



EMPLOYMENT TRIBUNALS

Claimant: Mr T Nicholas

Respondent: Menzies Aviation (UK) Ltd

Heard at: Reading **On:** 14, 15, 16, 17
October 2025

Before: Employment Judge Shastri-Hurst

Representation

Claimant: in person

Respondent: Mr J Boyd (counsel)

JUDGMENT having been sent to the parties on 31 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. The respondent is a provider of airport services including ground handling, fuelling, cargo, transportation and executive services at airports. The claimant is employed by the respondent as a ramp agent at London Heathrow airport and has been since he started employment on 11 January 2010.
2. The claimant commenced the ACAS early conciliation process on 24 November 2022, and concluded it that same day. He presented his claim form on 25 November 2022.
3. The matter has been the subject of several preliminary hearings, including to deal with substantive issues of time limits and deposit order applications. The result of those preliminary hearing was that, by the point of the final hearing, the claimant had the following live claims:
 - 3.1. Victimisation: four allegations from 2022;
 - 3.2. Direct race discrimination in respect of three of those allegations.
4. The List of Issues was set out by Employment Judge Hawksworth following the hearing before her on 29 November 2023, at pages 114-116 in the final hearing

bundle (referenced herein and below as [114-116]).

5. On 20 March 2018, the claimant presented a claim to the Employment Tribunal. This was a claim of race discrimination on the basis that the claimant is black British, and also a claim of whistleblowing. That case proceeded to a final hearing in April 2019 that spanned three days and was heard by Employment Judge Lewis and two Non-legal members. The claims were dismissed in their entirety following a Reserved Judgment signed by the Judge on 9 May 2019. The relevance of that claim to this case is that it amounts to the protected act done by the claimant which gives rise to his victimisation claim. It is accepted by the respondent that his 2019 claim was a protected act.
6. I had the benefit of a bundle of 245 pages. There was only one supplement to this bundle on Day Two of the hearing, that being two email chains: the first being between Sanah Ansari (in the respondent's HR department, "SA") and the claimant between the dates of 8 and 16 August 2022, the second being an email from Geoff Seer (Baggage Duty Manager "GS") dated 6 August 2024 attaching notes requested by the claimant in a meeting that day. The notes attached are in fact the notes from the 21 July 2022 return to work meeting that we already have in the bundle at [228-231].
7. I also had sight of witness statements from the following individuals for the respondent:
 - 7.1. Daniel Durkiewicz ("DD") – Head of Ground Operations;
 - 7.2. Geoff Barefoot ("GB") – Baggage Operations Manager;
 - 7.3. Caine Grubb ("CG") – Spur Assistant Duty Manager;
 - 7.4. John Twyford ("JT") – Spur Duty Manager;
 - 7.5. Michael Shergold ("MS").
8. In support of the claimant, I had the following witness statements:
 - 8.1. The claimant;
 - 8.2. Mohamed Adan ("MA") – colleague;
 - 8.3. Simon Mutibwa ("SM") – colleague;
 - 8.4. Alessandro Bruni ("AB") – the claimant's Trade Union Representative;
 - 8.5. Tom Haid ("TH") – colleague.
9. I note at this stage that MA and SM did not attend to give evidence. That is therefore reflected in the weight I am able to give their evidence. When a person does not attend the Tribunal their evidence cannot be tested under cross-examination. Their evidence therefore necessarily has to carry less weight than those people who provided a witness statement and did attend to be subjected to cross-examination.
10. I have also had written documents to support closing submissions from both Mr Boyd and the claimant, for which I am grateful. Further, I put on record my thanks to both individuals for the professional, courteous and pragmatic manner in which they have conducted this hearing.

Issues

11. As set out above, the issues in this matter appear at [114-116]. I record the issues relating to liability below for ease of reference and clarity.

1. Time Limits

- 1.1. *The claim form was presented on 25 November 2022. ACAS early conciliation started and ended on 24 November 2022.*
- 1.2. *Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened on 25 August 2022 or between 25 August 2022 and 25 November 2022 is in time. Any complaint about something that happened on or before 24 August 2022 may not be in time.*
- 1.3. *Were the discrimination and victimisation complaints (including the allegation about something which happened after the claim was submitted) made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:*
 - 1.3.1. *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?*
 - 1.3.2. *If not, was there conduct extending over a period?*
 - 1.3.3. *If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?*
 - 1.3.4. *If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:*
 - 1.3.4.1. *Why were the complaints not made to the Tribunal in time?*
 - 1.3.4.2. *In any event, is it just and equitable in all the circumstances to extend time?*

2. Victimisation – Equality Act 2010 section 27

- 2.1. *The claimant relies on his Employment Tribunal claim number 3304873/2018 as a protected act.*
- 2.2. *[removed due to non-payment of deposit order].*
- 2.3. *Did the respondent do the following things (the 2022 allegations):*
 - 2.3.1. *In July/August 2022 HR Officer SA promised a full investigation into why the claimant was forced to take annual leave due to his security pass not being activated, however the claimant never got an outcome letter and the HR Officer ignored his emails;*
 - 2.3.2. *The claimant being forced to do his regular duties on 19 July 2022 (rather than being put on light duties) when he returned from a period of sick leave relating to a hernia;*
 - 2.3.3. *The respondent's failure to suspend Arun Clarke and take appropriate disciplinary action when Mr Clarke threatened and swore at the claimant on 25 August 2022;*
 - 2.3.4. *The respondent's failure to suspend Arun Clarke and take appropriate disciplinary action when Mr Clarke threatened and swore at the claimant on 27 November 2022.*
- 2.4. *By doing so, did it subject the claimant to detriment?*
- 2.5. *If so, was it because the claimant did the protected act?*

2.6. Was it because the respondent believed the claimant had done, or might to, a protected act?

3. Direct race discrimination – Equality Act 2010 section 13

3.1. The claimant describes himself as Black British.

3.2. Did the respondent do the things set out above at paragraphs 2.3.2, 2.3.3 and 2.3.4.

3.3. Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

The claimant says in respect of 2.3.2 that he was treated worse than three comparators who are white: Alan king, Dominic Nugent, and Albie (surname unknown).

