



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100002/2025

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Held in Glasgow via Cloud Video Platform (CVP) on 8, 9 and 10 December 2025

Employment Judge A Jones

10	Mr J I Lofulo	Claimant In Person
15	McCurrach UK Ltd Edinburgh	Respondent Represented by: Ms A Acheampong - Litigation Consultant

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The respondent unlawfully deducted the sum of **£295 (TWO HUNDRED AND NINETY-FIVE POUNDS)** from the claimant's wages and is ordered to repay that sum to him.
2. The claimant was not discriminated against because of the protected characteristic of race.
- 25 3. The claimant did not do a protected act and was not victimised.

REASONS

Introduction

1. The claimant presented a claim on 3 January 2025. He alleged that he had been discriminated against on grounds of race, that he was not given a copy of his contract of employment, he had been victimised and that the respondent had made unlawful deductions from his wages. The claimant accepted at the beginning of the hearing that he had received a copy of his contract, and this was not a matter being pursued by him.
- 30 2. The claimant had initially been represented by a firm of solicitors but by the time of this hearing he was representing himself. His partner was present as a support during most of the hearing. At the commencement of the hearing, I sought to clarify the issues in dispute. There had been considerable

correspondence between the parties in the lead up to the hearing. The claimant suggested that he had been given an opportunity by another Employment Judge to provide his own list of issues as he did not agree with that provided by the respondent which had previously been agreed with the claimant's former representatives. I had to explain on a number of occasions to the claimant that this did not mean that he could alter the basis of his claim. I explained that his claim was what was set out in his claim form. He had not made any application to amend his claim despite it having been explained to him that he would be required to do so if he wished the Tribunal to determine any matters not set out in his claim form. I had to reiterate this on a number of occasions as the claimant sought to lead evidence regarding matters which were not foreshadowed in his claim form and in respect of which he had not made any application to amend his claim.

3. The claimant gave evidence on his own account. The respondent led evidence from Ms Fretwell-Walker ('RFW') who had been the claimant's line manager and Mr Short who was Mr Fretwell-Walker's manager. A bundle of documents was produced, and both parties added a document to that bundle at the commencement of the hearing. Both parties made oral submissions.

Issues to determine

20 4. I set out the issues to be determined at the beginning of the hearing. I accepted that the list of issues provided by the respondent should be widened given the terms of the claimant's claim form. The issues to be determined were:

- 25 i. Did the respondent make unlawful deductions from the claimant's wages in terms of deductions which were made for parking and other vehicle related fines incurred by the claimant relating to a car provided to him by the respondent.
- ii. Was the claimant discriminated on the ground of his race in terms of section 13 Equality Act 2010 ('EqA') in the following respects.
 - 30 i. Was he subject to more scrutiny than comparators?
 - ii. Was he provided with less support and training than comparators?
 - iii. Was there a failure to provide him with a uniform?
 - iv. Was his contract not extended?
- 35 v. Did Ms Fretwell-Walker insinuate to him that he was a member of a gang in a conversation around 17 August 2024?

- iii. Did the claimant do a protected act?
- iv. If so, was the reason that his contract was not extended because he did that protected act?

5. The claimant relied on two actual comparators, a Ms Emma Pollit who is white and a Mr Roudh who is Asian.

Findings in fact

- 6. Having listened to the evidence and considered the documents to which reference was made and the submissions of the parties, the following material facts were found to have been established.
- 10 7. The claimant commenced employment with the respondent on 5 June 2024. He was employed on a temporary basis to cover for another employee who is black who was going on secondment to another role for a period of three months.
- 15 8. The claimant was employed in the role of Territory Manager which involved visiting convenience stores in order to supply them alcohol products on behalf of the respondent's clients.
- 16 9. The claimant signed his contract of employment on 23 May 2024 which was a fixed term contract from 5 June 2024 to 30 August 2024 "unless otherwise terminated by either party giving notice in line with the provisions within this document."
- 20 10. His contract stated, "The Company is entitled at any time during and on termination of your employment to deduct from your salary or from any other sums owed to you by the Company, any sums due to the Company by you and you hereby consent to the making of such deductions."
- 25 11. There was also a provision in the contract in relation to a vehicle scheme which stated, "When invited to participate in the Company Vehicle Scheme you will abide by the roles applicable to the scheme as contained in the Company Vehicle Handbook and Colleague Handbook."
- 30 12. The Colleague Handbook which was available on the respondent's intranet had a section on "Pay and Finances". In that section it stated that "There could be occasions where will need to deduct money from your salary. We will never do this without you knowing beforehand. Some of the reasons we might need to deduct from your pay include.....Any car damage or insurance excess". Under "Parking Files" the handbook stated "Any parking or related fines issued while using a company vehicle will be collated by Fleet and sent to payroll monthly for processing. Colleagues will receive an email informing

them of the deduction. Any queries on parking fines should be directed to the Avidity Fleet Team.”

