



# EMPLOYMENT TRIBUNALS

London South Employment Tribunal

5 February 2025, 28 April 2025, 1 -2

May 2025 (in person)

**Claimant:** Elliotte Lee

**Respondent:** Parkwood Community Leisure Ltd

**Before:** Judge M Aspinall (sitting as an Employment Judge)  
Mr G Anderson  
Ms N O'Hare

**Appearances:** Mr Lee, in person  
Ms Mather, Counsel for Respondent

## Judgment

The claims of direct race discrimination and victimisation are not well-founded and are dismissed

## Reasons

### BACKGROUND

1. The Claimant was employed by the Respondent from 1 March 2022 to 16 June 2023 as a Maintenance Engineer at The Hawth Theatre, Crawley. The Respondent, which operates leisure and entertainment facilities, employed the Claimant on a contract of 40 hours per week with a six-month probation period. The Claimant completed his probation on 1 November 2022, though he disputes having had formal probation review meetings.
2. During his employment, the Claimant initially reported to Mr David Watmore as his line manager until around May 2023, when management of the Claimant changed to Ms Kate Hill and Ms Jane Grimshaw. Mr Graham Russell joined the Respondent as General Manager in April 2023. This change in management structure is not in dispute, though the Claimant's experience of this change is contested.
3. On 26 April 2023, the Claimant raised a grievance against Mr Russell, Ms Hill, and Ms Grimshaw, alleging racial discrimination. The Claimant was subsequently suspended on 2 May 2023 following allegations that he had used the Respondent's electricity to charge his personal electric vehicle. Following an investigation and disciplinary hearing, the Claimant was dismissed for gross misconduct on 16 June 2023.
4. The Claimant appealed against his dismissal on grounds of severity, points of fact, and alleged failure to follow proper procedure. The appeal hearing took place with Mr Tony Doherty, who was also responsible for investigating the Claimant's grievance. The appeal was unsuccessful, and the dismissal was upheld.

### THE FEBRUARY 2025 HEARING AND ADJOURNMENT

5. The case was originally listed for hearing on 5 February 2025. At that hearing, significant procedural failures became apparent on both sides. The Claimant had submitted his witness statement seven months after the deadline, and it was inadequate in format and content.

The Respondent had failed to exchange witness statements by the deadline of 27 June 2024, had not prepared the agreed bundle by the deadline of 23 May 2024, and had introduced a key witness statement from Mr Russell only days before the February hearing.

6. After extensive discussion of these procedural failures, the Tribunal gave clear oral directions to the parties. The Respondent was directed to ensure that all relevant documents were included in the bundle, with specific reference to the grievance document that Mr Lee had submitted during his grievance process, and the statement Mr Lee had provided at his disciplinary hearing. The Tribunal also directed that Mr Cleverly would give evidence via video link to accommodate Mr Lee's discomfort.
7. Given these procedural issues and the need to ensure a fair hearing, the Tribunal adjourned the case to 28 April, 1 May, and 2 May 2025. This adjournment was intended to allow proper preparation and to give Mr Lee adequate time to consider Mr Russell's late witness statement. Mr Lee was directed to provide a witness statement within 10 days.
8. These directions were made orally and were unambiguous. All parties were present when they were given, and there was no application to vary these directions at any time before the reconvened hearing.

#### **THE DECISION TO STRIKE OUT THE RESPONSE**

9. When the hearing reconvened on 28 April 2025, it immediately became apparent that the Respondent had failed to comply with the Tribunal's directions from February. The grievance document and the disciplinary statement were still not included in the bundle. A new bundle had been prepared on the Friday before the hearing but had not been sent to the Claimant, meaning he was working from a different bundle than the Tribunal and the Respondent.
10. When questioned about these omissions, Ms Mather, representing the Respondent, initially claimed no knowledge of the February directions. After the Tribunal informed her that clear directions had been given, she suggested these documents were not relevant or that there had been "misunderstandings" about what was required.
11. The Tribunal provided Ms Mather with five separate opportunities to obtain detailed instructions from the Respondent's solicitors. We paused the hearing for reasonably lengthy periods on each of these occasions to allow Ms Mather to confer with her instructing solicitors. Despite these multiple opportunities, satisfactory explanations for the failure to comply with the directions were not forthcoming.
12. The Tribunal considered the prejudice to the Claimant, who has autism spectrum condition and had been clear about needing all his documents included. We proposed the question of striking out the response some considerable time before doing so, giving the Respondent ample opportunity to address our concerns. We carefully considered various alternatives, including a further adjournment, ordering the Respondent to pay costs, allowing the hearing to proceed with limitations on the Respondent's participation, or directing that adverse inferences be drawn. We explained in detail our reasons for rejecting these alternatives, including the additional delay a further adjournment would cause, the limited deterrent effect of a costs order, and the difficulty in formulating appropriate limitations or inferences that would adequately address the prejudice to the Claimant.
13. Ultimately, we determined that the Respondent's persistent failure to comply with directions regarding bundle preparation, despite having had three months to do so since the February hearing, constituted an unreasonable manner of conducting proceedings. Consequently, the Tribunal decided to strike out the Response under Rule 38(1)(b) of the Employment Tribunals Rules of Procedure 2024. We directed that the hearing would proceed on the basis of the Claimant's evidence alone, with the Respondent permitted to cross-examine but not