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

3.4. If so, was it because of race?

Legal framework

Overarching point

12. I consider it important to emphasise (and explained to the parties at the hearing) that the legal framework of this case is whether, in short, four things happened because the people who did those things were significantly influenced by the claimant being black British and/or by the claimant having brought a previous Tribunal claim. That causal link between the treatment suffered and the claimant's race and his 2019 claim is a key part of a race discrimination and victimisation claim

13. I explained that it is not enough for a claimant to complain about unreasonable, unprofessional or inappropriate conduct. There must be something more than that to draw a connection between the claimant's race and/or his 2019 claim.

Victimisation

14. Section 27 of the Equality Act ("EqA") sets out:

“(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.”

15. It was accepted in this case that the 2019 claim fell squarely within the meaning of protected act, specifically s27(2)(a) EqA. As such, I do not set out the relevant law as to protected acts.

16. In terms of the meaning of detriment, the Court of Appeal in Ministry of Defence v Jeremiah [1980] ICR 13 held that a detriment exists:

“if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment”.

17. In other words, if the claimant has suffered a disadvantage compared to other employees (whether real or hypothetical), they will have suffered a detriment. Despite this, there is no strict need for a comparator in cases of detriment.

18. For a detriment to be “because of” a protected act, it is necessary that it had a significant influence on the perpetrator. It is not necessary for the Tribunal to identify conscious or subconscious motivation – Nagarajan v London Regional transport [2000] 1 AC 501 at p512-513. The meaning of “significant” has been held to mean “more than trivial” – Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases [2005] ICR 931.

Direct race discrimination

19. Section 13 EqA provides:

“(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”.

20. S13 requires a comparison exercise to be done, comparing the respondent’s treatment of the claimant with the treatment of a “comparator”. The Tribunal can use actual comparators or, if there is no real person who fits the definition of a comparator, hypothetical comparators.

21. The appropriate comparison exercise is set out at s23 EqA as follows:

“(1) On a comparison of cases for the purposes of section 13, ... there must be no material difference between the circumstances relating to each case.

(2) The circumstances relating to a case include a person’s abilities if -

(a) On a comparison for the purposes of section 13, the protected characteristic is disability...”

Burden of proof

22. The burden of proof for discrimination claims is set out in s136 EqA:

“(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”.

23. In Laing v Manchester City Council and anor [2006] ICR 1519, Mr Justice Elias held that:

“the onus lies on the employee to show potentially less favourably treatment from which an inference of discrimination could properly be drawn”.

24. This requires the Tribunal to consider all the material facts without considering the respondent’s explanation at this stage (“stage one”). However, this does not mean that evidence from the respondent undermining the claimant’s case can be ignored at stage one – Efobi v Royal Mail Group Ltd 2021 ICR 1263.

25. It is not enough for the claimant to show that there has been a difference in treatment between her and a comparator, there must be “something more”. In Madarassy v Nomura International plc 2007 ICR 867, Lord Justice Mummery held:

“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”.

26. In Virgin Active Ltd v Hughes 2023 EAT 130, it was highlighted by the Employment Appeal Tribunal that the consideration of whether there are material differences in the circumstances of an actual comparator compared to those of the claimant needs to take place before applying the shift in the burden of proof. Regarding a hypothetical comparator, the claimant must show that the comparator would have been treated more favourably. This requires the Tribunal to be able to draw inferences of likely treatment of a hypothetical comparator from the evidence before it.

27. It is only if the initial burden of proof is reached that the burden shifts to the respondent to prove to the Tribunal that the conduct in question was in no sense whatsoever based on the protected characteristic – Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931.

Reason for less favourable treatment under s13 EqA

28. There are two parts of direct discrimination: (a) the less favourable treatment and (b) the reason for that treatment. Sometimes, however, it is difficult to separate these two issues so neatly. The Tribunal can decide what the reason for any treatment was first: if the reason is the protected characteristic, then it is likely that the claim will succeed – Shamoon v Constable of the Royal Ulster Constabulary [2003] UKHL 11.

29. In terms of the required link between the claimant’s race and the less favourable treatment he alleges, the two must be “inextricably linked” - Jyske Finands A/S v Ligebehandlingsnaevnet acting on behalf of Huskic: ECLI:EU:C:2017:278.

30. The correct approach is to determine whether the protected characteristic, here race, had a “significant influence” on the treatment – Nagarajan v London Regional Transport [1999] IRLR 572. The ultimate question to ask is “what was the reason why the alleged perpetrator acted as they did? What, consciously or unconsciously, was the reason?” - Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48. This is a question of fact for the Tribunal to determine, and is a different question to the question of motivation, which is irrelevant. The Tribunal can draw inferences from the behaviour of the alleged perpetrator as well as taking surrounding circumstances into account.
31. If there is more than one reason for the treatment complained of, the question is whether the protected characteristic (in this case, race) was an effective cause of the treatment – O'Neill v Governors of ST Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372.

Facts

32. As set out above, the claimant commenced work with the respondent as a ramp agent on 11 January 2010, and remains employed.

