EMPLOYMENT TRIBUNALS

Claimant: Mr G W Mbuyi

Respondent: Rail Gourmet UK Limited

Held at: Reading Employment Tribunal (and by CVP)

On: 16, 17,18 July and 6 & 7 October 2025

Before: Employment Judge Isabel Manley
Mr D Sagar
Dr C Whitehouse

Appearances:
For the claimant: In person
For the respondent: Ms J Charalambous, counsel

Interpreter (French): Mr Dinganga (July hearing)
Mr Illonga (October hearing)

JUDGMENT

1 The reason for the claimant's dismissal related to his conduct and that dismissal was not unfair.

2 There was no less favourable treatment of the claimant because of his race.

3 The tribunal has no jurisdiction to hear the claimant's unlawful deduction of wages claim and, if it had, he would not have been able to show he was entitled to any sums of money.

4 The claimant's claims fail and are dismissed.

JUDGMENT having been provided orally to the parties on 7 October 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. A list of issues for this claim had been agreed at a preliminary hearing. We allowed one extra claim for race discrimination which appears at issue 2.2. We answer the questions raised in those issues in our conclusions. In summary, the claimant is claiming unfair dismissal; direct race discrimination which includes a time limitation point; holiday pay and arrears of pay.

2. In his skeleton argument for the October hearing the claimant referred to victimisation under s.27 of the Equality Act. This potential claim had been touched on at earlier points of the proceedings, but it has been made clear that there was no such claim and the claimant accepted that position. The Equality Act 2010 (EQA) claim is for direct race discrimination under s13 EQA. The comparators were identified as the claimant's four Asian colleagues who had been spoken to during the first investigation process.

Hearing

3. At the hearing in July, we heard from the claimant and five respondent's witnesses. On the first day the tribunal read the necessary documents in the bundle which was almost 400 pages and we read all the witness statements.

4. The claimant presented two witness statements; one was dated 5 December 2023 and contained 21 paragraphs; and another undated document of 33 paragraphs which might well have been sent to the tribunal around July 2024 when the final hearing had been listed to take place. The major difference between the witness statements is that the second one contained an allegation of misbehaviour on the part of the claimant's line manager, Ms Cranley. The claimant presented another witness statement at the hearing in October, but as the evidence was complete, this was not looked at except in relation to assisting the tribunal with understanding the claimant's case on his claims. It was not produced formally as evidence and the respondent did not have an opportunity to cross-examine on it.

5. The respondent's witnesses were:

    - Mr P Owens, Office manager and the investigator.
    - Ms Cranley, the claimant's supervisor and who gave him a final warning. She had a supplemental statement.
    - Mr Ball, Account Manager, had details of the schemes.
    - Ms Aspinall, General Manager and dismissed the claimant, and
    - Mr Crane, who heard the claimant's appeal.

6. The tribunal began deliberations late in the afternoon of 6 October and we continued them on the morning of 7 October and gave judgment just after 2pm.

The facts

7. These are the facts that we find to determine the issues we need to decide.

8. The claimant began working for the respondent as a Customer Service Assistant on 17 September 2014. The claimant was promoted to Team Leader and he was then made Equipment Manager in 2019. The claimant gave evidence that he was covering two units in that job and the respondent agreed that he was a dedicated and hard-working employee. He believed that he should have received an increase for the extra work but none was offered or agreed. The claimant's contract is at pages 44 to 56 of the bundle. The claimant signed it although it is possible he did not read it carefully (as is often the case).

9. The claimant worked on a contract the respondent had with Eurostar. Eurostar offered a scheme for employees and contractors, which included the claimant. This was to buy discounted tickets for travel. At page 73 of the bundle the benefits are outlined. These are to be booked on a system called Aria. The scheme was called PALS. It was for friends and family at reduced rates. Between pages 81 and 83 of the bundle there are frequently asked questions (FAQs) about the scheme. Under the question "*How many bookings can I make per year?*" it says, "*Allocation January to December*" and for contractors it says, "*10 bookings each year and each booking can be for up to five people*." The claimant regularly used the scheme he tells us from 2016.

10. In early 2020 the claimant's PALS account was blocked. The claimant's evidence on what he was told about this was somewhat confused. He suggested that he had not been told that fraud was suspected but it is clear from what he said in a number of investigations that, at the very least, he had been told it was "*something about fraud*" that caused the block on his account. This is clear from the notes of the first investigation meeting, which we shortly come to, which the claimant signed.

