, aerospace and rail industries. There are two sites in the Midlands, the smaller one at Kidderminster where the claimant worked. Mr Bosworth was the responsible manager for the claimant's workplace. The site has been severely affected by the pandemic and where it previously operated 3 shifts there, this is now reduced to a day shift. (In September 2021, 2 years after the claimant's departure a BSI audit there gave a positive recommendation for ISO 45001 accreditation.)
29. The claimant was a skilled panel beater, who had provided similar services to the first respondent between December 2017 and July 2018. When that period of engagement ended the claimant accepts, (email at page 24 and 25), he was responsible in part in that he says, "*I'd again like to apologise for last year I really didn't mean to be a nuisance I also really didn't mean to talk to Chris the way I did last year either which is why I apologised when I could find the right words.*"..... "*I went to speak to Chris last year when he pulls me for not wearing safety glasses.*"..... "*I then stupidly did the same thing again when I returned from my holiday and asked Chris about the bonuses everyone received to find I wasn't included.*"
30. He goes on to say "*I was wondering if you had giving any consideration to letting me come back to super foam at any point. I spoke to Blake the other day as I am pretty sure he wasn't keen on the idea because of my attitude last year and I can understand why in all fairness.*"
31. The claimant asserted he returned with a fresh attitude. A week or so after starting work the claimant was covertly recording the night shift, which was only known to the respondent in passing, when the claimant said he started to record Nathan Irvine on 18/19 July 2019 in an altercation. In fact the claimant recorded over 100 hours of time at the first respondent's premises unbeknown to the respondents and such actions suggest dissatisfaction on the claimant's

part.

32. On 1 July 2019, which was the claimant's first night shift, the claimant's night shift manager Michael Dade was found at his desk unconscious and unresponsive, with vomit coming out of his mouth. The "near miss hazard report" at page 26 reports an ambulance being called and later a "*doctor confirmed there was a high level of caffeine in his blood which was caused by drinking a large amount of high energy drinks.*"
33. Witness statements taken at the time from those on shift, (excluding the claimant whose first shift it was, and from whom a statement was not obtained) do not mention consumption of alcohol by Mr Dade. There is reference to a brain issue at page 28 in an "accident record" and on page 26 "a high level of caffeine and drinking a large amount of high energy drinks" is mentioned.
34. The claimant raised Mr Dade smelling of alcohol in his ET1, when he made the assertion, which at no time was substantiated by him in evidence that "*the night manager was operating a vehicle on the shop floor whilst seemingly intoxicated by alcohol*". The Tribunal does not make any finding that this occurred.
35. He raised vodka consumption in a text to Mr Bosworth at 16.57 on 2nd August 2019 after the termination of his contract, which took place by text earlier that day, as set out in terms above. On page 58 of the bundle in response, the claimant texted back, "*Your night shift manager has to be picked up off the floor and put in an ambulance because he's drank two bottles of vodka.....Goes round messing with people's work stations.....And I'm too much of a hassle?That's not fair matw.*"
36. The claimant clearly felt aggrieved at his treatment by the first respondent. In the ET1 he had asserted the disclosure above to be a public interest disclosure qualifying for protection and materially influencing Mr Bosworth. The Tribunal find the reference to excess alcohol usage on the part of Mr Dade made by the claimant to Mr Bosworth was only made after the termination of his contract.
37. The Tribunal does not find the claimant verbally told Mr Bosworth Mr Dade operated machinery after drinking alcohol before his contract was terminated, and nor does the Tribunal accept the claimant just missed being able to record this in one of his many transcripts.
38. The claimant sent an email at page 127 to Simon Forrester on 2nd August 2019 making comments alleging witnessing "racist comments left right and centre from the contractors and the night manager Mike" and suggesting he had recordings but not making allegations about Mike and alcohol consumption and unsafe actions. At page 128 the claimant in an email entitled "unfair dismissal" on 2nd August 2019 at 21.41 to Kevin Smith makes the same allegation re racist language and Mr Dade tightening jigs and also says in this email of Mr Dade, (the same man was lifted into an ambulance from drinking vodka at work). In an email page 130 on 3 August he alludes to Mr Dade driving a forklift truck at work but does not explicitly say he has seen him under the influence of

alcohol doing so.