13. Under the Avidity Fleet Policy there was a provision which stated, “Drivers are responsible for paying of all parking fines and any penalties relating to any company vehicle (including courtesy vehicles) in their care. The driver will also be responsible for any additional administration costs that a third-party supplier may charge the company in relation to these. The company will automatically pay for a parking fine if it gets to a final demand. The amount paid by the company will including any administration fees incurred from suppliers will be deducted from the employee’s salary. If the employee wants to contest the fine, it is their responsibility to do so directly with the issuer. If Avidity then receives a refund, they will reimburse the employee with any refund sums received via payroll. Parking fines generally start off with a lower amount and build up to higher amounts relatively quickly. It is essential that these fines are dealt with timeously to avoid additional charges.”

14. The claimant sent emails to his manager on 15 and 21 July 2024 raising various issues following conversations about his performance. There was nothing in those emails to suggest that the claimant was alleging that the respondent had contravened the provisions of the Equality Act or that his race was anything to do with how he was being treated by his manager or anyone else at the respondent. His line manager responded to the various issues raised by him. She explained that the training he had received was no more or less than any other colleague and that she could post out a uniform to him.

15. The claimant’s manager met with the claimant on a field visit on 23 July 2024 where she accompanied him on his duties. At that time, she gave him two branded t-shirts which had not been worn and had been returned by another member of staff who had left the business. The respondent ordered t-shirts and other branded clothing in bulk and not for specific employees. At the time of the commencement of the claimant’s employment, there was no available branded clothing. The respondent does not operate a uniform policy and the wearing of branded clothing while visiting clients is not required.

16. The claimant complained that the branded clothing was the wrong size and that one of the items had a tear in it. He sent a picture of the tear, which appeared to be a manufacturing defect to his manager and stated “Nonetheless I’m thankful for it, I can always tuck it in 😊 😊 😊”

17. When the manager went on field visits with staff, she would complete a review document outlining positives and negatives in performance. The claimant was not treated any differently than other colleagues in this regard. He was not subject to more scrutiny than his comparators.

18. The claimant had a further telephone conversation with his line manager on 7 August 2024 regarding his performance at work. He recorded that call and did not tell his manager that he was doing so or ask her permission to do so. He did not suggest to his line manager at that time that he was being discriminated against because of race. RFW indicated to him that if he was unhappy with how she was treating him, he should raise a grievance with her line manager, Mr Short.

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19. On 10 August 2024, the claimant was involved in an incident in which he was stabbed and his friend who was also stabbed subsequently died from his injuries. The incident also involved a gun which was not discharged.

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20. RFW was on annual leave between 12 and 19 August. The claimant contacted Mr Short on 12 August to inform him of what had happened and stated that he would be off work for 3 days as a result.

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21. Mr Short sent RFW an email that day in order to ensure that he did not forget to keep her up to date with issues about her team. The email included reference to the assault experienced by the claimant.

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22. On her return from leave on 19 August RFW telephoned the claimant. Her main purpose in doing so was to check how he was and whether he should be at work. The claimant told RFW what had happened and told her that one of the attackers had a gun which had fallen out of his pocket and slid across the floor and that if the claimant's friend had not picked it up, the incident could have been worse. RFW was concerned that the claimant was at work given the seriousness of the incident he had been involved in, but he told her that he wanted to remain at work for the distraction. RFW asked the claimant whether the police were involved in the matter, whether the perpetrators were known to the police and whether they were part of a gang. She did not suggest at any time that the claimant was part of a gang. She did not make reference to the ethnicity of the perpetrators, of which she had no knowledge. The claimant did not express any concerns to RFW at the time at the terms of the conversation they had on 19 August.

