



EMPLOYMENT TRIBUNALS

Claimant: Mr G Powell

Respondent: British Car Auctions Limited

Heard at: Birmingham Employment Tribunal **On:** 09/12/2019- 18/12/2019

Before: Employment Judge Mark Butler
Mr RS Virdee
Ms J Keene

Representation

Claimant: Claimant himself
Respondent: Mr Crowe (Solicitor)

JUDGMENT

The unanimous decision of the employment tribunal is that:

1. The claim of racial harassment is not well founded and is dismissed.
2. The claim of direct race discrimination is not well founded and is dismissed.
3. The claim of victimisation is not well founded and is dismissed.

REASONS

Background

4. For the purposes of this judgment, as the claim concerns allegations of race discrimination that have been unfounded and dismissed, and involves named individuals, the Tribunal has anonymised all names in this case, with exception to Mr Powell, the claimant, and Mr Crowe, the representative for the respondent. We have used the first two letters of their surname so that the witnesses can be identified by the parties. Their names are not important to the case or the decision that has been made.

5. The various claims in this case arise following Mr Powell having been subjected to a disciplinary process by the respondent, and a consequent written warning being given to him.
6. Mr Powell submitted his claim form with the Employment Tribunal on 31 August 2017. This included claims for racial harassment, direct race discrimination, victimisation, unfair dismissal and breach of contract.
7. Mr Powell's race discrimination claims were being brought based on the subcategory of colour. He identified as a black man within that subcategory, and for the purposes of his claim.
8. This case has had quite a lengthy route through the Tribunal process, and is outlined below.
9. An in person Preliminary Hearing was conducted by Employment Judge Benson on 12 December 2017. In this hearing the issues were recorded. These can be seen at paragraphs 8-12 of the Case Management Summary of that hearing. Furthermore, the claims of unfair dismissal and breach of contract were struck out as the Tribunal did not have jurisdiction to hear them, as Mr Powell had submitted his claim whilst he was still employed.
10. Mr Powell explained to Employment Judge Benson that he had submitted a further claim form following his resignation. He explained that this included claims of unfair dismissal and breach of contract. However, there is no second claim form. And Mr Powell confirmed at the beginning of this hearing that he did not submit a second claim form, and that he was not seeking to bring complaints of unfair dismissal or breach of contract.
11. This case was initially listed for 5 days, to take place at Birmingham Employment Tribunal on 23 October 2018- 30 October 2018. However, as the claimant had failed to serve his witness statement in line with Employment Judge Benson's Directions, or within a suitable period thereafter, a decision to postpone the hearing was made by Employment Judge Woffenden on 19 October 2018.
12. In vacating this listing, Employment Judge Woffenden considered it prudent to list an in person Preliminary Hearing to decide what further directions were required to enable the case to be heard. This was listed for 10am on 22 October 2018.
13. Mr Powell did not attend the Preliminary Hearing listed for 22 October 2018 as required. Having failed to attend, Employment Judge Harding dismissed the claims under Rule 47 of the **Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013**.
14. By email on 06 November 2018, Mr Powell applied for reconsideration of the decision to dismiss his case.
15. Mr Powell's application for reconsideration was heard by Employment Judge Harding on 17 January 2019. Mr Powell's application was successful. We do not repeat the reasons for this here.

