



Reserved Judgment

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mr P Rafis

Sacred River Ltd t/a Sketch

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central

ON: 6-9 January 2026

BEFORE: Employment Judge A M Snelson

On hearing the Claimant in person and Ms L Redman, counsel, on behalf of the Respondent, the Tribunal determines that:

- (1) The Claimant's complaints of direct race discrimination are not well-founded.
- (2) The Claimant's complaints of race-related harassment are not well-founded.
- (3) The Claimant's complaint of detrimental treatment on 'whistle-blowing' grounds is not well-founded.
- (4) The complaints of detriments, alternatively acts of harassment lettered (a), (c), (d) and (f) in the reasons below fail on the further ground that they were presented out of time and the Tribunal has no jurisdiction to consider them.
- (5) Accordingly, the proceedings as a whole are dismissed.

REASONS

Introduction

1 The Respondent is the corporate vehicle for a London restaurant.

2 The Claimant, who was born in this country and describes himself as white, was continuously employed by the Respondent as a Night Cleaner, from 27 December 2023 until he resigned on notice which expired on 13 June 2024. Following a period of Early Conciliation between 15 August and 26 September 2024, he presented a claim form to the Tribunal on 27 September 2024 containing various poorly-defined complaints, all of which were resisted.

3 At a preliminary hearing for case management conducted by Employment Judge Tinnion on 26 February 2025, at which the Claimant appeared in person and the Respondent by a solicitor, it was established that the claims were for direct race discrimination, race-related harassment and detrimental treatment on 'whistle-blowing' grounds and that the discrimination and harassment claims were based solely on his protected characteristic of colour (white). The issues were defined, a directions timetable set and a final 'face-to-face' hearing fixed to commence on 6 January 2026, with four consecutive sitting days allocated.

4 The final hearing duly came before me on 6 January this year. The Claimant appeared in person; Ms Redman, counsel, represented the Respondent. Owing to the last-minute closure of the Tribunal building, the hearing was converted to a video conference call, which led to some delays, but all difficulties were overcome thanks to the cooperation of both sides.

5 On day one I granted an application by the Claimant for a witness order requiring the attendance of Mr Julian Lloyd, who had supplied a witness statement in the Claimant's support. I intervened at various other points to assist him to give the best possible account of his case. I offered breaks at various points. I provided guidance on the way in which cross-examination questions should, and should not, be framed. I gave detailed guidance on the distinction between evidence and argument in order to help him to formulate his closing submissions.

6 The evidence and closing submissions were completed before the lunchtime adjournment on day three. At that point, I reserved judgment to spare the parties the further time and expense of awaiting an oral adjudication.

Evidence and Materials

7 The Tribunal received oral evidence from the Claimant and his supporting witness, Mr Lloyd (already mentioned) and, on behalf of the Respondent, Ms Stacey-Lee Ashmead, Back of House Manager, Mr Solomon Boafor, Night Cleaner, Mr Emmanuel Heymann, Night Cleaner, and Ms Sinead Mallozzi, CEO.

8 In addition to witness evidence, I read the documents to which I was referred in the bundle of 176 pages. The paperwork was completed by a cast list and the helpful written closing submissions of Ms Redman.

The Legal Framework

Direct discrimination

9 The Equality Act 2010 ('the 2010 Act') protects employees and applicants for employment from discrimination and analogous torts. Chapter 2 lists a number of forms of 'prohibited conduct'. These include direct discrimination, which is defined by s13 in (so far as material) these terms:

- (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.**

'Protected characteristics' include race, which includes colour (s9(1)). By s23(1) and (2)(a) it is provided that, for the purposes of (*inter alia*) a direct discrimination claim, there must be no material difference between the circumstances of the claimant's case and that of his or her comparator and that (for these purposes) the 'circumstances' include the claimant's and comparator's abilities.

10 In *Nagarajan v London Regional Transport* [1999] IRLR 572 HL Lord Nicholls construed the phrase 'on racial grounds' in the Race Relations Act 1976, s1(1)(a), in these words:

If racial grounds ... had a significant influence on the outcome, discrimination is made out.

In line with *Onu v Akwiwu* [2014] ICR 571 CA, I proceed on the footing that introduction of the 'because of' formulation (which replaced 'on racial grounds', 'on grounds of age' etc in the pre-2010 legislation) effected no material change to the law.

Harassment

11 The 2010 Act defines harassment in s26, the material subsections being the following:

- (1) **A person (A) harasses another (B) if –**
 - (a) **A engages in unwanted conduct related to a relevant protected characteristic, and**
 - (b) **the conduct has the purpose or effect of –**
 - (i) **violating B's dignity, or**
 - (ii) **creating an intimidating, hostile, degrading, humiliating or offensive environment for B.**
- ...
- (4) **In deciding whether conduct has the effect referred to in sub-section (1)(b), each of the following must be taken into account –**
 - (a) **the perception of B;**
 - (b) **the other circumstances of the case;**
 - (c) **whether it is reasonable for the conduct to have that effect.**

12 In *R (Equal Opportunities Commission) v Secretary of State for Trade & Industry* [2007] ICR 1234 HC, it was accepted on behalf of the Secretary of State that the 'related to' wording of the definition of harassment in the EU Equal Treatment Directive (EU/2002/73/EC), Article 1.2.2, from which the 2010 Act, s26(1) is derived, did not require a 'causative' nexus between the protected characteristic and the conduct under consideration: an 'associative' connection was sufficient. Burton J did not doubt or question the concession. The EHRC Code of Practice on Employment (2011), which does not claim to be an authoritative statement of the law (see para 1.13), deals with the 'related to' link at paras 7.9 to 7.11. It states that the words bear a broad meaning and that the conduct under consideration need not be 'because of' the protected characteristic. I agree, subject to the caveat that more is required than a mere contextual (or 'but for') connection. There must be a link,

proved in evidence or properly inferred by the Tribunal,¹ between the mental processes of the putative harasser and the protected characteristic of the complainant (see *Unite the Union v Nailard* [2019] ICR 28 CA).