39. The Tribunal finds when the claimant worked on the nightshift at Kidderminster, the interaction between the contractors including the claimant was at times toxic and unpleasant. Plainly there was a lot of swearing, name calling and insulting and vile verbal abuse about issues such as body odour and weight issues as set out particularly in the transcript- audio2 at page 78 onwards.
40. The claimant is as blameworthy as any other contractor in giving out abuse of this type to those around him. This is illustrated by the transcript at page 82. The audio recording when played showed a wholly unacceptable level of aggression and animosity in the work place and the claimant himself sounded like he was at times baiting others and was in the Judge's view emotionally disregulated to a degree. In his own words the claimant said to the Tribunal, "*What I lack in muscle I make up for in noise. I can be "shouty" if you back me into a corner like a dog.*" The industrial language is excessive and appalling between work colleagues. The claimant's tone is aggressive. It created a toxic working environment at the time.
41. The claimant has latterly raised issues about health and safety matters. In evidence the claimant repeatedly said he wanted to involve human resources and he asked his Managers to involve them, however, at no time did the claimant raise any health and safety issue with "Safecall" a speak up/whistleblowing line operated by the respondent and advertised in the premises on notice boards and the like. Nor did he contact Simon Forrester- General Manager whose contact details he had when he was recruited and nor did he contact Sadie Tandy Gray although he had previously used her contact details on "linked in" and was aware of her email address.
42. The claimant made complaint in evidence that Mr Dade had been tightening jigs used in the process of panel beating and this was impliedly detrimental to carrying out the work the claimant did. It was raised in some of the transcripts recorded by the claimant but did not form part of any protected disclosure claim.
43. The claimant did not raise to Mr Dade or to Mr Bosworth the issue of extraction being inadequate for multiple people and the filters constantly blocked for the 4 weeks of contracting there.
44. The claimant confirmed in evidence that he did not know whether David Bosworth knew about the injury to his thumb at the time he hurt it as shown in photograph at page 14 and the Tribunal finds that when the claimant hurt his thumb on an airline when the connector did not fit correctly he did not write this in any accident report book and he did not report it to Mr Bosworth or Mr Dade.
45. In the transcript at page 100 the claimant in conversation with Aidan and Karl discusses his view of the gates at the premises and the claimant characterizes this as a "*serious health and safety violation*". In the transcripts the claimant describes his own conduct as "*liking to do stupid things sometimes*" and "*live life on the edge and play Russian roulette with his arm*", The transcript evidences the claimant telling another contractor Aidan about his view of the

gate and that the claimant says he has told Mike Dade. According to David Bosworth a keypad was attached after consultancy advice regarding security issues and a push button was added in November 2019 for Mr Dade. The claimant on a balance of probabilities mentioned the gate to Mr Dade as the functionality of the gate changed shortly after and this in the claimant's mind related to health and safety and Mr Dade spoke to Mr Bosworth about the gate on Mr Bosworth's evidence. The claimant had demonstrated a blasé attitude to his own safety as demonstrated by his language at the time. No person suffered any injury by virtue of the gate.

46. The claimant had a disagreement over the quality of a panel with the quality control officer Sam Jagielczuk which led him into conflict with Mr Bosworth when Sam complained to Mr Bosworth about the claimant's attitude. The claimant in conversation with Rob Robinson at page 114 -116 says that Sam has a good eye, " *she has almost got too much of a keen eye.*" The claimant may not have appreciated that his attitude could come over to someone else as officious and obnoxious.
47. On the night shift of 18/ 19th July 2021 an altercation took place when Nathan Irvine grabbed the claimant's collar. There were no immediate suspensions at the time, about which the claimant makes complaint and the respondent appears to accept would have been good practice. The altercation was looked into by Mr Bosworth within a few days and when the statements were taken, Mr Bosworth accepted Nathan Irvine had touched the claimant and Nathan Irvine's contract was terminated. The claimant's statement appears on page 49 and Aidan Sullivan supported the claimant's version of events in an email at page 56.
48. On 23 July 2019 Stephen Donnelly reported to Mr Bosworth that he had received a text message from the claimant, which appears at page 53 and he suggested Mr Bosworth would be better dealing with it. The claimant was interviewed by Mr Bosworth about the text message he sent to Mr Donnelly and the claimant said he had multiple recordings of Mr Donnelly making racist comments.
49. The message sent by the claimant at page 53 is threatening and reads as follows:- " *just at word of warning if you fancy causing trouble for me I'll take the multiple Voice recording of the racist shit you say at work to the relevant people and the person you're talking about. Thumbs up emoji and keep quiet emoji. from Stephen Donnelly.*"
50. At no time has the claimant ever produced such a recording to the respondents or to the Tribunal. The claimant alleged that Mr Donnelly made racist comments about an operative ND. The Tribunal makes different findings on this part of the evidence.
51. The employment judge makes no finding that Stephen Donnelly used racist language in the presence of the claimant out side the presence of ND but about ND. There was no recording of such abuse in over 100 hours of covert recording at the premises by the claimant despite his assertion there was

