



# EMPLOYMENT TRIBUNALS

**Claimant:** Adrian Stewart  
**Respondent:** Tesco Stores Limited  
**Heard at:** Watford ET, in chambers  
**On:** 30 January 2025  
**Before:** Employment Judge G. King

## RECONSIDERATION JUDGMENT

1. The Claimant was a contract worker, and the Respondent was a principal for the purposes of s.41 Equality Act 2010.
2. The Claimant's claim of direct race discrimination against Respondent is permitted to proceed on the issues identified below:

Direct race discrimination (Equality Act 2010 section 13)

- 2.1 The Claimant describes himself as black.
- 2.2 Did the Respondent do the following things:
  - 2.2.1 Refuse to sign off the Claimant's final day of training, which resulted in the termination of the Claimant's employment with his employer, and:
  - 2.2.2 Give feedback to the Claimant's employer that the Claimant was not suitable to be a contract worker for the Respondent, which resulted in the termination of the Claimant's employment with his employer?
- 2.3 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide

whether he was treated worse than someone else would have been treated. The Claimant has not named anyone in particular who he says was treated better than he was and therefore relies upon a hypothetical comparator who is not black but shares the same employment circumstances as the Claimant.

- 2.4 If so, was this treatment because of the Claimant's race?
  - 2.5 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to the Claimant's race?
3. The above claim is permitted to proceed, subject to a Deposit Order, which is detailed in a separate Order.

## REASONS

### History of the Claim

1. On 10 August 2023, the Claimant presented a claim form (ET1) bringing claims of unfair dismissal, race discrimination, and wrongful dismissal.
2. On 3 April 2024, a direction was given that the response should be accepted, and that there should be an order in the below terms:  
  
*"The Claimant is by (Date + 14) to send Respondent a list in date order and numbered paragraphs of the things done to him by the Respondent which he claims were acts of racial discrimination. For each thing, he must say, what happened, when it happened, and which individual(s) did it."*
3. Unfortunately, this order was not sent out by the Tribunal.
4. There was a Case Management Hearing on 21 May 2024. At that hearing, it was discussed that the Claimant was employed by Challenge-TRG. The Respondent was not the Claimant's employer. The Claimant had been employed by Challenge-TRG for around two weeks.
5. As a result of this hearing, the Tribunal found it did not have jurisdiction to hear the Claimant's claims of unfair dismissal and wrongful dismissal, as the Respondent was not the Claimant's employer. Similarly, the Tribunal found it did not have jurisdiction to hear any complaint of race discrimination relating to employment with the Respondent, as the Claimant was not employed by the Respondent.
6. Reasons for this decision were sent to the parties on 3 July 2024.

7. On 11 November 2024, Employment Judge Alliot made a direction that the previous direction from 3 April 2024 (paragraph 2, above) should be actioned, notwithstanding that it had been superseded by the Case Management Hearing.

8. Accordingly, a letter dated 2 December 2024 was therefore sent to the Claimant, ordering that:

*“The Claimant is by 16 December 2024 to send Respondent a list in date order and numbered paragraphs of the things done to him by the Respondent which he claims were acts of racial discrimination. For each thing, he must say, what happened, when it happened, and which individual(s) did it.”*

9. Employment Judge Alliot made a further direction that, upon receipt of the Claimant’s reply, the case was to be referred to Employment Judge King to consider if the claim is still live and if a claim under s.41 Equality Act is being brought by the Claimant.

### Reconsideration

10. The rules concerning reconsideration are contained within rule 68 of the Employment Tribunal Procedure Rules 2024.

68.—(1) The Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.

(2) A judgment under reconsideration may be confirmed, varied or revoked.

(3) If the judgment under reconsideration is revoked the Tribunal may take the decision again. In doing so, the Tribunal is not required to come to the same conclusion.

### Deliberation

11. This claim is to be reconsidered to determine if the Claimant is bringing a claim under s.41 Equality Act 2010.

12. S.41 Equality Act states:

41 Contract workers

(1) A principal must not discriminate against a contract worker—

(a) as to the terms on which the principal allows the worker to do the work;

(b) by not allowing the worker to do, or to continue to do, the work;

- (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
- (d) by subjecting the worker to any other detriment.