16. Having allowed the application to reconsider, Employment Judge Harding moved on to deal with general case management matters. This included listing the final hearing for a 7-day hearing, commencing on 09 December 2019.
17. At the beginning of this hearing, the Tribunal took Mr Powell to Employment Judge Benson's record of the Preliminary Hearing of 12 December 2017, which was also referred to by Employment Judge Harding. Mr Powell confirmed that his claim concerned those matters recorded at paragraphs 8, 9 and 10 of that record. We do not repeat them here. Mr Powell further confirmed that he was not bringing a claim of unfair dismissal or breach of contract.
18. Although recorded as an issue between the parties, Mr Crowe confirmed that there were no time limitation issues that needed to be considered in this case.
19. In terms of witnesses, we heard from Mr Powell himself. Mr Powell also asked the Tribunal to take into consideration a witness statement produced by Mr Co. However, as Mr Co did not attend the hearing it was explained to Mr Powell that the Tribunal can only attach weight to his evidence that it considered appropriate. It was explained to Mr Powell that as Mr Co was not attending his evidence cannot be challenged or disputed, which is a matter that the Tribunal has to take into consideration.
20. For the respondent we heard evidence from: Mr Gr, who was a Yard Assistant on the site employing Mr Powell, and expressly named in relation to aspects of this claim; Mr Ca, who was Yard Manager at the site at which Mr Powell was employed, and was involved in investigating misconduct matters; Mr Ga, who was Transport Manager at the site employing Mr Powell, and who investigated Mr Powell following an allegation against him by Mr Gr; Mr Th, who carried out the Disciplinary Hearing against Mr Powell, and; Mr Wi, who was a Roving Auctioneer and senior manager for the respondent and the person who made the decision to suspend Mr Powell, and who was also expressly named in Mr Powell's claim against the respondent in 2009.
21. In terms of Mr Powell, we make no finding in relation to his credibility. As the Tribunal do not consider it necessary to do so, and especially given his unawareness of Tribunal procedure and importance of documents. However, we do make comment in relation to his reliability as a witness. Mr Powell's case appeared to contain a number of inconsistencies throughout. This included differences between his claim form, his witness evidence, and his oral evidence, which on occasion conflicted with contemporaneous evidence. Although Mr Powell submitted that this was just differences in terminology, this is not accepted by the Tribunal as the differences were significant differences. This was a common theme throughout the hearing.
22. Although Mr Powell's case did appear to change somewhat between documents and when under cross-examination, as noted above, the Tribunal did not consider that this was a deliberate attempt by him to mislead the Tribunal. Mr Powell did not appear to understand the process, or the importance of his witness evidence in establishing his claim. The

Tribunal had the impression that Mr Powell thought that he could 'prove' his case through him answering questions under cross-examination and through his cross-examination of the respondent's witnesses. It was explained to Mr Powell by the Tribunal the importance of the documents, including his claim form and witness statement, and that his evidence in chief and the cross-examination of him was his evidence and his opportunity to establish his claim. In reaching this position, the Tribunal has also taken into account the length of time since these incidents took place.

23. In terms of the respondent's evidence, the Tribunal had no reason to call in to question the credibility of any of the witnesses. However, as always when there has been a significant period of time, there were some inevitable gaps in memory. However, on the whole we found each of the witnesses to provide a consistent account of their involvement, in terms of their witness statements, their answers under cross examination and the contemporaneous evidence we were taken to.
24. The Tribunal was assisted by a bundle of 197 pages. Mr Powell did hand up a separate bundle of 33 pages. However, having reviewed that bundle there was a lot of repetition from the trial bundle. The only document in the second bundle that could properly be described as a new document was a grievance letter from 2008. However, Mr Crowe had no objections to this being looked at by the Tribunal when it was raised on day 4 of the hearing, as he did not consider it to be relevant to Mr Powell's claims.
25. The Tribunal ensured that there were enough breaks throughout the hearing to ensure that all parties were able to fully participate in this hearing. All parties were reminded that if further breaks were required then all they needed to do was ask.
26. The first day of the hearing was used for reading time. The case was not listed on Tuesday 10 December 2019 due to the Tribunal Judges Conference. Mr Powell gave evidence on day 2 and the first half of day three. The respondent's witnesses gave evidence on the remainder of day 3 and on day 4. Closing submissions were made on day 5. The remainder of day 5 and day 6 was used for deliberations. Mr Crowe asked if the Tribunal would reserve judgment in circumstances where we were intending on handing down judgment on day 7. This was due to expenses that would be incurred for travel and use of a hotel. Mr Powell did not object to this. The Tribunal decided in these circumstances that it would be pragmatic to reserve judgment, with a view to promulgating the judgment at the earliest possible time. Day 7 was used to finalise the judgment.
27. There were numerous occasions where Mr Crowe had to interrupt Mr Powell's cross examination. This was because Mr Powell was putting inaccurate statements to witnesses as fact. Further, there were occasions where Mr Powell was introducing matters that were not part of his case. Although frustrating for Mr Powell, Mr Crowe was right to interrupt on these occasions.
28. Similarly, the Tribunal had to interrupt Mr Powell's cross examination for the same reasons noted above. However, in recognition that Mr Powell was unrepresented, the Tribunal tried to give as much leeway as possible

to him.