to call their own witnesses. We indicated that remedy would be considered separately if the Claimant succeeded in establishing his claims.

### **THE RESPONDENT'S APPLICATION TO SET ASIDE THE STRIKE-OUT DECISION**

14. On 30 April 2025, the Respondent made an application to set aside or vary the case management order striking out the Response, pursuant to Rule 30(3) of the Employment Tribunals Rules of Procedure 2024. Their application argued that the strike-out was disproportionate to the procedural irregularities, that a fair trial remained possible, and that the bundle issues were the result of mistakes and miscommunication, not deliberate actions. The Respondent cited several cases emphasising the draconian nature of strike-out, including *Blockbuster Entertainment Ltd v James* [2006] IRLR 630, *De Keyser v Wilson* [2001] IRLR 324, and *Santander UK PLC v Bharaj* UKEAT/0075/11.
15. The Claimant opposed the application, arguing that the Respondent's conduct had been unreasonable and that they had deliberately excluded key documents despite his clear requests for all documents to be included.
16. In support of the application, the Respondent called Mrs Ruth Butts, Legal Director at Hill Dickinson solicitors, who gave evidence under affirmation. Mrs Butts confirmed that she had removed six documents she deemed "not relevant" because they related to ACAS conciliation or subject access requests. When questioned why the grievance document was excluded, she stated that her team "didn't understand what this document was" and "thought it wasn't evidence from the time". She acknowledged that documents were removed despite the Claimant stating "due to my learning difficulties, I'm not happy to omit any documentation". Mrs Butts characterised the omissions as "mistakes" rather than deliberate actions.
17. After hearing evidence and submissions, the Tribunal refused the Respondent's application. We found that the Respondent's conduct in preparing the hearing bundle had been persistently unreasonable, with conscious decisions made to exclude certain documents despite clear directions. We distinguished the cases cited by the Respondent, noting that this case involved persistent failure to comply with specific directions over a period of months, not first-time non-compliance. Our proportionality analysis considered that the Respondent was professionally represented by a major law firm and should be held to a high standard, that their failure to include key documents was not a single oversight but a pattern that continued despite clear directions, and that the prejudice to the Claimant, who has autism spectrum condition, was significant.
18. While we accepted Mrs Butts's evidence that there was no malicious intent to exclude documents, we found that conscious decisions were made to exclude certain documents, and these decisions were persistently maintained despite tribunal directions to the contrary. This constituted unreasonable conduct under Rule 38(1)(b). We maintained our permission for the Respondent to cross-examine the Claimant on the basis of his claim but not on the basis of their response.

### **COMPLAINTS MADE IN THE CLAIM**

19. The Claimant brought complaints of direct race discrimination and victimisation to the Employment Tribunal under the Equality Act 2010. The complaints were presented to the Tribunal on 25 September 2023.
20. In relation to direct race discrimination, the Claimant alleged that he had been treated less favourably than others because of his race. He asserted that he was the only employee of Black heritage working at The Hawth Theatre, and this was the reason for the alleged unfavourable treatment. Specifically, he alleged that Mr Russell did not introduce himself to the Claimant while introducing himself to other employees, that Mr Russell dismissed his

concerns about changes to his working hours, that Ms Hill shared his contract details on Oracle where other staff members could see them, that Ms Grimshaw criticised his work and made unannounced visits to check on him, and that his dismissal was an act of race discrimination.