Sickness absence 2022

33. In 2022, the claimant suffered from a hernia. He was signed off sick from work by his GP on 6 February 2022. He took a period of annual leave at the beginning of July, returning to work on 12 July 2022. The first week of his return to work, he undertook training that was required, given his length of time out of the respondent company. He returned to his substantive role on 19 July 2022.
34. All ramp agents require a security pass. When an employee has been out of the business for 60 days or more there is a need to reactivate that security pass before they are able to return to their duties. Given the length of the claimant's sickness absence in 2022, his pass had expired and required reactivation prior to his being able to return to his baggage handling tasks.
35. The claimant alleges that he was forced to take annual leave due to his security pass not being activated. This forms the background to Allegation 2.3.1.
36. As a matter of fact it appears to be correct that he was required to take annual leave. More accurately, he was told by GS that he could either take paid annual leave, or he could take unpaid leave.
37. It is the respondent's case that when a pass has expired and requires reactivation, there are three options for an employee:
- 37.1. to take annual leave if they have any remaining;
 - 37.2. to take unpaid leave;
 - 37.3. to seek redeployment if the delay in activation is going to be lengthy.
38. The claimant said that he was unaware that these were the three options open to someone with a pass that needed reactivating. There appeared latterly in this hearing to be some dispute as to whether there was a policy regarding requiring people to take unpaid leave in such a situation (the respondent refers to the “no pass no pay” policy). However, given that the claimant took paid

annual leave, not unpaid leave, I do not need to make further findings about the applicability or otherwise of the no pass no pay policy.

39. Given that the claimant was unaware of the respondent's approach regarding reactivating employees' passes, he is unable to argue against the respondent's case that one typical option for someone in his position is to be required to take annual leave.
40. I accepted the respondent's evidence that there are those three options available to someone who needs their pass reactivated. Further, I was satisfied that, in this case, the claimant was required to take annual leave to cover a number of days in July 2022 in order to get his pass reactivated. From the emails the claimant provided during this hearing, it is clear that he was required to let take annual leave on 1, 2 and 3 of July 2022.
41. The claimant's actual complaint to this Tribunal was that SA promised him a full investigation as to why he was required to take annual leave, but that he never received an outcome letter and SA ignored his emails.

Allegation 2.3.1 – in July/August 2022 HR officer SA promised a full investigation into why the claimant was forced to take annual leave due to his security pass not being activated, however the claimant never got an outcome letter, and the HR officer ignored his emails

42. The claimant in cross examination clarified initially that he was not pursuing a claim against SA, in that he did not consider she was motivated by his race. I noted in fact that this allegation was one of victimisation and not race discrimination.
43. The claimant then however said that this was a joint enterprise between SA and GS, but maintained that he did not say SA was discriminating against him. In fact his main complaint appeared to be against GS. When asked by me why he considered there to be a race element to this factual allegation, he answered that there was "a history of detrimental treatment, and that GS was his team leader and treated him differently to others".
44. There has latterly been a suggestion by the claimant that the delay in getting him a functioning pass was a malicious act by GS. That is however not the claim that has been raised to date, it did it appear in the list of issues and I was not asked to deal with an amendment application. As such, I need not make findings on this point. No application has been made to amend Allegation 2.3.1 in any way.
45. Allegation 2.3.1 within the list of issues, following the preliminary hearing with Employment Judge Hawksworth, was squarely put to be against SA and SA alone. In any event, when asked in cross-examination whether he considered his concern that GS had not done enough to reactivate his pass to be a race issue, the claimant replied that he did not consider GS to be motivated by race.
46. Considering the facts of this allegation, the first question for me to consider was "was there a promise from SA to conduct a full investigation?".
47. I was not satisfied on the evidence before me that a promise from SA was made

to conduct a full investigation. The claimant told me in evidence that this promise was made in the meeting of 21 July 2022. The claimant relied on an email exchange between him and SA in August 2022 that he disclosed on Day Two of this hearing. He told me that those emails provided evidence that a full investigation had been promised and was being chased. The email chain did not provide evidence of such things. The email chain comprised three emails as follows:

- 47.1. First, on 8 August 2022, the claimant emailed SA to request a transcript of the meeting of 21 July 2022. I note although that specific date was not mentioned in the email, the meeting referred to was a meeting that took place "over two weeks ago". Further the meeting on 21 July 2022 was the only meeting that occurred between that date and 8 August 2022. It therefore follows that the transcript of the meeting referred to in the 8 August email was a transcript of the meeting of 21 July 2022;
 - 47.2. The following day on 9 August 2022, SA replied attaching those meeting notes. These are the notes we have at [228];
 - 47.3. On 16 August 2022, the claimant replied raising a concern that three matters that had been discussed at the meeting had not been included in the notes: the third of those matters was that the claimant "was forced to use [his] annual leave on 1, 2 and 3 July due to [his] security pass not being reactivated".
48. There was no mention in that email chain of the claimant having requested a full investigation regarding why he was forced to take those days as annual leave. Given that the claimant was keen to raise three things that were missing from the meeting notes, I found that, had he asked for and been promised a full investigation, he would have raised that as a fourth important point that was missing from the hearing notes: he did not do so. I therefore found that no such promise was made in the meeting. Furthermore, neither of his emails I have just described demonstrate the claimant chasing any such investigation or indeed requiring an investigation to take place. His concern is simply that his complaints were recorded accurately in the notes of 21 July 2022 meeting.
49. Given that I found that the respondent's general practice is to require employees with no active pass to either take annual leave or take a period of unpaid leave or be redeployed, the fact that the claimant was presented with the option of taking annual leave or taking unpaid leave would not be unusual.
50. It would not be reasonable to expect SA, from the claimant's email of 16 August or indeed from him saying in the meeting that he was forced to use his annual leave, to take from that that the claimant wanted to raise a grievance about it or that he required an investigation take place. His being forced to take annual leave was simply a part of how the respondent deals with passes that need to be reactivated.
51. In other words, without an explicit request from the claimant that he wished this matter to be investigated, I considered it reasonable that SA did not take that matter any further. She could not reasonably have been expected to infer from the claimant's communications that he wished the matter to be investigated.
52. In terms of GS's involvement regarding any investigation, the claimant said for

the first time during his evidence that he had spoken to GS on two occasions following the 21 July meeting, in order to chase up the alleged investigation. The evidence he gave as to these two conversations was vague. He said that the first conversation he had was probably about a couple of weeks after the email to SA. He also told me that he did not remember the time gap at all, as to whether it was months or weeks, between the first conversation with GS and the second. Both conversations, the claimant told me, went along the lines of him saying “when can I expect have the investigation that was promised”, and GS saying he would look into it.