29. During cross-examination of Mr Ca, Mr Powell became frustrated and decided to bring his cross-examination to an abrupt end. However, the Employment Judge tried to calm Mr Powell down. Mr Powell did eventually ask some further questions of Mr Ca.

Law

30. We were not taken to any case law in relation to the legal areas under consideration. However, to assist Mr Powell to understand the burden of proof in discrimination claims, we have included important guiding paragraphs from the cases of **Igen Ltd (Formerly Leeds Careers Guidance and ors v Wong and other cases [2005] ICR 931**, CA and **Madarassy v Nomura International plc [2007] ICR 867**, CA, and **Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913**, CA. None of these are controversial.

31. The law relevant to Mr Powell's claim is as follows:

Section 26 of the Equality Act 2010: Harassment

(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.

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

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect

Section 13 of the Equality Act 2010: Direct discrimination

(1) 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.

Section 27 of the Equality Act 2010: Victimisation

(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.

Section 136 of the Equality Act: Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (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.

32. Igen Ltd (Formerly Leeds Careers Guidance and ors v Wong and other cases [2005] ICR 931, para 28 and 29:

Para 28 *“... The language of the statutory amendments seems to us plain. It is for the complainant to prove the facts from which, if the amendments had not been passed, the ET could conclude, in the absence of an adequate explanation, that the respondent committed an unlawful act of discrimination. It does not say that the facts to be proved are those from which the ET could conclude that the respondent “could have committed” such act.”*

Para 29 *“... The relevant act is, in a race discrimination case ... [that] the alleged discriminator treats another person less favourably and ... does so on racial grounds. All those facts are facts which the complainant, in our judgment, needs to prove on the balance of probabilities.”*

33. Madarassy v Nomura International plc [2007] ICR 867, para 56 and 57:

Para 56 *“... The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.”*

Para 57 *“Could conclude” ... must mean that “a reasonable tribunal could properly conclude” from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of [race] discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include*

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evidence adduced by the respondent contesting the complaint. Subject only to the statutory “absence of an adequate explanation” at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment ...”

34. Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913, para 106:

“Accordingly I have come to the conclusion that previous decisions of this Court such as Igen, as approved by the Supreme Court in Hewage, remain good law and should continue to be followed by courts and tribunals.”

Issues

35. Was Mr Powell subjected to any of the following treatment by Mr Green:

- a. Attempting to run Mr Powell over?
- b. Telling Mr Powell to fuck off on 05 May following Mr Powell raising with him comments made about a colleague, Maher?
- c. Telling Mr Powell to fuck off when Mr Powell asked him to move cars on 09 May 2017?
- d. Making a false allegation against Mr Powell on the 23 May 2017?

36. Were any of those listed at paragraph 35, above, less favourable treatments that Mr Powell was subjected to?

37. Were any of those less favourable treatments, if indeed they were, because of Mr Powell's race (colour)?

38. What matters should have been investigated by the respondent?

39. Were those matters investigated at the time of the complaints?

40. Were the matters raised in Mr Powell's grievance of 09 May 2017, insofar as the alleged attempt to run him over and Mr Green telling him to 'fuck off' on 05 May 2017 following comments by Mr Green about Maher, fully investigated?

41. Was Mr Powell subjected to a disciplinary process, following which he was issued a written warning?

42. Were any of the matters above because of Mr Powell's race (colour)?

43. Were any of the issues recorded above at paragraphs 38-41 because of

Mr Powell having brought a successful Employment Tribunal complaint against the respondent in 2009?

Findings of fact

We make the following findings of fact, on the balance of probability based on all the matters we have seen, heard and read. In doing so, we do not repeat all the evidence, even where it is disputed, but confine our findings to those necessary to determine the agreed issues.