21. In relation to victimisation, the Claimant alleged that he suffered detriments because he had done a protected act, namely raising a grievance of race discrimination on 26 April 2023. The detriments alleged were his suspension on 2 May 2023 and his dismissal on 16 June 2023, which the Claimant claimed were because he had raised the grievance rather than for the reasons given by the Respondent.
22. The Respondent denies all claims, asserting that the Claimant was not treated less favourably because of his race and that his suspension and dismissal were due to his unauthorised use of the Respondent's electricity to charge his personal vehicle, constituting theft and gross misconduct, rather than because he had raised a grievance.

### **ISSUES FOR DETERMINATION BY THE TRIBUNAL**

23. The Tribunal needed to determine the following issues.
24. In relation to direct race discrimination under section 13 of the Equality Act 2010:
25. Did the Respondent subject the Claimant to the following treatment:
  - a) After joining the Respondent's company in or around March 2023, did Mr Graham Russell not introduce himself to the Claimant, while introducing himself to every other employee?
  - b) After making a complaint about changes to his hours of work in his contract in March or April 2023 to Mr Russell, did Mr Russell brush it off?
  - c) On or around 19 April 2023, did Ms Kate Hill share the Claimant's contract on Oracle where other staff members could see it?
  - d) On a number of occasions around March/April 2023, did Ms Jane Grimshaw criticise the Claimant's work and make unannounced visits to check he was actually working?
  - e) Was the Claimant dismissed on 16 June 2023, having insufficient service for a claim of unfair dismissal?
26. If so, did the Respondent treat the Claimant less favourably than it treated or would have treated others?
27. Was the less favourable treatment because of race?
28. In relation to victimisation under section 27 of the Equality Act 2010:
29. Did the Claimant do a protected act, namely raise a grievance on 26 April 2023?
30. Did the Respondent subject the Claimant to detriments, namely:
  - a) Suspending the Claimant on 2 May 2023?
  - b) Dismissing the Claimant on 16 June 2023?
31. If so, was this because the Claimant had done a protected act?

32. The Tribunal also needed to consider whether the complaints had been brought within the time limits specified in section 123 of the Equality Act 2010 and, if not, whether it would be just and equitable to extend time.

### THE HEARING BEFORE THE TRIBUNAL

33. The hearing took place at the London South Employment Tribunal on 5 February 2025 and 28 April, 1 May, and 2 May 2025. The Tribunal panel consisted of Employment Judge M Aspinall, sitting with lay members Mr G Anderson and Ms N O'Hare. The Claimant represented himself, with support from Ms Stills during parts of the hearing. The Respondent was represented by Ms Phoebe Mather of counsel, instructed by Hill Dickinson LLP. At the original hearing on 5 February 2025, which was adjourned, the Respondent had been represented by Ms Senior of counsel.
34. At the outset of the hearing, it was noted that the Respondent's response had been struck out as a sanction for failure to comply with case management orders. However, the Tribunal had allowed the Respondent limited participation in the hearing, confined to cross-examination on specific issues and making submissions. The Tribunal directed that the Respondent could not introduce new factual matters or rely on evidence that had not been disclosed to the Claimant.
35. During the course of the hearing, the Tribunal heard oral evidence from the Claimant. The Claimant informed the Tribunal that his witness, Ms Michelle Richards, was unable to attend due to illness. While the Tribunal considered Ms Richards' witness statement, we gave it limited weight as she was not present to be cross-examined by the Respondent or to answer questions from the Tribunal. The Respondent did not call any witnesses due to the limitations placed on its participation. The Tribunal was provided with two bundles of documents, including the originals from February 2025 and additional documents provided just prior to the hearing.
36. On the second day of the hearing, the Tribunal also heard evidence from Mrs Ruth Butts, a solicitor whose actions had led to the striking out of the Respondent's response. This testimony related to procedural matters rather than the substantive issues in the case.
37. The Claimant became emotional while delivering his closing submissions and, with the Tribunal's permission, submitted his written statement electronically rather than reading it in full. Following closing submissions from both parties, the Tribunal reserved its judgment.

### THE LAW

38. The Equality Act 2010 provides the legal framework for the Claimant's complaints of direct race discrimination and victimisation.
39. Section 13(1) of the Equality Act 2010 defines direct discrimination as follows: "*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.*"
40. Race is a protected characteristic under section 4 of the Act, and section 9(1) provides that "*Race includes – (a) colour; (b) nationality; (c) ethnic or national origins.*"
41. Section 27 of the Equality Act 2010 deals with victimisation and states:
- "(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."*

42. In relation to the burden of proof, section 136 of the Equality Act 2010 provides:

- "(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 subsection (2) does not apply if A shows that A did not contravene the provision."*

43. As elucidated in *Igen Ltd v Wong* [2005] EWCA Civ 142, this creates a two-stage test. First, the claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an unlawful act of discrimination. Second, if the claimant satisfies the first stage, the burden shifts to the respondent to prove that it did not commit the unlawful act.
44. In *Madarassy v Nomura International Plc* [2007] EWCA Civ 33, the Court of Appeal clarified that "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."
45. Regarding time limits, section 123 of the Equality Act 2010 provides that claims must generally be brought within three months of the act complained of, subject to the early conciliation rules. The tribunal has discretion to extend time if it considers it "just and equitable" to do so.