13. The Respondent is a principal for the purposes of this claim.

14. Further to the order of 2 December 2024, the Claimant sent four emails to the Tribunal. None of them complied with what was requested. The first, sent on 3 December 2024 at 16:06, contains a statement:

*“Everything is listed times and dates in the statements and confirmed by Tesco legal department...”.*

In the second email, sent on the same day at 16:22, the Claimant says:

*“Just abuse from start to finish”.*

The third email, sent on the same day at 17:00, says

*“All the insults are in Tesco documents.”*

In the fourth email, sent on 4 December 2024 at 08:26, the Claimant says:

*“they had the complaint raised internally, they had the complaint raised at acas and they've had the complaint raised to the courts which has still yet to be addressed.”*

15. The Employment Tribunal has no access to the Respondent's internal documents. Nor does the Tribunal have any access to documents sent through ACAS. A Claimant wishing to bring a claim in the Employment Tribunal must set out from the outset exactly what it is that he or she is claiming, and must do so in a format where the claim can clearly be understood, with precise dates and times, and specific allegations. Vague and generalised complaints of “abuse” or “bullying” are not sufficient.

16. A s.41 Equality Act claim was not discussed at the Case Management Hearing on 21 May 2024. It was not listed as an issue in either List of Issues supplied by the parties, and the hearing mainly centred on why the Claimant could not bring a claim for unfair dismissal.

17. The Claimant's ET1 does, however, contain the line:

*“The final friday afternoon after completing the day tasks , I entered a room where 3 managers was sitting who then went on to refuse to sign off the final day to progress on to full time operation shifts.*

*I was then thrown out the building by tesco staff and bullied and wasn't allowed to talk with my agent and managers who are located in the same building .”*

18. In the ET3, the Respondent does accept it was the Respondent's managers who met with the Claimant and did not sign off his final day. The Respondent said it had good reasons for doing this. The Respondent does accept that it was this feedback which led to the Claimant's employment with Challenge-TRG being terminated.
19. In considering whether an ET1 contains a particular claim, regard has to be had to the whole document. The mere fact that a box has been ticked stating that there is a claim of e.g. disability discrimination may not be sufficient to bring such a claim, if the particulars of claim refer only to a different type of discrimination (see *Ali v Office of National Statistics* [2005] IRLR 201 and *Baker v Commissioner of the Metropolis* UKEAT/0201/09).
20. The EAT held in *Chandhok v Tirkey* [2015] ICR 527 that: *"The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1."*
21. There is no specific mention of race discrimination contained in the narrative set out at box 8.2 of the ET1.
22. The subsequent documents, however, do contain a suggestion of race discrimination. Clarification from the Claimant was requested by the Tribunal, and the Claimant cannot be criticised for the delay in this request being sent out to him. The Tribunal therefore takes these subsequent documents (the Claimant's emails of 3 and 4 December 2024) into account when assessing the claim as a whole.
23. The Claimant's third email of 3 December 2024 says  
  
*"They just don't like it that a black person who just come to drive showed more intelligence than them and felt threatened in their skin..."*  
  
From this, it can be inferred that the Claimant is saying the actions of the Respondent were motivated by his race.
24. The Tribunal has taken into account that the Claimant is a litigant in person and is acting without the benefit of legal advice. The Tribunal is satisfied that the Claimant did intend to bring a claim of direct race discrimination (s.13 Equality Act 2010) against the Respondent as a principal under s.41 Equality Act 2010, albeit that the claim was not clearly articulated. It is in the interests of justice to allow the intended claim to proceed.
25. The basis of the claim is that:
  - a. the Respondent refused to sign off the Claimant's final day of training, which resulted in the termination of the Claimant's

employment with his employer, and that the reason the Respondent did this was because of the Claimant's race

- b. the Respondent gave feedback to the Claimant's employer that the Claimant was not suitable to be a contract worker for the Respondent, which resulted in the termination of the Claimant's employment with his employer, and that the reason the Respondent did this was because of the Claimant's race.

26. The claim is therefore allowed to proceed on the issues set out at the top of this Judgment. This, however, is subject to a Deposit Order. The reasons for this are set out in a separate order.

27. Further directions will be given upon the payment of the deposit.

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Employment Judge G. King

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Date: 30 January 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

4 February 2025

FOR THE TRIBUNAL OFFICE

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>