53. I found it unlikely that, (a) had the claimant chased at that stage with GS, he would not continue to chase until he got an outcome and (b) GS would on two occasions give the same answer without the claimant seeking any further explanation in those conversations, particularly on the second occasion.
54. I therefore did not accept that the claimant chased such an investigation with GS. Furthermore the claimant did not raise GS’s failure to deal with this investigation as a grievance. Given that his grievance entered in October 2022 (after this alleged exchange) was a complaint about failure of procedure, I found that the claimant was capable of raising complaints of failure to follow procedure or failure to follow through on a grievance. The fact he did not do so gave support to my finding that no such investigation was promised and no chasing occurred.
55. I was therefore not satisfied that the claimant was promised a full investigation.
56. The second question was “was there a failure to provide an outcome letter?”. The short answer is “yes”, as there was no outcome letter. However, it necessarily follows that the reason the claimant received no outcome letter was because there was no investigation warranting such a outcome letter.
57. The third question was whether SA ignored the claimant’s emails. The emails I was pointed to were those I have mentioned above, dated 8 to 16 August 2022. Clearly, the first of the claimant’s emails on 8 August was not ignored, as he received a response from SA. In terms of his second email of 16 August 2022, I was not taken to any email response from SA to the claimant, and I did not see notes of the 21 July meeting in the bundle which suggest that the claimant’s amendments set out in his 16 August email were adopted by the respondent.
58. However, given the fact that the emails that I was being asked to look at only came to light halfway through this hearing as opposed to during standard disclosure, I was not satisfied that the claimant had done enough to prove that any email from him was “ignored” by SA. The word “ignored” connotes a deliberate mental act on the part of SA to actively ignore communication from SA. On the email documentation I saw, I considered that the claimant had not proven that, factually, his emails had been ignored.
59. In any event, if I was wrong on that and SA did ignore an email from the claimant, the relevant question then became “what was the reason for that behaviour?”. The reason the claimant alleges in the List of Issues is that SA knew of the claimant’s 2019 claim and was significantly influenced by that. That point was not made in his oral evidence to the Tribunal, or in his witness statement.

60. I am therefore not satisfied that the reason for any ignoring of emails was because of claimant's 2019 claim. I shall return to this in my conclusions.

Return to work

61. As I have set out above, the claimant returned to work on 19 July 2022. He did not have a formal return to work meeting on that day, and returned to his normal work duties.

62. On 20 July 2022, CG was on shift as the Assistant Duty Manager, with JT as his Duty Manager. At the appropriate time, a handover took place between the managers leaving shift and those moving onto shift. At this handover, it is routine for JT to inform CG of any managerial responsibilities he requires him to undertake on any given day. CG informed me that on that particular day, the managerial tasks conveyed to him included holding a return to work meeting with the claimant. In other words, he was told on 20 July to do a return to a meeting with the claimant and he held such a meeting on that same day.

63. The claimant duly had a return to work meeting with CG on 20 July 2022. The relevant return to work form is at [148] and displays some confusion over the date of return to work and the date the absence ended. I have already set out above the dates as I found them to be, following hearing oral evidence which clarified the dates.

64. The return to work form read as follows:

“Any actions needed to support employee – yes
Amended duties until meeting set up
MR put on light duties as of 20 July 2022 meeting to be set up with Geoff Seer and HR”

65. That form was signed by CG on 20 July 2022.

66. I understood these notes to mean, first, that the claimant was put on amended duties following this meeting with CG on 20 July and, secondly, that a meeting with GS and HR would be set up to discuss light duties further. Such a meeting did in fact take place on 21 July 2022.

67. On 21 July 2022, the intended meeting with GS and HR was set up and took place at 1300hrs in the spare office. The relevant notes are at [228]. From the notes of that meeting, it was clear that the claimant was given three options as set out on [230]:

67.1. Option 1: a phased return at full pay, starting the claimant at four hours and then increasing his hours week by week. This would be a temporary measure lasting four weeks to start with;

67.2. Option 2: to return on full hours but be placed in Terminal 3 with a lifting aid; or,

67.3. a mixture of the two.

68. The claimant opted for Option 1, namely a phased return at full pay increasing his hours from four hours upwards for a period of four weeks. Also at this meeting it was arranged that the claimant would go to an occupational health appointment following which a report would be produced.

69. The claimant accepted in evidence that he was placed on that phased return from the time of the meeting at 1300hrs on 21 July 2022.

Allegation 2.3.2 – the claimant being forced to do his regular duties on 19 July 2022 (rather than being put on light duties) when he returned from a period of sick leave relating to a hernia

70. The claimant was placed on amended duties from the time of his meeting with GS on 20 July 2021. He was then placed on a specific phased return from 21 July 2022.

71. I therefore found that the claimant was not on amended duties, and therefore on his regular duties, for the whole of his shift on 19 July 2022, and some of his shift on 20 July 2022: approximately 1.5 days.

72. I then turned to consider the reason why the claimant was not given amended duties at the point of his return straightaway on 19 July 2022.

73. The reason he was not given amended duty straightaway is that he did not have a return to work meeting immediately on his return on 19 July 2022. As soon as he had a return to work meeting with CG, he was taken off his regular duties and placed on some form of amended duties.

74. The question then became “what is the reason why the claimant did not have a return to work meeting before 20 July 2022?”.

75. CG said in evidence that it was because he was not asked by JT to do a return to work meeting on 19 July 2022, but on 20 July 2022. The claimant told me that he did see CG on 19 July 2022, at which point CG said to him “if you are not fit for work I have got no choice but to send you home”. In his evidence Mr Grubb initially doubted whether he was in work at all on 19 July 2022, as he said a return to work would have formed a handover on that day if he had been at work. However, he was equivocal about that point, given the length of time that had passed. His evidence as to the comment allegedly made by him on 19 July was that it was highly unlikely as he would expect to remember such a conversation.