44. Mr Powell first brought a claim of race discrimination against the respondent on 11 March 2009. This was settled on a commercial basis by the respondent.
45. The workplace was a mixed workplace in terms of race.
46. Swearing and offensive language was normal in the workplace. This was between individuals and was indiscriminate.
47. Mr Gr disliked Mr Powell. This was a dislike on a personal level. This was not because of Mr Powell's race and/or colour. Mr Powell found this to be a 'sad situation' and 'he doesn't know why Paul [Mr Gr] hates him'. This was recorded as having been stated by Mr Powell during his Disciplinary Hearing of 08 June 2017, discussed below. Mr Powell also stated that he did not know why Mr Gr disliked him on two occasions when questioned under cross-examination, although he later tried to change his evidence on this after he thought about it.
48. Mr Powell did raise with Mr Ca that Mr Gr had almost run him over outside the key office. Mr Powell raised this on 28 April 2017.
49. In response to this, Mr Ca undertook some fact finding to discover what had happened. In identifying what happened he talked to Mr Gr and Ms Cl. It was decided by Mr Ca, that there was nothing to support Mr Powell's complaint. That brought Mr Ca's fact-finding to a conclusion. We accepted Mr Ca's evidence that had he discovered something then he would have taken the matter further and launched a formal investigation. This is consistent with the approach that Mr Ca had taken with his later investigation.
50. The fact-finding exercise undertaken by Mr Ca was an investigation into these matters. This was completed on 28 April 2017. No further investigation into this matter took place, as it was considered unnecessary given Mr Ca's conclusion.
51. On the evidence, we find that Mr Gr did not attempt to run over the claimant on 28 April 2017. Ms Cl gave two statements during the material period. In the first of these at p.143 of the bundle, on 09 May 2017, there was no mention of the incident other than her stating that Mr Gr had said that 'he is going to run him over to prove a point'. The second statement, at p.181, made on 30 June 2017, she states that she could not remember anything happening when asked about the incident. We put significant weight on this evidence, being documents created at or around the time of

the alleged incident, and made by an independent witness, whose credibility was not challenged by Mr Powell. A further factor leading to this conclusion was the manner in which the claim developed. The note created by Mr Powell on 09 May 2017, found at p.136 of the bundle, identifies an incident where he says he was 'almost run over'. This then became Mr Gr trying to run him over. This, along with other inconsistencies in the claimant's case, led to this conclusion.

52. Mr Gr told Mr Powell to fuck off on the 05 May 2017, following a conversation about Mr Gr's working with a non-English colleague, Maher. Although Mr Gr's evidence was that he did not use this term on that day, it did not appear consistent with the remainder of his evidence where he accepted that he would often, almost daily, tell Mr Powell to fuck off.
53. Mr Gr struggled to work with Maher and explained to Mr Powell that 'he doesn't want to work with him he wants somebody who could speak English' (p.136 bundle).
54. It was not because of Maher's nationality that Mr Gr did not want to work with him, it was about the ability to communicate between them in English. We accepted Mr Gr's evidence on this, and Mr Powell did not challenge this explanation during cross examination.
55. Mr Gr did not tell Mr Ca or Mr Ga about this incident on 05 May 2017. We accepted the evidence of Mr Ca and Ga on this. Mr Ca, in particular, willingly accepted the times on which Mr Powell had raised a complaint. We had no reason to doubt Mr Ca's explanation that such a complaint was not raised on this date.
56. As Mr Powell had not told Mr Ca or Mr Ga of this incident on the 05 May 2017, there was nothing to investigate.
57. For the avoidance of doubt, even if we are wrong on whether Mr Powell had told Mr Ca and/or Mr Ga of the 05 May 2017 incident, Mr Powell produced no evidence in his witness statement, whilst under cross examination or through documentary evidence to satisfy the Tribunal that Mr Gr telling him to fuck off on the 05 May 2017 was because of his race (colour).
58. On 09 May 2017, Mr Powell wrote what he refers to as a grievance. This contained a number of allegations and complaints. This included the alleged attempt to run him over (see above), refers to the Maher incident (above), refers to use of obscene language by Mr Gr towards him, and also references an image of a golliwog. Each of these will be considered in turn below.
59. The allegation of Mr Gr attempting to run him over was not investigated again, having already been considered by Mr Ca.
60. Although having been raised on the 09 May 2017, the respondent did not investigate matters around comments about Maher. However, there was no evidence to support that this failure to investigate was anything to do with Mr Powell's race.