recordings. The investigation by Mr Bosworth in generic terms did not find any substance to the suggestion of Stephen Donnelly making racist comments. Stephen Donnelly refuted making such comments to Mr Bosworth and was upset and relied on the fact he lived in a mixed race household, showing photos of his son's partner on his phone who is black to Mr Bosworth making in the Judge's view the allegation more inherently unlikely than likely. The Employment Judge also considered it inherently unlikely if Stephen Donnelly was regularly making racist comments that he would bring attention to that fact by forwarding a text making such an allegation to a Manager, which was more likely the action of an innocent person.

52. Mr Northam finds that Stephen Donnelly did make racist comments as alleged by the claimant, as there was no denial of the allegation to the claimant in the long transcript at page 82-85. Mr Donnelly replies, "Oh my God" several times rather than a denial. During the tirade, the claimant alleges he no longer has to listen to Mr Donnelly's "*racist shit*" (83) *now mate that a bonus isn't it you have to keep your f..ing mouth shut now you di..head*" which Mr Northam considers has the ring of truth about the claimant's primary allegation.
53. Mrs Ramsden is unsure whether Mr Donnelly used racist language or not, but such language may have been possible given the toxicity of the night shift environment but on balance does not find the allegation against Mr Donnelly proved on a balance of probabilities given the fact that Mr Donnelly raised the text of the claimant with his manager.
54. The Tribunal all agree that no verbal racist abuse took place on the premises,(at any time on the Judge's and Mrs Ramsden's findings and after 21 July 2019 on Mr Northam's as the claimant asserted on his own evidence the effect he says of sending the text to Mr Donnelly had been that the abuse stopped. The abuse alleged by the claimant was never directed to the claimant but was about a Pakistani employee.
55. All of the panel agree that a complaint of racist verbal abuse was never made to or escalated by the claimant to a Manager at the time of his engagement. The claimant did not involve human resources or Safecall or a Manager over alleged racist abuse. In contrast the claimant sent a threatening text to Mr Donnelly intimating he had something over him rather than showing upset about racist language. Further the specific language was not identified by the claimant in the ET1 and was not explicitly alleged by the claimant until much later in February 2020 when one phrase only was articulated.
56. All of the panel agree and find that Mr Bosworth terminated the claimant's services with the First Respondent because the claimant was justifiably considered to be a disruptive influence. The Tribunal accept the issues raised by Mr Bosworth at paragraph 16 of his witness statement-in brief "*interrupting an investigation meeting with Aidan Sullivan, sending a threatening text message to Steven Donnelly, alleging he had covert recordings of Mr Donnelly but when asked not producing any, nor was there any evidence of racism found by Mr Bosworth, arguing and being rude to Samantha Jagielczuk and spreading*

rumours Mr Dade tampered with jigs."

57. The claimant emailed after his services were terminated making allegations about the respondent's work practices and the reasons for his termination. These evolved as set out above at pages 128-9, 131-134 and in a statement in email to Ms Tandy Gray at page 136-137. Other than matters pertaining to Mr Dade and racist abuse, the claimant did not raise the other 3 matters alleged in the further and better particulars relating to health and safety now alleged in the Tribunal as protected disclosures, which led to the claimant suffering detriment.
58. The claimant was aggressive in a conversation on 21 August 2021 with Ms Tandy Gray after the end of his contract when she was attempting to explain her investigation outcome to him. He was swearing using the F word and in the end after he accused her of being racist she told him there was no point in the call and when he spoke over her she ended the call.
59. In 2020 when asking Blake Bishop to give witness evidence in support of his claim, the claimant used abusive language to Blake Bishop on text message, Blake being a Team leader at the time of the claimant's first period with the respondent and latterly being employed at the respondent's Worcester site. The messages also make unsubstantiated allegations Mr Bishop is a cocaine user pages 227-247. Within the messages, the claimant accepts some times he has "a shit attitude".