76. CG’s evidence as to the instruction given to him by JT on 20 July to undertake a return to work meeting cannot be challenged by the claimant as the claimant was not present during that handover meeting. I accepted CG’s evidence that he was only asked by JT to undertake a return to work meeting on 20 July. Given he is responsible for 200 staff members over three lines, I accept that he is guided by his Duty Manager as to what managerial duties need to be done each day. Even if the conversation did take place as the claimant suggested between CG and the claimant on 19 July, this, I found, would not assist me with the question as to why the return to work meeting happened on 20 July 2022, not 19 July 2022.

77. I therefore found that the return to work meeting only took place on 20 July 2022 because that was the date on which he was asked to do it; he was not asked to undertake return to work meeting on 19 July 2022 and therefore did not hold that meeting on that date.

25 August 2022

78. On 25 August 2022, the claimant and Arun Clarke ("AC") were involved in an altercation. The chronology is as follows:

78.1. AC was the claimant's supervisor on the day in question, and was annoyed because the claimant had returned to his break late. There was a dispute as to whether in fact the claimant had returned late, as the claimant said he was given an extra-long break that day. However this point did not need to be resolved as it did not assist me with my findings on the relevant issues;

78.2. On the claimant's return, AC and he had a verbal altercation. Once again, there was a dispute in fact about what happened during this altercation. The claimant accepted that he acted inappropriately and unprofessionally in the course of this altercation, however vehemently denied swearing. He told me that AC brandished a scanner at him whilst using threatening words. Stephen Sinclair (Baggage Coordinator "SS"), a colleague, was present at the time of this altercation;

78.3. AC telephoned JT to inform him that the claimant was late back from his break. TJ set out in his witness statement at paragraph 8 that AC sounded quite annoyed by this. As such, JT asked Rupe Sandhar (Assistant Deputy Manager "RS") to go and see what was happening;

78.4. RS therefore attended the scene. SS removed AC from the scene and, in turn, RS took the claimant away to another area to try to calm him down;

78.5. On being informed of this incident, JT asked CG to call AC and the claimant up to his office separately to discuss what had happened. During those conversations, CG was also present in JT's office.

78.6. A summary of what was discussed in the respective conversations with the claimant and AC was recorded at [154] by CG on 25 August 2022 at 2305hrs. It was recorded in that note that the claimant said he did not want to make a formal complaint at this time. Later during the conversation, the claimant is recorded as saying he would not make a complaint but would go "to the top": the claimant agreed with this part of CG's recollection. The claimant accepted that he had probably said words to the effect that it was a waste of time as no one cares, as CG recorded in his notes. The claimant told me that he did want to make a complaint just not to JT or CG. He explained to me he wanted to make a complaint to HR. However there is no evidence to suggest that he conveyed that particular message, that he wished to take a complaint to HR, to CG or JT on 25 August 2022. The meaning of the phrase "take it to the top" is, I found, objectively unclear. I did however accept that it was made clear to CG and JT that the claimant did not wish either of them to take any further action on 25 August 2022: this was common ground.

78.7. JT also spoke to SS, who told him that AC said he was going to knock the claimant out. SS was asked to follow up this oral conversation with a written statement. That written statement emerged the following day via email and is on [156]. In that statement, SS repeated that AC had

said “I’m going to knock you out” to the claimant;

78.8. JT also met with AC, and asked him to provide a statement which appeared at [155]. In that discussion with AC, he too said that he did not wish to pursue the matter further to any formal channels;

78.9. JT also spoke to RS.

79. Having spoken to all those present at the time of the altercation, JT spoke to GB: they had a discussion about what, if anything, needed to be done regarding this altercation. It was agreed between the two gentlemen that, as there was no physical contact between the claimant and AC, no further action was required.

80. In order to sense check that decision, the two gentlemen set up a meeting with SA, the HR adviser at the time. There was a delay between 25 August 2022 and holding this meeting: this was due to SA being on leave and only returning on 1 September 2022.

81. It was SA’s view that, given it was understood that neither AC nor the claimant wanted to take matters further, and given that this was a verbal argument as opposed to a physical one, she agreed with the decision to draw a line under the matter.

Claimant’s grievance 20 October 2022

82. The claimant entered two grievance emails on 20 October 2022, at [159] and [161] respectively.

83. The first grievance in time is that at [161], which opened with the following statement:

“I would like to lodge a grievance against Geoff Barfoot, John Twyford, and Rupe Sandhar for failing to follow procedure and policy regarding an allegation of threats of violence made against me. The fact that they failed to take it seriously and neglected the duty of care they should have towards me, left me with serious anxiety and stress”.

84. The email at [159] raised the following complaint:

“I am raising a grievance against the respondent for failing to follow procedure and refusing to provide me with the investigation and outcome letter requested pertaining to a report made by a colleague named Stephen Sinclair to which I was a party”.

85. DD was appointed as grievance manager. First, he asked the claimant to attend an initial investigation meeting; the invitation is at [172]. The minutes of the grievance meeting are at [173-177]. The claimant was accompanied by his trade union representative, AB.

86. During the course of his investigations, DD also had meetings with RS, JT, SS, GB, CG and AC. Having spoken to all those individuals, DD had the intention of speaking to the claimant for a second time. He requested the same of the claimant in an email of 22 November 2022 at [165]. Initially the claimant confirmed his attendance, however by email 28 November 2022, the claimant explained he had been advised by his union representative not to attend a

further meeting until he had received the notes requested. Those notes relate to primarily SS's statement now found at [156] of the bundle.

87. As such, DD did not hold a second meeting with the claimant, and therefore made his decision on the grievance on the information he had received up to that point.