## THE EVIDENCE

46. The Tribunal had before it two bundles of documents: the original bundle prepared for the February 2025 hearing and an additional bundle containing documents submitted more recently. The bundles included the Claimant's contract of employment, email correspondence between the Claimant and various members of the Respondent's management team, sign-in sheets, documents relating to the Claimant's grievance and its outcome, documents concerning the Claimant's suspension, investigation, disciplinary hearing, dismissal and appeal, as well as screenshots of what the Claimant asserted was evidence of his contract details being shared on Oracle.
47. The Tribunal heard oral evidence from the Claimant. He testified about his employment with the Respondent, the change in his line management from Mr Watmore to Ms Hill, his interactions with Mr Russell after Mr Russell joined as General Manager, his concerns about the changes to his working hours, his allegations regarding Ms Hill sharing his contract details on Oracle, his perception of Ms Grimshaw's criticism of his work, his grievance, his suspension and dismissal, and his belief that these actions were motivated by race discrimination and victimisation.
48. The Claimant asserted that he was the only employee of Black heritage at the theatre and that this was why he was treated less favourably. He maintained that his dismissal for charging his electric vehicle using the Respondent's electricity was disproportionate and motivated by race discrimination and victimisation rather than genuine concerns about

misconduct. He disputed having had conversations with Mr Watmore about not charging his vehicle at work, as alleged by the Respondent, and claimed that he had evidence from a garage called Tates showing his vehicle was not in his possession during some of the periods when these conversations allegedly took place.

49. The Claimant's witness statement contained assertions about his treatment but provided limited objective evidence to support his belief that the treatment was because of his race or because he had raised a grievance. His statement relied heavily on his subjective interpretation of events.
50. The Claimant had also submitted a witness statement from Ms Michelle Richards, a former colleague and partner, who was unable to attend the hearing due to illness. Her statement primarily addressed the Claimant's character and her perception that he felt he was being treated differently because of his ethnicity, but did not provide specific examples of discriminatory conduct she had observed. The Tribunal gave limited weight to this statement as Ms Richards was not present to be cross-examined or to answer questions from the Tribunal.
51. Due to the restrictions on the Respondent's participation, no oral evidence was presented by the Respondent's witnesses. However, the documentary evidence included statements made during the investigation, disciplinary and appeal processes by Mr Russell, Mr Watmore, Ms Hill, Mr Cleverly (who conducted the disciplinary hearing), and Mr Doherty (who conducted both the grievance investigation and the appeal hearing).

#### **FINDINGS OF FACT AND APPLICATION OF THE LAW**

52. Having carefully considered the evidence to which we were referred, we make the following findings of fact on the balance of probabilities:
53. Regarding the allegation that Mr Russell did not introduce himself to the Claimant while introducing himself to every other employee, we find that this did not occur as alleged. During cross-examination, the Claimant accepted that his assertion that Mr Russell had introduced himself to "every other employee" was not accurate. The Claimant accepted that Mr Russell had also not introduced himself to Ms Claire Janetski, who is white. This admission is significant because it undermines the Claimant's assertion that the failure to introduce himself was motivated by race. The evidence does not support a finding that the Claimant was treated less favourably than others in this regard, and certainly not because of his race. As noted in *Madarassy v Nomura International Plc*, a difference in treatment alone is not sufficient to establish discrimination; there must be "something more" to indicate that the treatment was because of a protected characteristic. No such additional evidence was presented.
54. Regarding the allegation that Mr Russell brushed off the Claimant's complaint about changes to his working hours, we find that the evidence does not support this claim. The documentary evidence shows correspondence primarily between the Claimant and Ms Hill regarding the working hours, with no clear evidence of Mr Russell's direct involvement in these discussions. While the Claimant asserted in his witness statement that Mr Russell told him "abruptly" that he would have to accept the changes regardless of how he was feeling, he provided no corroborating evidence for this assertion. The documentary evidence actually indicates that consideration was given to the Claimant's childcare needs, with a compromise arrangement being offered (working from 7am rather than the standard 8am start time). We also note that the Claimant's contract explicitly stated that his hours could be varied according to operational requirements, and that the Claimant was proposing to work fewer than his contracted 40 hours per week. On these facts, we cannot find that the Claimant was treated less favourably than a hypothetical comparator would have been treated, nor that any such treatment was because of his race.