THE LAW

60. The Tribunal has to determine facts on a balance of probabilities, the burden to establish his claims being on the claimant in the first instance, subject to the matters below and we have to apply the legal provisions to the facts found. No authorities were cited to the Tribunal.

PROTECTED DISCLOSURE DETRIMENT

61. The law applicable to the matters relating to protected disclosures is found primarily in part IVA of the Employment Rights Act 1996. In particular section 43A, "Meaning of protected disclosure"; "In this Act a "protected disclosure means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."
62. Section 43B "Disclosures qualifying for protection"; Per ss(1) "In this part a "qualifying disclosure" means any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following- (a), "(b) " (c) *the relevant aspect here is* " **(d) that the health and safety of any individual has been, is being or is likely to be endangered**"(e) and (f)are not relevant
63. Section 43C(1) "Disclosure to employer and other responsible person" ,"A qualifying disclosure is made in accordance with this section if the worker makes the disclosure- (a) to his employer or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to (1) the conduct of a

person other than his employer or (2) any other matter to which a person other than his employer has legal responsibility to that other person.

43C(2) A worker who in accordance with the procedure whose use by him is authorised by his employer makes a qualifying disclosure to a person other than his employer is to be treated for The purposes of this part as making the qualifying disclosure to his employer.

64. Part V of the Act deals with protection from suffering detriment in employment in particular Section 47(B) deals with Protected disclosures and at section 47 (B) (1) " A worker has the right not to be subjected to any detriment by any act, or deliberate failure to act by his employer done on the ground he has made a protected disclosure"

65. Section 48 (1A) provides " a worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B".

66. The respondent accepts the claimant satisfies the definition of worker in s43K(1). ERA 1996.

DISCRIMINATION CLAIMS **HARASSMENT**

67. The Tribunal considered the relevant provisions of the Equality Act 2010, in particular section 26 of the Equality Act, subsection 1, which provides:

"A person (A) harasses another (B) if,

- (a) A engages in unwanted conduct related to a protected characteristic and
 - (b) the conduct has the purpose or effect of - violating his dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection 1b each of the following must be taken into account -

- (a) the perception of B
- (b) the other circumstances of the case and
- (c) whether it is reasonable for the conduct to have that effect.

The Tribunal considered the EHRC Code of Practice on Employment 2011 particularly in relation to harassment at Chapter 7 and language in the workplace at paras 17.44-17.51 including at 17.51 inappropriate or derogatory language in the workplace.

The claimant can bring his claim in circumstances where the unwanted conduct is related to a protected characteristic ie race here, but does not take place because of it.

The claimant can rely on the protected characteristic of the person concerned even if he does not share it.

VICTIMISATION

The Tribunal considered section 27 Equality Act 2010 as follows:-

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

68. A realistic approach must be taken to any situation in which it is said a protected act occurred. The burden of proof is on the claimant to prove that he did a "protected act". The burden if such a protected act is established is also on the claimant to establish that the respondent subjected him to a detriment because of the protected act. The causation aspect requires knowledge of the protected act and a causal connection between the protected act and the detriment.

69. The Tribunal, having heard evidence over 2 days, and submissions on the third day had time on day 3 for deliberations to reconsider of all of the papers, the notes of evidence taken, the recordings heard, the law applicable and the submissions made.

SUBMISSIONS IN BRIEF FORM

a. The respondents submitted -

that the claimant had not made any protected disclosures and in any event if it were accepted he had, they had not caused him detriment

There was no racist abuse by Mr Donnelly from which the claimant could mount a discrimination claim

The claimant did not do a protected act to mount a victimisation claim.

The claimant's contract was terminated due to his attitude in a number of respects.

b. The claimant submitted-

that Mr Dade had drunk alcohol on 1 .7 and in effect the respondents had covered it up.

He asserted he sent the text to Steven Donnelly to stop him bullying him and all racist abuse then ceased.

He said re the gate -- that it was dangerous and he took it as far as he needed to with Mr Dade.