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23. RFW invited the claimant to a contract review meeting to take place on 22 August 2024. At that meeting, which took place on Teams, RFW informed the claimant that the person he was covering for was coming back to his role and that therefore the claimant's contract of employment would be terminated on 30 August on its expiry. RFW indicated to the claimant that he did not have to work the remainder of his contract and would be paid until 30 August. The claimant did not suggest that the termination of his contract was anything to do with his race or the conversation he had previously with RFW on 19 August. RFW met the claimant the following day to obtain company equipment.

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24. RFW provided the claimant with a letter dated 22 August confirming the termination of his employment and stating that he had the right of appeal against that termination. The claimant did not appeal against the termination of his contract.

5 25. On 6 September 2024, the claimant sent an email to Mr Short entitled "Formal complaint regarding discriminatory treatment and unfair workplace practices." He stated that he was writing to formally raise a complaint regarding the way he had been treated by RFW. He stated "As an African Black man, I believe that my ethnicity has played a significant role in the discriminatory behavior I have experienced. During a conversation with Rachel following a stabbing incident I was involved in, she made an inappropriate and offensive reference to me being part of a gang." The claimant then went on to state that he hadn't been paid for bonuses or received his August payslip. He then stated, "Should I fail to receive an adequate outcome from this complaint, I will be left with no option but to seek legal representation due to the discriminatory treatment I have been subjected to, and the manner in which I felt forced out of my job."

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26. Ms Harris, an Account Manager for the respondent was appointed to deal with the claimant's grievance. She invited the claimant to a meeting on 4 October by letter dated 24 September to discuss the grievance. Notes were taken of that meeting. Ms Harris then met with Mr Short and RFW separately on 10 October to discuss the allegations made by the claimant. Ms Harris then sent a letter to the claimant dated 18 October setting out the outcome of the claimant's grievance. Ms Harris concluded that she did not uphold his allegations of race discrimination or that he hadn't been fully trained. She explained that the claimant's August payslip had not been provided to him as he had left the business and there was no private email address for him. She indicated that she accepted that there could have been better communication round why the claimant's bonus had been withheld and regarding timescales, and that further action would be taken to ensure that personal email addresses were obtained from staff. The claimant was informed that he could appeal against the outcome of the grievance. He did not do so.

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27. Mr Short then sent an email to the claimant on 21 October 2024 explaining the deductions from his final salary and bonus payments. He was informed that a deduction of £295 had been made from his August salary. He was also informed that since then £424.50 of parking charge notices had been received and that this was being withheld from the bonus payment to which the claimant was entitled and the balance of £20.19 would be paid to him. Mr Short provided a breakdown of the deductions which would be made. Mr Short also informed the claimant that repairs to damage caused to the car used by the claimant was estimated at £3200 but that the respondent has not made any attempt to recover that payment at that time.

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28. One of the comparators identified by the claimant, Ms Pollitt was employed on a permanent contract and not a fixed term contract. The other comparator, Mr Roudh was employed on a temporary contract to cover long term sick leave of another employee. That employee subsequently resigned and as a result Mr Roudh's contract of employment was extended although he is no longer employed by the respondent. There were material differences between the circumstances in which both comparators were employed and those of the claimant.

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29. The claimant commenced alternative employment on 14 October 2024 having been offered that employment on 27 September 2024 although he subsequently resigned from that employment.

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Observations on the evidence

30. The claimant's evidence was not wholly credible or reliable. He sought to rely on an email he said he had sent to RFW on 26 July 2024. That document was not in the format of an email. Once it became clear that the "email" suggested that the claimant had not received a uniform when he had in fact received one by the date he said the email had been sent, the claimant changed his position. It was suggested that this email had been sent on a different date and was the same as the email on 15 July which had been sent. The emails were not the same, although there were some similarities. In addition, the claimant said that he had not told RFW that there had been a gun involved in the incident in which he was stabbed. I did not accept this as credible. RFW said she had been told that there had been a gun, and the claimant accepted that there had been a gun. It was not clear how RFW would have known this if the claimant had not told her. The claimant's position was that RFW suggested that he had been in a gang, whereas RFW's position was that she had asked whether the people who had perpetrated the attack on him and his friend were in a gang. She said that she assumed by the time of their conversation, the claimant would have been interviewed by the police, and they might have given him some knowledge about their enquiries. This all seemed far more plausible than RFW suggesting to the claimant that he was in a gang. The evidence of RFW was preferred. RFW was accepted as a credible and reliable witness as was Mr Short.