11. Of course, March 2020 was the global pandemic and the claimant, with others, was furloughed and there were restrictions on travel. There was no attempt by the claimant during this period to make any PALS bookings.

12. The claimant attended work for a stock take in July 202.

13. In September 2021 he spoke to someone called Sandrine about his PALS system being blocked. This appears to be one of the places where "*something like fraud*" was mentioned. Sandrine appears to have taken it no further. When she was asked about this during the investigation, she said they were very busy at that point.

14. The claimant began to use his colleagues' accounts to book or attempt to book discounted tickets through the PALS scheme. We understand this to be for church friends and family.

15. On 30 March 2022 the Eurostar contacted the respondent to report that the claimant had attempted 150 bookings between December 2021 and May 2022. Eurostar also referred to the PALS accounts of people who had left the respondent being used. This aspect was not followed up at this time.

16. Mr Owens was appointed to investigate this. He saw a number of people and the notes of his investigation start at page 124. During April he spoke to those people whose accounts the claimant had used. In summary, they confirmed that the claimant had permission to use their accounts. Most understood that the bookings were for up to 10 bookings per year for each member of staff.

17. Mr Owens spoke to the claimant in an investigatory meeting on 28 April 2022. The claimant said he knew his account was blocked; he had tried to get it unblocked by speaking to Sandrine and he had consent of employees to use their accounts. He did not deny that he had made, or attempted to make, 150 bookings in the period.

18. Mr Owens made a recommendation on 9 May that the claimant be put forward to a disciplinary meeting. He did not recommend that the other people he had spoken to face any disciplinary action and he gave understandable reasons for this (page 144)

19. On 25 May, Ms Cranley, who was the claimant's line manager, held a disciplinary meeting with the claimant. The invitation letter is at page 152. The claimant said in cross-examination that he was not sure that he got that letter but he did attend the meeting so it appears he did get it and the letter contained a warning that it was a serious matter. The notes of the hearing are at page 154 to 156. The claimant does not necessarily accept that they are an accurate record.

20. The outcome of that hearing was that Ms Cranley issued a final written warning and offered the claimant alternative employment away from the Eurostar contract. Ms Cranley's witness statement at paragraph 5 sets out the reasons for her imposing this sanction. She told the tribunal that she thought the claimant was a good worker with a very good attitude. She said it was heartbreaking for her to have to decide and she did not want the claimant to lose his job. The claimant was suspended on 26 May on full pay while he looked into alternative roles. There is no evidence that the claimant was not paid correctly at that point.

21. The claimant gave evidence about Ms Cranley treating him badly in a variety of ways. It is not until the second witness statement where the claimant alleged he had paid her a £80 bribe in connection with a redundancy exercise. Ms Cranley denied that that had happened. The tribunal found Ms Cranley to be an honest witness and do not accept that this event occurred, not least because it was mentioned so long after it was alleged to have taken place.

22. The claimant raised other concerns about her preventing him from taking holiday and a matter related to the covid vaccine but the tribunal do not accept that Ms Cranley was biased against the claimant. She clearly did all she could to try to retain the claimant in employment.

23. On 30 May 2022 the claimant decided to refuse the alternative employment he

had been offered. He gave reasons for this connected with it being lower pay; a lower position and difficulties with the shifts that were asked to be worked. He put this in an email to Ms Cranley and this appears at page 184.

24. In this email he also mentioned something about changing colleagues' passwords. The tribunal accepts that this was the first time the respondent was aware of this aspect – the changing of passwords for the PALS system. This concerned the respondent and several of the witnesses met on 1 June to discuss what to do about this new information. It was abundantly clear that the respondent was also concerned about its relationship with Eurostar.

25. On 7 June 2022 the claimant was invited to another investigatory meeting. On 8 June 2022 Eurostar asked the respondent to remove the claimant from the contract. This appears at page 157 of the bundle. No similar requests were made for the other people who had been spoken to.

26. Mr Ball gave evidence about the claimant's use of the PALS system which showed attempted purchases as well as those booked. Apparently, the system does not show (or the document we had did not show), how many attempted bookings had been rejected. Mr Ball's evidence was that the system automatically stops somebody booking more than 10 tickets on their individual accounts. His evidence was that that was that he believed that was the reason the claimant then used other people's accounts.