88. DD's Grievance outcome is dated 13 December 2022 and is found at [186]. DD partially upheld the grievance on the following basis – [187]:

“I do believe this situation should be dealt with differently as my investigation findings confirm that you and Arun did behave inappropriately and unprofessional and therefore fails to follow the respondent's core values. Both of you confirmed not to take this further and therefore no further action was taken”

89. DD explained to me in evidence that his view was the respondent could have done something different in terms of its approach to the 25 August incident. Specifically, he considered that it could have investigated immediately and independently, regardless of whether the claimant and AC wished to pursue matters formally. DD was clear, however, that if they were to suspend anyone they would have to suspend both the claimant and Mr Clarke.

90. The claimant then appealed DD's decision. That appeal meeting was held with Frank Dobbelssteijn (Vice president of London Heathrow, “FD”) on 3 April 2023. The notes of that meeting are at [189-195].

91. In the grievance appeal hearing, and for the first time, the claimant raised a second incident that had occurred with AC, this time on 27 November 2022. On [192] of the notes, the claimant was recorded as saying as follows:

“I was queueing to sign in and start work and I [probably] said there is a queue here and [AC] went into a rant and swore at me and said “I just told you fucking idiot”, that was Aaron Clark. That was in front of the managers.”

92. The claimant confirmed following the question from Vanisha Waghela (“VW”, recorded as note taker) that he had not reported this matter at any time prior to this occasion.

93. The outcome of the appeal is at [197]. In that outcome letter, in terms of the new 27 November incident raised, FD stated:

“this is a new incident and will be investigated separately”.

94. In terms of the appeal before him, FD upheld DD's decision on the original grievance. However, he did recommend some corrective action to be taken as follows, recorded at [199]:

1 “As a result there will be disciplinary action taken against the individuals that were party to the confrontation. You are also party to attend the disciplinary. Allegation of violence is considered gross misconduct”;

2 “Given that it is my view stronger management action should have been undertaken at the time it is recommended that Spur management undertake training on conduct in the workplace”.

95. Following these recommendations, an investigation meeting was held regarding the claimant on 13 June 2023, the notes of which are at [202]. The claimant did not attend this meeting, having advised in advance that he would decline to attend the meeting.
96. A parallel investigation meeting took place with AC on the same day: those notes are at [204]. Likewise, AC did not attend the meeting. Both meetings went ahead in the party's absence, the hearing manager being Sunil Dutta ("SD").
97. An investigation report regarding the claimant was produced by SA at [206] of the bundle. A parallel report was produced regarding AC and is found at [210] of the bundle. The claimant received an outcome letter following that investigation on 28 July 2023 [214]. It was decided that disciplinary proceedings would not be instigated on this occasion. That concluded matters arising from 25 August 2022.

Allegation 2.3.3 – the respondent's failure to suspend Arun Clarke and take appropriate disciplinary action when Mr Clarke threatened and swore at the claimant on 25 August 2022

98. During cross-examination, the claimant confirmed that he considered the alleged perpetrators under this allegation to be GB, JT and CG. In other words, this allegation relates to the initial decision not to take any further action, that decision being taken between 25 August and 1 September 2022 by those three individuals.
99. Firstly, I was not satisfied that CG was a decision maker as to how this matter was to be dealt with. I accepted he was present during some of the initial discussions, however the evidence across the respondent's witnesses was that it was GB and JT, in conjunction with HR, who made the decision not to escalate this matter.
100. It is factually accurate to say that JT and GB did not suspend AC; neither did they take any disciplinary action. The allegation was that they failed to take "any appropriate action". Given that, by the end of the grievance process, both the claimant and AC were subject to an investigation process, I accepted that the failure to undertake that formal investigative step earlier was inappropriate.
101. I therefore found that, factually, there was a failure to suspend and a failure to take appropriate disciplinary action against AC. I accept that the environment within which AC and the claimant work is a male dominated one that comes with the "industrial language" one might expect from a factory floor, for example. However, I heard evidence (from DD) that the respondent is attempting to change that culture. If the respondent wants to effect real change, then it needs to start using formal processes for altercations such as this.
102. I therefore next had to consider the reason why there was no suspension and a failure to take appropriate disciplinary action. The two decision makers were GB and JT. Their evidence has consistently been that they decided not to suspend and draw a line under the incident for the following reasons:

- 102.1. There was no physical altercation, it was only verbal; and,

102.2. Neither AC nor the claimant wanted to take matters further.

103. I accept that the two gentlemen had incomplete evidence before them, as they had not undertaken a formal investigative process at the time of making their decision. However, they did have the initial accounts of the four people who had been present: AC, C, SS and RS. The salient evidence of each of those four individuals was as follows:

103.1. SS confirmed that AC started the altercation, the reason being that he thought the claimant was late back from a break. Although AC was the initial instigator, the claimant did not back down and was “egging him on”. AC shouted “I am going to knock you out” to which the claimant replied “he ain’t going to do nothing”. SS recorded that AC swore at the claimant;

103.2. AC’s account is at [155]. He recorded a verbal altercation, started by himself, that descended into AC “seeing red” and the claimant swearing at him, saying “you fucking idiot”. He wrote that the claimant said “what are you going to do” at which point he admitted “reacting” but did not explain what that reaction looked like. He also recorded the claimant saying “you ain’t going to do nothing”. CG’s note of the conversations that he witnessed with JT confirmed that AC accepted he had sworn at the claimant, but that the claimant had sworn at AC too;

103.3. Via CG’s report, I had a near contemporaneous note of the conversation that JT had with the claimant, in which he said (and accepted at the Tribunal that he said) words to the effect of “I don’t want to complain now, but will take this to the top”. The claimant firmly denied swearing at AC;

103.4. Although JT spoke to RS as well, JT reported at paragraph 16 of his witness statement that RS added nothing. I noted that RS had not been present at the start of the altercation in any event.