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Relevant law

35 35 *Unlawful deduction from wages*

13. — *Right not to suffer authorised deductions.*

(1) *An employer shall not make a deduction from wages of a worker employed by him unless—*

(a) *the deduction is required or authorized to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

(b) *the worker has previously signified in writing his agreement or consent to the making of the deduction.*

5 (2) *In this section "relevant provision" , in relation to a worker's contract, means a provision of the contract comprised—*

(a) *in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*

10 (b) *in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.*

15 (3) *Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

20 (4) *Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*

25 (5) *For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.*

30 (6) *For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.*

35 (7) *This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.*

31. A deduction authorised by a contractual term may be contingent on the employer following a certain procedure. If that procedure is not followed, the deduction will be unlawful.

Race discrimination

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Section 13 EqA Direct discrimination

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- (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) *If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.*
- (3) *If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.*
- (4) *If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.*
- (5) *If the protected characteristic is race, less favourable treatment includes segregating B from others.*

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Victimisation

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Section 27 EqA Victimisation

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- (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.*

5 (3) *Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

(4) *This section applies only where the person subjected to a detriment is an individual.*

(5) *The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.*

10 **Discussion and decision**

Unlawful deduction from wages

32. I was satisfied that there was a provision in the claimant's contract of employment which entitled the respondent to deduct sums from his salary in relation to fines incurred when the claimant was using a company car. The provisions were set out in the claimant's contract and the relevant handbooks. However, the respondent made clear in those provisions that sums would not be deducted prior to an employee being informed of the deduction which was to be made. That much is clear from the provision in the handbooks which stated "There could be occasions where will need to deduct money from your salary. We will never do this without you knowing beforehand." The provisions undertook to send an email explaining the position. I accepted that the claimant had received emails from the respondent and those acting on their behalf informing him of the fines which were to be paid. However, I did not accept the respondent's submission that this meant that the claimant had been informed in advance of the deduction. He had been informed that there were sums to be paid by him. That is different from the respondent informing him that these sums had not been paid and therefore would be deducted from his wages. The claimant did not receive a payslip for August until after the termination of his employment. He was not informed in advance of the August pay run that sums would be deducted from that pay. He did not receive an email explaining the position in advance. The claimant was not informed of what sums had been deducted until the email from Mr Short on 21 October. Therefore, the respondent unlawfully deducted the sum of £295 from the claimant's August pay.

33. The position regarding the further deductions was however different. The claimant was due a bonus payment, that payment was withheld by the respondent pending clarification of what sums were due to the respondent from the claimant in relation to fines arising from his use of the company vehicle. The claimant was informed in the email of 21 October, what his

5 entitlement to a bonus payment was and what sums were to be deducted from that payment. He was provided with this information prior to the payment being made. In these circumstances, the respondent did comply with its policy on this occasion and the deductions made are lawful as they were made under a contractual agreement with the claimant.

Race discrimination

34. Turning to the question of race discrimination, it was necessary first of all to determine whether the matters alleged to be detriments by the claimant happened and if so, did they amount to detriments.

10 35. The claimant complained that he was subject to more scrutiny than his comparators, not given enough support, not given a uniform and that his contract was not renewed.

Was the claimant subjected to more scrutiny than comparators?

15 36. The evidence the claimant relied on in this regard was the fact that Mr Roudh's review was not carried out until October. However, the Tribunal accepted RFW's evidence, which was not challenged, that she was obliged to fill out a review form when she accompanied a colleague in the field on their duties. The claimant had complained about challenges he was facing and as a result RFW spent more time with him than she spent with other colleagues. It seemed to the Tribunal that there was a fundamental inconsistency in the claimant's position, that on one hand he was not provided with the same training or support as others, but at the same time he was subject to more scrutiny when RFW sought to address his concerns by providing him with support. The form which was filled in was not a formal appraisal document, it was a document to be filled in following a field visit by RFW. Therefore, there was no evidence that the claimant had been subjected to any more scrutiny than those to whom he compared himself.

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Was the claimant given enough support?