27. Between 13 June and 25 July 2022, the claimant was on sick leave. The claimant was only paid statutory sick pay; this is in line with his contractual entitlement as the terms and conditions state that is the position when someone is suspended (page 202).

28. The investigatory meeting was delayed until his return from sick leave. The claimant met with Mr Owens again on 29 July 2022 and the notes appear at page 165 to 167. The claimant agreed that these notes are accurate. The claimant did question why the matter was being reopened and was told it was because of new evidence that had been provided which implied that the claimant had not just helped colleagues but had changed their passwords. Mr Owens gave evidence that he understood the disciplinary process had not ended. He said he followed advice and reopened the investigation. Mr Owens showed the claimant the letter from Eurostar at page 157 and said that they were concerned that it was bringing the respondent into disrepute. Mr Owens decided the matter needed to be referred again to a disciplinary hearing.

29. The respondent decided that the method for booking on the PALS system needed to be clearer and a letter was sent to all staff about that. The letter is at page 171 and this is dated 16 August 2022. It did clarify that the tickets are for personal use and that one should not give one's account details to others. The claimant's case is that this was unclear before that letter was sent but the tribunal accept that this is just emphasising how the system worked.

30. Ms Aspinall was appointed to hear the disciplinary hearing. It was her first such hearing.

31. She told us she reviewed Mr Owens' investigation notes and she met with the claimant on 9 September. That hearing was adjourned for her to carry out some investigations and it reconvened on 23 September. The claimant, under cross-examination, was not sure that he had seen the minutes from this hearing, they appear at pages 229 and 176 to 179. The claimant agreed that he had accessed the system 55 times, which was clearly more than 10. He said that colleagues were asking him for help with the system. He and Ms Aspinall discussed several individual cases. Ms Aspinall asked the claimant why he was using his own email address for the tickets if he was helping others but his explanation was unclear.

32. One thing that was also discussed which had not been discussed before, was that the claimant was suspected of using the accounts of two employees who had left the business. These we will refer to with their first names of Frank and David. The claimant said that this had been discussed with Ms Cranley in the meeting with her, but there is no note of that discussion in the notes we have seen. These former staff members' names had been provided to the respondent by Eurostar in March 2022 but Mr Owen had not investigated that aspect, perhaps because they had left the business. It was put to the claimant by Ms Aspinall. The claimant denied using their accounts stating that for Frank there had been an accidental use when he was changing one of his colleague's passwords. The tribunal has seen documentary evidence that the accounts for these two colleagues, who had left the respondent in 2021, had been accessed by the claimant. There was one attempt for Frank and two for David in March 2022. It does not appear that the booking was accepted but the tribunal accept that they were attempted by the claimant.

33. Ms Aspinall was aware that the claimant had received a final written warning and that this disciplinary hearing was a reopening of the case because of the information about changing of passwords and the use of Frank and David's accounts. Ms Aspinall agreed that there was no evidence that the claimant was selling tickets.

34. Ms Aspinall decided to dismiss the claimant. The outcome was contained in a letter at page 181 and was a dismissal for misuse of the system and bringing the respondent into disrepute with a client. In her witness statement Ms Aspinall said there were some grey areas about use of the system but the claimant's use of former employees' accounts was the deciding factor for her as she found he had been dishonest about this.

35. On 29 September 2022 the claimant appealed the decision to dismiss him (page 258). In summary, he said that he had not been warned that he should not use colleague's accounts. He denied using the accounts of Frank and David and said that he had already been sanctioned for this offence. He queried whether he should be entitled to a redundancy payment.

36. On 13 October Mr Crane held an appeal. The notes of that are at 250 to 252, and the notes of Mr Crane's thinking are at pages 271 to 272. These indicate that Mr Crane asked appropriate questions and gave thought to the decision he had to make.

37. On 1 November 2022 the claimant received the outcome of the appeal (pages

274 to 275). The decision was that that the dismissal should stand. The claimant accepts that he did not make an allegation that actions were taken against him because of his race before this point.

The law

38. For the unfair dismissal, the statutory provisions are in the Employment Rights Act 1996 (ERA). Section 98 (1) and (2) contain the potentially fair reasons for dismissal including "conduct". The burden of showing a potentially fair reason rests on the respondent.