104. This was the salient evidence that JT had, and shared with GB, shortly after the incident. This is also the information that both gentlemen shared with SA on 1 September 2022. They had sought clarity from the parties involved that no actual physical violence took place.

105. I found that, on the evidence they had available (even incomplete), it was reasonable to reach the conclusion that the claimant and AC did not want to take matters further. I also found that no-one had indicated that actual physical violence had occurred.

106. Therefore, the two bases of the reason given by JT and GB for not suspending AC or progressing this incident further were reasonable bases on the evidence they had at the time of making their decision. I accepted that these two reasons were the actual reasons why the two decision makers did not escalate the matter.

107. In other words, the two reasons why AC was not suspended and no appropriate disciplinary action was taken were:

107.1. JT and GB reasonably understood that both protagonists did

not seek to take the matter further; and

107.2. JT and GB reasonably understood that no actual violence had taken place.

Allegation 2.3.4 - the respondent's failure to suspend Arun Clarke and take appropriate disciplinary action when Mr Clarke threatened and swore at the claimant on 27 November 2022

108. I have set out some of the facts relating to this matter above. To complete the chronology relevant to this allegation, I made the following findings:

108.1. The first time the 27 November 2022 incident was raised by the claimant was in his grievance appeal meeting on 3 April 2023;

108.2. FD, in his outcome letter dated 25 April 2023, stated that this matter would be investigated separately;

108.3. No such investigation was ever done; and,

108.4. FD left the respondent's employment shortly after he completed the grievance appeal.

109. Therefore, factually, it is correct that AC was not suspended, and there was a failure to undertake the promised investigation. Given that FD deemed it appropriate to undertake an investigation and that investigation did not transpire, I am satisfied that there was a failure to take appropriate disciplinary action. The question once again then was "what was the reason?".

110. In this regard I had a gap in the evidence, as I did not have evidence before me as to what FD's next steps were, if any, in relation to the promised investigation and any hand over he may have had with his successor. The five possible options are as follows:

110.1. FD deliberately did not do an investigation, and deliberately did not pass the task on to his successor;

110.2. FD, in the course of his departure, forgot about his undertaking to do an investigation, forgot to undertake the investigation himself and forgot to pass on the task to his successor;

110.3. FD did ask his successor to do an investigation, and that successor deliberately failed to follow through on the instruction to investigate;

110.4. FD did ask his successor to do an investigation, but the successor forgot to do so; or,

110.5. Someone, somehow obstructed the process, by speaking to FD and getting him to drop the matter, or by speaking to his successor and getting them to drop it. This last possibility was suggested to the claimant in his cross-examination. He was asked "are you saying someone nobbled FD and got to him and said don't have an investigation?". The claimant's answer was "No". When asked what the mischief was in this

allegation or where a cover-up appeared, the claimant said “I have never heard of anyone being called a fucking idiot in a manager’s office and nothing being done”. He did, however, clarify in response to a question from me that he had never heard of anyone being called a fucking idiot in manager’s office at all.

111. On hearing the claimant’s evidence, it in fact transpired that the claimant’s concern was that GS and Wayne Heighes (“WH”), the two managers who witnessed the incident on 27 November 2022, did not action the matter. Therefore, the alleged perpetrators of victimisation or discrimination regarding this allegation are said to be GS and WH.

112. What they witnessed, according to the claimant, is AC calling him a fucking idiot. The claimant at the Tribunal further explained that AC’s body language was very threatening. However, he accepted that AC did not actually threatened him verbally. That was the extent of the allegation as it was put by the claimant when he had the opportunity to talk about it on 3 April 2023.

113. However unsatisfactory that use of language may be, however inappropriate and unprofessional it may be, I have already accepted that the claimant’s working environment is one where industrial language is used between colleagues. As such, I consider it reasonable for GS and WH not have escalated this matter further. This is particular given that the claimant himself did not make it clear at the time of the incident that he wished the matter to be taken further by way of the disciplinary process. It is not a scenario in which I found it would be reasonable to expect managers to automatically suspend and commence disciplinary process.

114. I therefore found that the reason why GS and WH did not suspend AC or take appropriate disciplinary action was because it was reasonable for them not to in light of the environment in which they work. In other words, I accept that this sort of language, of a colleague calling another colleague a fucking idiot is not taken by the respondent’s management to be sufficiently serious to warrant suspension or disciplinary process. That is the reason why neither of those actions took place.

Conclusions

Allegation 2.3.1 – victimisation – in July/August 2022 HR officer Sana promised a full investigation into why the claimant was forced to take annual leave due to his security pass not being activated, however the claimant never got an outcome letter, and the HR officer ignored his emails

115. Factually, I found that there was no promise for a full investigation and as such there was no need for an outcome letter. Those two elements of the claim fail on the facts.

116. In terms of the HR officer ignoring the claimant’s emails, I was not satisfied that this part of the allegation was made out on the facts.

117. In any event, even if I am wrong on that and an email was ignored by SA, there was no good evidence before me at all to suggest that SA was influenced in any way by the claimant’s protected act, namely the 2019 claim.

118. I therefore concluded that the claimant had not presented any facts from which I could conclude that this was an act of victimisation. As such the claim fails.

Allegation 2.3.2 – victimisation and direct race discrimination – the claimant being forced to do his regular duties on 19 July 2022 rather than being put on light duties when he returned from a period of sick leave relating to a hernia

119. In my findings of fact, I found that the reason why the claimant was not put on light duties earlier than 20 July 2022 was because that is the time at which he had a return to work meeting. Following on from that, I found that the claimant had a return to work meeting on 20 July as opposed to when he returned on 19 July because CG was only asked to perform a return to work meeting on 20 July not 19 July 2022.

120. That is a non-discriminatory reason and a reason unconnected with the claimant bringing a claim in 2019. As such the claims of victimisation and direct discrimination fail.