61. Mr Ca, on instruction by a senior manager, investigated the use of offensive and aggressive language whilst Mr Powell was moving cars around the wash bay. In doing so he took statements from Mr Powell, Mr Gr, Mr Jo, Ms Cl, and Mr Co. He concluded that there was enough evidence to support the complaint about Mr Gr's language against Mr Powell. A disciplinary in relation to this for Mr Gr was held on 10 May 2017. The allegation was found to be true on his admission. Mr Gr was given a written warning as a result of this incident.
62. For the avoidance of doubt, Mr Gr told Mr Powell to 'fuck off' because he did not like him. The initial allegation did not raise this as a matter to do with race, and Mr Powell did not present any evidence in this hearing to convince the Tribunal that it was an act of racial discrimination.
63. Mr Gr shared an image of a 'golliwog' on his facebook wall. This image was shared from a post that was made by a third party. The third party had added the comment 'Lets see how far he can travel before facebook takes him off'.
64. Mr Gr did not send this image to any specific person.
65. Mr Powell became aware of this image through a different unidentified third party. Mr Powell's evidence on this was contradictory. What Mr Powell refers to as a grievance of 09 May 2017, found at page 136 of the bundle, merely refers to the image having been posted on Mr Gr's facebook profile. His witness statement refers to Mr Gr speaking freely about the posting and showing it to other members of staff. Whereas under cross examination, Mr Powell referred to Mr Gr sending the image to other members of staff, and it being a Mr Co that sent it to him. We have not seen any evidence to support the image having been sent to him. Nor does Mr Co refer to this, despite having provided a witness statement. This supported our finding above.
66. We make no finding in relation to whether any investigation took place into this image. Although having been raised on the 09 May 2017, and we saw no evidence that the respondent investigated this matter, this lack of evidence was understandable given this image did not form part of Mr Powell's claim. However, even if it had, there was no evidence to support that any failure to investigate, if that was the case, was anything to do with Mr Powell's race. Despite not forming part of Mr Powell's claim, this needed to be considered in case the Tribunal were of the mindset that discrimination ought to be inferred in this case. But we decided that this was not enough to infer discrimination.
67. On the 23 May 2017, there was an incident between Mr Gr and Mr Powell. Mr Powell approached Mr Gr in front of two others and accused him of being racist. This is consistent with the contemporaneous evidence that we have seen, in the form of an email sent by Mr Ca to Mr Ga, on that same day. Further, both Mr Ca and Mr Gr gave consistent evidence under cross examination in respect of this.
68. On the 23 May 2017, following becoming aware of the incident referred to above, Mr Ga investigated this matter. As part of his investigations, Mr Ga questioned Mr Powell, a copy of which is at page 154 of the bundle. And

he received a copy of a statement by Mr Gr, that was requested of him by Mr Ca, this is found at page 151 of the bundle.