55. Regarding the allegation that Ms Hill shared the Claimant's contract on Oracle where other staff members could see it, we find on the evidence that this claim is not substantiated as described. First, the evidence shows that the document in question was not the Claimant's contract but a spreadsheet containing basic information such as working hours and start date – information that was not particularly sensitive or private. Second, the platform was Google Docs, not Oracle as alleged. Third, while the Claimant provided a screenshot showing what he claimed was evidence that the document was shared more widely, this evidence was insufficient to establish that the document was actually accessible to staff other than himself and Ms Hill. The Claimant asserted that Ms Richards had seen the document on her work computer, but Ms Richards was not present to give evidence on this point, and there was no other corroboration. The Claimant also claimed that Ms Hill had apologised for mistakenly sharing the document, but no email to this effect was located in the bundle despite the Claimant's assertion that such an email existed. Even if we were to accept that the document was briefly accessible to others by mistake and was quickly corrected once identified, this would not constitute less favourable treatment because of race under section 13 of the Equality Act 2010, as there is no evidence to link such an error to the Claimant's protected characteristic.
56. Regarding the allegation that Ms Grimshaw criticised the Claimant's work and made unannounced visits to check he was actually working, we find that the evidence does not support this claim. The Claimant's witness statement did not provide specific examples of such criticism or unannounced visits. When questioned about this during cross-examination, the Claimant referred to an email exchange regarding an access door, but upon examination of this email, we do not find it to be critical of the Claimant's work. Rather, it appears to be a normal workplace communication regarding a maintenance issue. Furthermore, given that Ms Grimshaw was part of the Claimant's management team, it would be reasonable for her to check on the progress of work and to visit areas of the theatre where the Claimant might be working. The Claimant has not established that he was treated less favourably than others in this regard, nor that any such treatment was because of his race.
57. It is not in dispute that the Claimant was dismissed on 16 June 2023, having insufficient service for a claim of unfair dismissal. The question for us is whether this dismissal constituted less favourable treatment because of race. The evidence shows that the Claimant was dismissed following an investigation into allegations that he had used the Respondent's electricity to charge his personal electric vehicle without authorisation. This investigation included evidence from Ms Louis Street, who had photographed the Claimant's vehicle connected to an extension lead leading into the theatre building, and a statement from Mr Watmore indicating that he had previously told the Claimant not to charge his vehicle at work. The Respondent was also concerned about the manner in which the Claimant was charging his vehicle, which was said to be unsafe – trailing wires into a standard socket through a window – particularly given that the Claimant was one of those responsible for Health and Safety at the theatre. The fact that the Claimant was partly responsible for Health and Safety made his alleged conduct particularly concerning for the Respondent. This responsibility would reasonably heighten the expectations regarding safe practices, and potentially aggravate any breach of those practices.
58. The Claimant disputed having had such conversations with Mr Watmore and claimed that his vehicle was being repaired during some of the periods in question, but the garage documents he provided did not clearly establish that the vehicle was unavailable throughout the entire period alleged. At the disciplinary hearing, according to the minutes (the accuracy of which the Claimant disputes), the Claimant stated: "I've not contested that I've done it. What I'm contesting is why it's been such a big deal." We find that, on the balance of probabilities, the Respondent had reasonable grounds to believe that the Claimant had engaged in unauthorised use of electricity, which it considered to be gross misconduct. We have seen no evidence to suggest that an employee of a different race who had engaged in



similar conduct would have been treated differently. The Claimant's assertion that his dismissal was motivated by race, rather than the misconduct alleged, is not supported by objective evidence.