He denied a vendetta against the respondents and asserted his other concerns were genuine.

The claimant claims he states he raised issues with his Line Manager, which would be sufficient under the safe call procedure

The claimant raised his treatment as a contractor as against the treatment of an employee.

CONCLUSIONS

Public Interest Disclosure

70. The Tribunal rejected the claimant's allegations on the facts he asserted to support any finding of public interest disclosure detriment. Save as regards the operation of the security gate. The relevant findings of fact above are read in to the judgment here.
71. As regards the security gate aspect, the claimant did raise the gate mechanism with Mr Dade given this was changed shortly after the Claimant left and Mr Bosworth acknowledges Mr Dade raised it. We consider that section 43B (1) (d) is satisfied in relation to the claimant's report to Mr Dade in respect of the gate as it was a matter of health and safety and was altered and therefore that disclosure is qualifying and protected. This was the only protected disclosure made by the claimant during the month of contracting with the first respondent.
72. However the claimant did not suffer any detriment related to a report about the gate. It was not the cause of termination. Mr Bosworth did not know the claimant had raised the gate issue. Mr Dade raised it to Mr Bosworth.
73. As regards the other allegations of protected disclosures -The claimant did not raise a concern about Mr Dade and alcohol UNTIL AFTER his contract had terminated. At no point did the evidence articulate at the time of the contract that the claimant raised to a manager a health and safety concern about Mr Dade.
74. Furthermore the claimants other 2 alleged protected disclosures were also not made out on the evidence but seemed to be grievances raked up after the event especially in the light of the post contract emails to Ms Tandy Grey and the evolution thereafter of the claimant's Tribunal claims.

75. When the claimant alleged he had been assaulted by Mr Irvine, which was not related to a claim in respect of a protected disclosure the first respondent handled the matter appropriately and Nathan Irvine's services were terminated.
76. Although the matter of a report of a Manager driving a fork-lift vehicle under the influence of alcohol could in some circumstances be a qualifying disclosure as this did not happen there was no qualifying disclosure in that regard.
77. It follows that the cause of the detriment to the claimant could not be the making of that protected disclosure or the other two.
78. In respect of the gate aspect of complaint having accepted Mr Bosworth's evidence, the gate complaint did not cause the claimant's termination and the claimant has not made out the cause of the detriment to be a public interest disclosure. The reasons for the termination were as Mr Bosworth articulated.

DISCRIMINATION HARASSMENT

79. On the findings of the majority as there was no racist verbal abuse found to have occurred there was no basis for the claimant's claim to the Tribunal as no unwanted conduct related to a relevant protected characteristic occurred. Nasty verbal talk of itself is not actionable unless related to a protected characteristic.
80. On the findings of Mr Northam the claimant's dignity was not violated, nor was an intimidating hostile, degrading, humiliating or offensive environment created for the claimant by the racist abuse of another person, as the claimant was more concerned to use the matter to threaten Mr Donnelly in his own personal quarrel rather than report it himself to the respondent and it had ceased within a short period. It was also only a part of the toxicity of language and atmosphere and environment on the night shift at the time. Although the Tribunal does not condone such conduct.
81. In the light of the Tribunal's consideration of the law and the facts here and taking into account the ECHR Code the claimant's claim fails.

VICTIMISATION

82. On the findings of the Tribunal the claimant did not do a protected act. The claimant did not bring a claim or do anything in connection with the Act. The issue of racist abuse was brought to the first respondent's attention ironically by the alleged perpetrator of that abuse on the claimant's case.
83. It follows that if the claimant did not do a protected act the claim of victimisation fails and the claimant could not have suffered any detriment because of it.

CLAIM AGAINST THE SECOND RESPONDENT

- 84.** Mr Bosworth was joined as a second respondent to meet the allegations relating to alleged racial discrimination by harassment and victimisation, neither of which have been found to be based in fact by the majority and in respect of victimisation by the whole Tribunal. It follows therefore that there is no grounds upon which either discrimination claim could be successful against Mr Bosworth.
- 85.** In the circumstances all of the claimant's claims fail and are dismissed although there is a slight difference of view on the facts as found relating to the Mr Donnelly allegations.

Employment Judge Grundy

5 November 2021

JUDGMENT SENT TO THE PARTIES ON

11 November 2021

FOR THE TRIBUNAL OFFICE