121. Exploring that causative link further: the claimant presented three comparators for his direct race discrimination claim. I had very limited information about those three individuals, and crucially have not seen evidence as to whether they were signed as fit to return to work, as the claimant was by 19 July 2022. The claimant says that one of them was fit to return to work, however, without more detail about their respect times off work, their respective ailments and their respective levels of fitness to work, including any medical evidence presented to the respondent, I was not satisfied that they are appropriate comparators. In other words, I was not satisfied, on the balance of probabilities, that there was no material difference between the circumstances of the three named individuals and the claimant.

122. Turning to a hypothetical comparator: I had no good evidence before me from which I could draw an inference that CG was acting because of the claimant's race, or that he would treat someone in the claimant's circumstances (who was signed as fit to work) in any more favourable way. As such, I am not satisfied that the claimant met the initial burden of proof.

123. The same logic was applied to the victimisation claim. There was no good evidence from which I could draw an inference that CG was significantly influenced (or in fact influenced at all) by the claimant's 2019 claim, so as to find that the claimant had shifted the burden of proof.

124. Even if the burden of proof had shifted, I accepted that there was a non-discriminatory reason for CG holding the return to work meeting when he did, and therefore a non-discriminatory reason for not making adjustments to the claimant's role on 19 July 2022.

125. As such, I rejected allegation 2.3.2 as both an allegation of race discrimination and victimisation.

Allegation 2.3.3 – victimisation and direct race discrimination – the respondent's failure to suspend Arun Clarke and take appropriate disciplinary action when Mr Clarke threatened and swore at the claimant on

25 August 2022

126. I have already set out my findings as to the reason why GB and JT did not suspend AC and did not take appropriate action. There were two reasons:

126.1. They reasonably understood that both protagonists did not seek to take the matter further; and,

126.2. They reasonably understood that no actual violence had taken place.

127. As such, I was not satisfied that JT and GB's inaction was significantly influenced by either his race or his 2019 claim. Therefore, his victimisation and direct discrimination claims failed.

128. Once again, I explored the causative link further. Turning to a hypothetical comparator, I had no good evidence before me from which I could draw an inference that JT and GB were acting because of the claimant's race, or that they would treat someone of a different race in materially the same circumstances as the claimant (who had been in an altercation in which the same evidence presented itself to JT and GB) in any more favourable way. As such, I was not satisfied that the claimant had discharged the initial burden of proof.

129. During the hearing, I heard evidence about how black or non-white workers are treated at the respondent in relation to such altercations: that more black people are suspended than white people. However, I have no knowledge whatsoever of the situations leading to any suspensions or otherwise of anyone, other than in relation to 25 August 2025. I cannot therefore draw any inferences from broad assertions of institutional racism without specific supporting evidence.

130. In terms of the victimisation claim, there was no good evidence from which I could draw an inference that JT and/or GB were significantly influenced by the claimant's 2019 claim.

131. Even if the burden of proof had shifted, I accepted that there was a non-discriminatory reason for JT and GB's decision not to suspend AC or follow any disciplinary action.

132. I therefore dismissed this claim.

Allegation 2.3.4 - the respondent's failure to suspend AC and take appropriate disciplinary action when Mr Clarke threatened and swore at the claimant on 27 November 2022

133. I have set out my findings as to the reason why there was a failure to suspend and a failure to take appropriate disciplinary action following AC calling the claimant a "fucking idiot" on 27 November 2022.

134. I found that the reason why such action was not taken was because the managers of the respondent would not consider such an incident to warrant suspension or disciplinary action. Specifically, GS and WH did not consider this a matter that warranted suspension or disciplinary action.

135. As such, I was satisfied that the reason for the failure to suspend and the failure to carry out an appropriate disciplinary action was not the claimant's race or his 2019 claim.

136. Exploring this point further, there was no good evidence before me to suggest that WH and GS would have treated a white person in the claimant's situation (a white ramp agent being called a fucking idiot by AC) any differently. Furthermore, I had no good evidence that either WH or GS were significantly influenced by C's 2019 claim.

137. I therefore concluded that the burden of proof had not shifted. In any event, I accepted a non-discriminatory reason for GS and WH's conduct.

138. I therefore dismissed this allegation as well.

139. As such I dismissed the claims in their entirety on the basis of the merits of those claims.

Time Limits

140. I will consider the matter of time limits for completeness.

141. The case law on this matter of time limits tells me I must consider the length and reason for delay (Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23.), as well as any other relevant factors.

142. The Tribunal must consider the balance of prejudice to the parties if the extension is granted or refused – Rathakrishnan v Pizza Express (Restaurants) Ltd 2016 ICR 283.

143. Out of four factual allegations, two were out of time: those at Allegations 2.3.1 and 2.3.2. The earliest in time was Allegation 2.3.2; that claim should have been presented by 18 October 2022. It was therefore roughly five weeks out of time.

144. The respondent quite properly did not seek to say that it had suffered any particular substantive prejudice as a result of that five week delay. It was properly able to defend the claim at the Tribunal.

145. I accepted that the claimant did not want to come back to the Tribunal having been through the process once before. I further accepted that, following the incident on 25 August, his health suffered. The claimant also explained he had high blood pressure which caused him to experience headaches. Furthermore, he told me, and I accepted, that the incident on 25 August 2022 was really what triggered him to bring a claim, as he believed he could not take any more and it could not get any worse.

146. The length of the delay was short and I accepted the claimant's genuine reasons for bringing the claim when he did as opposed to any time earlier. As I have mentioned above, the respondent did (quite properly) not seek to argue that it was under any prejudice in defending the two claims that are outside the primary time window.

147. As such, had any of the claims been successful I would have found that they were brought within such time as was just and equitable.

Approved by:

Employment Judge Shastri-Hurst

16 December 2025

JUDGMENT SENT TO THE PARTIES
ON

17 December 2025

FOR THE TRIBUNAL OFFICE