30 37. The claimant did not lead any particular evidence on what support he said others were provided with which he was not. RFW indicated that there had been some training which Mr Roudh had attended which the claimant hadn't as he had not commenced work when it had taken place. Mr Roudh had started work with the respondent on 28 May and Ms Pollitt on 17 June. RFW's position was that the training for each individual was different and dependant on what they needed. There was no evidence that colleagues were provided with training which the claimant did not receive. Indeed, the contrary seemed to be the position in that RFW spent more time with the claimant than the colleagues to whom he compared himself.

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Was the claimant given a uniform?

38. The Tribunal accepted that the claimant was not given any branded clothing to wear when he was working until sometime after the beginning of his employment. Therefore, it was necessary to determine whether this amounted a detriment. What will constitute a detriment will depend on the facts and circumstances of any particular case. It need be no more than a disadvantage. However, the tribunal was not satisfied that the failure to provide the claimant with branded clothing for a number of weeks amounted to a detriment. As explained by RFW, it was not mandatory to wear branded clothing and the claimant would have had various other items with him when visiting clients to demonstrate his authority to sell products including a tablet and point of sale items which could be provided.

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39. In any event, even if the Tribunal is wrong in finding that the failure to provide the claimant with branded clothing until 23 July did amount to a detriment, the Tribunal was satisfied that this was nothing to do with the claimant's race, but because there was none available until RFW received 2 t-shirts from a leaver which she gave to the claimant. In addition, issues of time bar would arise from a detriment said to have taken place between 5 June and 23 July 2024, when the claim was not raised until January 2025.

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20 *Why was the claimant's contract terminated?*

40. The claimant's position was that his contract would have been extended but for his race. His position was that Mr Roudh's contract was extended. However, Mr Roudh's circumstances were materially different from that of the claimant. He had been employed to cover long term sick leave. The person whose leave he was covering then resigned and Mr Roudh's contract was extended as a result. The other comparator was employed on a permanent and not fixed term basis. Therefore, the claimant could not demonstrate less favourable treatment than either individual, as their circumstances were materially different.

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30 41. In any event, the Tribunal accepted the respondent's evidence that the person for whom the claimant was covering was to come back to his substantive role. RFW's evidence was that they had launch days for the following year campaign for the client in early September and that she did not feel it fair or useful for the claimant to attend launch events for a campaign in which he would not be involved. There was simply no evidence whatsoever that the claimant's race had anything to do with the decision not to extend the claimant's contract beyond the initial agreed fixed term. The claimant sought to suggest that RFW had created a discriminatory narrative about him, referring to him as angry and frustrated. However, RFW explained why she had come to that view and there was no evidence to suggest that she had

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developed some kind of stereotype of the claimant as an “angry black man” as the claimant tried to suggest.

Did RFW suggest that the claimant was part of a gang?

42. The final allegation was that RFW had suggested that the claimant was part of a gang and that this was a racial stereotype because the claimant had been involved in an incident involving knife crime. As explained above, the Tribunal preferred the evidence of RFW that what she had asked was whether the claimant’s attackers were part of a gang. This was related to the use of a knife and the presence of a gun. Her comment was not related to the race of the claimant or any attackers. She was simply showing concern for the claimant and asking if he knew any more about why the incident had occurred. RFW did not suggest in any way that the claimant was part of a gang and her reference to his attackers potentially being part of a gang, was not in any way related to race.

15 43. In these circumstances the claimant’s claim of race discrimination fails.

Victimisation

44. The Tribunal then went on to consider whether the claimant had done a protected act. The claimant’s position changed during the course of the hearing as to the protected act on which he relied. He initially said it was the email of September in which he raised a grievance. However, once it was pointed out to him that he could not have been subjected to detrimental treatment for doing a protected act if he had not yet done the protected act, his position changed. He then suggested that he had raised alleged discriminatory treatment with RFW in a conversation with her. His evidence in this regard lacked credibility. Indeed, he did not suggest to RFW in cross examination that he had alleged that she had discriminated against him during any conversation with him. It was noted that the claimant would follow up telephone calls with emails raising concerns. He did not in any of his emails suggest that he had alleged discriminatory treatment. There was no reference to this matter in the claimant’s claim form and it was raised for the first time in submissions by him.

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45. In these circumstances, the Tribunal did not accept that the claimant had done a protected and therefore his complaint that he was subjected to a detriment as a result must fail.