39. As to the fairness or otherwise of the dismissal, if we are satisfied that there was such a potentially fair reason, Section 98 (4) states:-

"Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-

a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

b) *shall be determined in accordance with equity and the substantial merits of the case*"

40. We are also guided in our deliberations, because this is a conduct dismissal, by the leading case of *British Home Stores v Burchell [1978] ICR 303* which sets out the issues which we should consider including whether the respondent had a genuine belief in the conduct complained of which was founded on a reasonable investigation and whether a fair process was followed. The investigation should be one which is fair and reasonable and the band of reasonable responses test applies to that part of the process as well as to the overall consideration of the fairness of the sanction (*Sainsburys Supermarkets Limited v Hitt [2003] IRLR 23*). We must also not substitute our view for that of the respondent, a point emphasised in *Iceland Frozen Foods v Jones [1982] IRLR 439* (and re-affirmed in *Foley v Post Office and HSBC Bank Ltd v Madden [2000] ICR 1283*). Rather, we must consider whether the dismissal fell within a range of reasonable responses.

41. For the race discrimination claim, that falls under EQA. The relevant parts of the sections we need to consider are as follows:-

"13 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.

(2) -

123 Time limits

(1) Proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) -

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) -

136 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.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) -

(5) -

(6) A reference to the court includes a reference to—

(a) an employment tribunal;"

42. When considering the treatment of the claimant as compared to comparators, s23 (1) EQA provides that there must be no material difference between the circumstances of each case.

43. In summary, the claimant must show, on a balance of probabilities, that there was less favourable treatment because he is Black. The claimant's treatment is compared to others, who must not be in materially different circumstances and must tainted by the claimant's race. The cases of Igen v Wong [2005] ICR 931 and Madarassy v Nomura International plc [2007] ICR 867 remind the tribunal to consider the matter in stages. First the claimant must show a prima facie case of discrimination before the burden shifts to the respondent. These stages may merge when the tribunal is considering the facts. We know that a mere difference in race and in treatment is not enough to shift the burden of proof.

44. Finally, the claims for sums of money; that is, the claims for holiday pay and salary are brought under Part 11 of the ERA which prohibits unauthorised deductions of wages. The burden is on the claimant to show that there are sums

of money to which he is entitled. There are also time limits of three months to bring these claims although it allows for time to run from the late of the last payment if they are in a series of payments.

Conclusions

45. These then are our conclusions provided by reference to the list of issues set out in the preliminary hearing summary.

Unfair dismissal

46. The first questions arise under the unfair dismissal heading.

47. At issue 1.1, the question is what was the reason for the claimant's dismissal? The respondent says the reason was the claimant's conduct and the respondent has to provide evidence that that was their reason. The tribunal are satisfied that all the steps that the respondent took related to the claimant's conduct. There is a substantial body of evidence through investigations and other documents and all witness evidence that makes it abundantly clear that this respondent was concerned about the actions of the claimant.

48. At issue 1.2, we are asked to decide whether the respondent acted reasonably in treating the conduct as a sufficient reason to dismiss, and the issues that we will look at appear at 1.3.

49. The tribunal finds that the respondent did genuinely believe that there was misconduct. The respondent did believe that there was misuse of the PALS system and it was clear that they were concerned about the relationship with Eurostar.

50. It is true that there were some changes as this case progressed because the original concern that was investigated related to use of the colleague's accounts with permission, and that changed to the questions about changing of passwords and use of former colleague's accounts.

51. The grounds for dismissing the claimant were reasonable. This was heavy use of the system amounting to 150 attempts in a relatively short period of time. The tribunal finds that the respondent carried out reasonable investigations. Those investigations were thorough; they included talking to the claimant, looking at the system records; asking for information on how the system worked, and speaking to the claimant's colleagues.

52. We therefore ask ourselves whether dismissal was within the range of reasonable responses. We look here at the procedure that the respondent used, including the claimant's concern that a sanction had already been imposed by Ms Cranley. Whilst that is true to some extent, it is also a fact that the claimant had decided not to take any of the alternative jobs, so it could not be said that the matter was at a conclusion. The tribunal accepts that the respondent was entitled to look again at what had happened when they had got new information about changing of passwords and they were entitled to look in more detail about the accounts of the former employees.