59. We note that during his evidence, the Claimant repeatedly asserted that the disciplinary proceedings were causally connected to his grievance. However, on the balance of probabilities, we find that the investigation into his vehicle charging was triggered by specific reports from Ms Street rather than by the Claimant's grievance. The documentary evidence shows that the investigation followed standard procedures, and the Claimant was afforded the opportunity to respond to the allegations. There is insufficient evidence to suggest that the disciplinary process was initiated or conducted in a manner that was influenced by the Claimant's protected act.
60. Turning to the claim of victimisation, it is not in dispute that the Claimant did a protected act by raising a grievance alleging race discrimination on 26 April 2023. It is also not in dispute that the Claimant was suspended on 2 May 2023 and dismissed on 16 June 2023. The issue is whether these detriments were suffered because the Claimant had done the protected act.
61. Regarding the suspension, the Claimant asserted that Mr Russell, who made the decision to suspend him, must have known about his grievance because the Respondent's policies would have required him to be informed. However, the Claimant provided no direct evidence that Mr Russell was actually aware of the grievance at the time of the suspension decision. The timing of the suspension (six days after the grievance) could potentially raise questions, but proximity in time is not, in itself, sufficient to establish causation. The evidence shows that the suspension followed a specific incident – the report from Ms Street about the Claimant's vehicle being charged using the Respondent's electricity. This provides a clear non-discriminatory reason for the suspension decision. Applying the two-stage test from *Igen v Wong*, we do not find that the Claimant has established facts from which we could conclude, in the absence of an adequate explanation, that the suspension was because of the protected act rather than because of the reported misconduct.
62. Regarding the dismissal, the disciplinary process was conducted by Mr Cleverly, who was not implicated in the Claimant's grievance. The appeal was heard by Mr Doherty, who had also investigated the grievance, but there is no evidence to suggest that his handling of the appeal was influenced by the fact that the Claimant had raised a grievance. The documentary evidence indicates that both the disciplinary hearing and the appeal focused on the allegations of misconduct rather than on the grievance. Notably, the Claimant did not argue during the disciplinary process or the appeal that the proceedings were motivated by victimisation, despite having the opportunity to do so. His appeal was based on the severity of the sanction, points of fact, and alleged procedural failures, not on allegations of victimisation. We find that, on the balance of probabilities, the dismissal was because of the Respondent's genuine belief that the Claimant had committed gross misconduct, not because he had raised a grievance.
63. In light of our findings, we do not need to address the issue of time limits, as the substantive claims have not been established.

## CONCLUSION

64. The Tribunal has carefully considered all of the evidence presented in this case and has reached unanimous conclusions on the Claimant's complaints of direct race discrimination and victimisation.
65. On the direct race discrimination complaint, we have found that the Claimant has not established facts from which we could conclude, in the absence of an adequate explanation,

that he was treated less favourably because of his race. While the Claimant clearly believes that his race was a factor in the way he was treated, his evidence relies heavily on his subjective interpretation of events rather than on objective indicators of race discrimination. The fact that he was the only employee of Black heritage at the theatre does not, in itself, establish that any unfavourable treatment was because of his race. As the Court of Appeal noted in *Madarassy v Nomura International Plc*, a difference in status and a difference in treatment are not, without more, sufficient to shift the burden of proof to the respondent.

66. On the victimisation complaint, we have found that while the Claimant did a protected act and subsequently suffered detriments in the form of suspension and dismissal, the evidence does not support a causal link between these events. The Respondent had clear non-discriminatory reasons for both the suspension and the dismissal – namely, the allegations of unauthorised use of electricity, which constituted gross misconduct under the Respondent's policies. The Claimant's assertion that these actions were motivated by his grievance rather than by genuine misconduct concerns is not supported by objective evidence.
67. We acknowledge that workplace changes, particularly changes in management style and structure, can be challenging for employees, and may be particularly difficult for individuals with autism spectrum conditions like the Claimant. However, difficulties adjusting to such changes do not, in themselves, indicate discrimination or victimisation within the meaning of the Equality Act 2010.
68. We have been mindful throughout these proceedings of the Claimant's autism spectrum condition and have carefully considered how this may have affected his perception of events and interactions in the workplace. We acknowledge that his condition may have led him to interpret certain management actions as discriminatory when they were not intended as such. However, while this explains his subjective belief in discrimination, it does not provide the objective evidence required to establish that any less favourable treatment occurred because of his race or that any detriment was suffered because he had done a protected act.
69. We also note that the question before us is not whether the Respondent's decision to dismiss the Claimant for gross misconduct was fair or proportionate – that would be a matter for an unfair dismissal claim, which the Claimant did not have sufficient service to bring. Our role is solely to determine whether the actions complained of constituted direct race discrimination or victimisation, and we have found that they did not.

**APPROVED**  
**Judge M Aspinall**  
**(sitting as an Employment Judge)**  
**5th May 2025**

**Sent to the parties: 14<sup>th</sup> May 2025**

**FOR THE TRIBUNAL OFFICE**

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