69. Mr Ga considered all of the evidence he had and decided that there were sufficient grounds to conduct a disciplinary hearing. This was initially arranged for 30 May 2017 but was rearranged and took place on 08 June 2017.
70. Mr Powell was suspended with full pay from 24 May 2017 by Mr Wi. He was suspended on the basis that he was fearful for his safety and as there was a worry that Mr Powell would interfere with the process. This is the unchallenged evidence of Mr Wi. Further, Mr Powell under cross examination explained that he was fearful for his safety.
71. The disciplinary hearing was chaired by Mr Th on 08 June 2017. He had worked for the respondent for some 3 days before chairing this hearing. During the hearing Mr Powell produced a statement from Mr Na. Mr Th took account of that statement, along with the other evidence.
72. Mr Th concluded that the evidence supported a finding that the allegations were well made out. Mr Th decided on issuing Mr Powell with a written warning.
73. During the disciplinary hearing Mr Powell again raised the issue of Mr Gr allegedly trying to run him over. This led to a further investigation of this matter. Mr Ga, as part of this, interviewed Ms Cl on 30 June 2017. The Tribunal has seen a contemporaneous note of this interview. Although this has already been mentioned above, repeating this matter here is useful from a chronological perspective.
74. Mr Powell informed the respondent by a note dated 13 June 2017 of his intention to appeal the disciplinary outcome, and he confirmed this by a further letter dated 28 June 2017. This appeal was arranged to take place on 12 July 2017. As part of this appeal, new information that has come to light was going to be considered.
75. The appeal meeting was postponed at the request of Mr Powell, having submitted a medical certificate by letter dated 15 August 2017. His medical certificate ran until 06 September 2017. This letter also sought permission to obtain a medical report on Mr Powell's condition. No rearranged appeal hearing date was set up at this time.
76. Mr Powell sent his letter of resignation to the respondent, dated 07 September 2017.
77. None of the matters complained of were because of Mr Powell's race (colour) and/or for any reason relating to having brought a claim in March 2009. Mr Powell produced no evidence in his witness statement, whilst under cross examination or through documentary evidence to satisfy the Tribunal that any of the matters that he raised in his claim was because of either his race (colour) and/or for any reason relating to having brought a claim in March 2009.

Conclusions

78. In presenting our conclusions we will deal with each conduct making up part of the claim separately.

79. Starting with the race harassment claim first:

- a. Mr Powell has not presented sufficient evidence that satisfied the Tribunal that Mr Gr did attempt to run him over on 28 April 2017.
- b. Mr Powell has not presented sufficient evidence that satisfied the Tribunal that Mr Gr having told him to 'fuck off' on 05 May 2017 was in any way related to his race (colour). Mr Powell did not satisfy the initial burden of proof that rested with him.
- c. Mr Powell has not presented sufficient evidence that satisfied the Tribunal that Mr Gr having told him to 'fuck off' on 09 May 2017 was in any way related to his race (colour). Mr Powell did not satisfy the initial burden of proof that rested with him.
- d. Mr Powell has not presented sufficient evidence that satisfied the Tribunal that Mr Gr made a false allegation against him on the 23 May 2017. In our judgment, although there was an allegation, it was not a false allegation. Even if we are wrong on that, we also conclude that Mr Powell, in any event, has not presented sufficient evidence that any such allegation was in any way related to his race (colour).

80. In relation to the direct race discrimination, we conclude the following:

- a. Mr Powell has not presented sufficient evidence to satisfy the Tribunal that the alleged running over incident on 28 April 2017 was not investigated fully at the time of the incident. We conclude that there was a proper investigation into this allegation at the time, and therefore this less favourable treatment complained of is not well founded.
- b. The complaints of the 05 May 2017 were not investigated at the time; however, this was because there was no complaint. Therefore this less favourable treatment complained of is not well founded. Furthermore, even had we concluded otherwise, Mr Powell has not presented sufficient evidence that any such lack of investigation was in any way related to his race (colour).
- c. Our conclusions concerning the failure to fully investigate the complaints at 8.1.1 and 8.1.2 of the Record of Preliminary Hearing when the claimant submitted a grievance on or around 09 May 2017, are the same as that above in paragraph 80(a) and 80(b).
- d. Mr Powell was subjected to a disciplinary process, which included him having been suspended with pay. However, Mr Powell has not presented sufficient evidence that him being subjected to this disciplinary process was in any way related to his race (colour).
- e. Although the decision to suspend Mr Powell does not appear to

form part of his claim, we consider it prudent to reach a conclusion on this for the avoidance of any doubt. The decision to suspend Mr Powell, in our judgment, was based on Mr Powell being fearful for his safety, and due to risks of him tampering with the process. We accepted those as the reasons for the suspension and are reasons that are not related to Mr Powell's race (colour).

81. In relation to the victimisation claim, Mr Powell has not presented sufficient evidence that any of the treatment set out in paragraph 9.1 of the Record of Preliminary Hearing was because he had done a protected act.

Employment Judge **Mark Butler**

Date 18/12/2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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