53. There are some slight minor procedural issues. For example, there seems to be a lack of a letter from Ms Cranley to the claimant confirming the outcome of that hearing, that is not enough to make this dismissal unfair.

54. The claimant was clearly aware of the case against him. He was either aware, or should have been aware, that he had overstepped the mark once his account was blocked and there had been mention of possible fraud.

55. The fact that the claimant also denied matters which had obviously occurred, such as the use of former staff members' accounts, was not helpful.

56. In all the circumstances, considering all the evidence before us, the tribunal cannot find that this dismissal was unfair.

Race discrimination – Time limits

57. Turning then to the race discrimination claim, we first consider under issue 2.2 and 2.4, which is the time limitation issue which relates to Ms Cranley's actions on 25 May 2022.

58. Because the claimant did not present his claim until 5 November 2022 which is longer than three months after Ms Cranley's sanction, the tribunal has to consider whether there is conduct extending over a period or whether it is just and equitable to extend time.

59. On balance, having considered the claimant is a litigant in person, and bearing in mind that there is a connection between Ms Cranley's actions and what later became a dismissal, the tribunal think it is just and equitable to extend time so that we can consider this claim.

Race discrimination

60. However, we cannot find that the sanction decided by Ms Cranley is less favourable treatment because of the claimant's race. It clearly is detrimental treatment to receive a final written warning and to be asked to take up alternative employment. The claimant compares that treatment to Asian colleagues whose accounts he used and who gave him permission to do so. No sanction was applied to them. But their actions were not at all similar to the action of the claimant. They did not use the system to get discounted tickets but simply allowed the claimant to use their accounts. They were in materially different circumstances. The claimant has failed to show evidence that race played any part in the actions of Ms Cranley. The burden of proof does not shift to the respondent. Even if it did shift, the respondent's explanation for the different treatment is completely reasonable and without any discrimination.

61. Turning then to issue 2.3, this is the allegation that the dismissal was discriminatory on the grounds of race. There is no time limit point here.

62. Of course, dismissal would amount to a detriment. Again, the claimant compares his treatment to that of his Asian colleagues.

63. We also consider whether a hypothetical comparator would have been treated

better. That would be someone who is not black; had accessed colleagues' accounts, and booked tickets, or attempted to book tickets, way over the allocation. There is simply nothing to tie the claimant's treatment to his race.

64. Those race discrimination claims must fail.

Outstanding pay

65. We now turn to the question of whether there is any outstanding pay due to the claimant.

66. Issue 3 reads that the question is whether the claimant is entitled to further payments by way of holiday pay and makes reference to page 364 of the bundle. The claimant confirmed that he is no longer claiming anything in relation to that final payslip.

67. It now appears from his skeleton argument and witness statement that he is claiming sums for 2019 and 2020. The respondent, not surprisingly, object to this change of claim. However, we did our best to look into it.

68. The problem for the claimant is really that there is a serious time limitation point on this claim as now made. Any claim for 2020 would have to be made by the end of March 2021 and on any reading, this is considerably out of time by about 18 months. Only if the claimant could show that it was not reasonably practicable to bring the claim in time, and we have no evidence to that effect. We have no jurisdiction to hear that claim.

69. We do want to add, for completeness, that the claimant was not able to show any loss as the figures he provided were impossible to understand. The claimant provided information about hours worked without any explanation and which were different to those previously provided (page 284) and we cannot understand the basis of his claim. In any event, as stated, we have no jurisdiction to decide the claim as now made.

70. Finally, in relation to the list of issues, we look at issue 4. This is whether the claimant was owed salary arrears between 25 May and 27 September 2022. Again, there has been some shifting in the claimant's position on this and the claimant's claims seem to be for a longer period than the indicated. We are unable to understand the claimant's calculations and, again, they are different from what was put forward previously. We thought that it might be because he was only paid statutory sick pay whilst he was sick in June and July 2022, but we have found that that was the contractual position anyway.

71. The burden of proof is on the claimant to show that there are sums owing and show how they have been calculated.

72. Taking into account the respondent's careful explanation of the payments the claimant received, the claimant cannot show any further sums due to him.

73. All of the claims must fail and they are dismissed.

Approved by:

Employment Judge Manley

3 November 2025

JUDGMENT SENT TO THE PARTIES ON

.10 November 2025.....

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FOR THE TRIBUNAL OFFICE