13 Despite the ample ‘related to’ formulation, sensible limits on the scope of the harassment protection are, we think, ensured by the other elements of the statutory definition. Two points in particular can be made. First, the Claimant must show that the conduct was unwanted. Second, the requirement for the Tribunal to take account of all the circumstances of the case and in particular whether it is reasonable for the conduct to have the stated effect (subsection (4)(b) and (c)) connotes an objective approach, albeit entailing one subjective factor, the perception of the complainant (s26(4)(a)). Here the Tribunal is equipped with the means of weighing all relevant considerations to achieve a just solution.

14 Central to the objective test is the question of gravity. Statutory protection from harassment is intended to create an important jurisdiction. Successful claims may result in very large awards and produce serious consequences for wrongdoers. Some complaints will inevitably fall short of the standard required. To quote from the judgment of Elias LJ in *Land Registry v Grant* [2011] ICR 1390 CA (para 47):

Furthermore, even if in fact the [treatment] was unwanted, and the Claimant was upset by it, the effect cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The Claimant was no doubt upset ... but that is far from attracting the epithets required to constitute harassment. In my view, to describe this incident as the Tribunal did as subjecting the Claimant to a ‘humiliating environment’ ... is a distortion of language which brings discrimination law into disrepute.

In determining whether actionable harassment has been made out, it may be necessary for the Tribunal to ascertain whether the conduct under challenge was intended to cause offence (*ibid*, para 13). More generally, the context in which the conduct occurred is likely to be crucial (*ibid*, para 43).

Protection against discrimination and harassment

15 It is open to a claimant to pursue a complaint of direct discrimination and a complaint of harassment based on the same act, but the Tribunal cannot uphold both. That is the effect of the 2010 Act, s212(1), which provides that a ‘detriment’ does not include conduct amounting to harassment.

16 Discrimination is prohibited in the employment field by s39 which, so far as relevant, states:

- (1) An employer (A) must not discriminate against an employee of A’s (B) –
- ...
- (c) by dismissing B;
- (d) by subjecting B to any other detriment.

¹ Or, where applicable, treated as inferred pursuant to the burden of proof provisions (see below)

A 'detriment' arises in the employment law context where, by reason of the act(s) complained of a reasonable worker would or might take the view that he or she has been disadvantaged. An unjustified sense of grievance cannot amount to a detriment (*Shamoon v Chief Constable of the RUC* [2003] IRLR 285 HL).

17 Separate protection against harassment is provided by s40(1)(a).

18 2010 Act, by s136, provides:

(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.

19 On the reversal of the burden of proof I have reminded myself of the case-law decided under the pre-2010 Act legislation (from which we do not understand that Act to depart in any material way), including *Igen Ltd v Wong* [2005] IRLR 258 CA, *Laing v Manchester City Council* [2006] IRLR 748 EAT, *Madarassy v Nomura International plc* [2007] IRLR 246 CA and *Hewage v Grampian Health Board* [2012] IRLR 870 SC. In the last of these, Lord Hope warned (as other distinguished judges had done before him) that it is possible to exaggerate the importance of the burden of proof provisions, observing (para 32) that they have 'nothing to offer' where the Tribunal is in a position to make positive findings on the evidence. In *Efobi v Royal Mail Group Ltd* [2021] 1 WLR 3863, Lord Leggatt passed similar comments (para 41). But where the burden of proof provisions have a part to play, I take as my principal guide the straightforward language of s136. Where there are facts capable, absent any other explanation, of supporting an inference of unlawful discrimination, the onus shifts formally to the employer to disprove discrimination. All relevant material, other than the employer's explanation relied upon at the hearing, must be considered.

20 By the 2010 Act, s123(1) it is provided that proceedings may not be brought after the end of the period of three months ending with the date of the act to which the complaint relates, or such other period as the Tribunal thinks just and equitable. 'Conduct extending over a period' is to be treated as done at the end of the period (s123(3)(a)). Now, under the Early Conciliation provisions, the limitation period is further extended by the time taken up by the conciliation process. The 'just and equitable' discretion is a broad power but one to be used with restraint: its exercise is the exception, not the rule (see *Robertson v Bexley Community Centre* [2003] IRLR 434 CA).

'Whistle-blowing'

21 By the Employment Rights Act 1996 ('ERA'), s43B, it is stipulated (so far as relevant) that:

(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is in the public interest and tends to show one or more of the following –

- (a) that a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- (c) that a miscarriage of justice had occurred, was occurring or was likely to occur;
- (d) that the health or safety of any individual has been, is being or is likely to be endangered;
- (e) the environment had been, was being or was likely to be damaged, or are
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

22 Qualifying disclosures are protected if made in accordance with ss43C to 43H (see s43A). By s43C, it is provided that:

- (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –
 - (a) to his employer ...

23 By ERA, s47B(1), it is provided that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

24 The requirement for a disclosure of 'information' was considered by Slade J sitting in the EAT in *Cavendish Munro Professional Risk Management Ltd v Geduld* [2010] ICR 325. She equated 'information' with 'facts', observing that mere 'allegations' did not fall within the statutory protection. This analysis was qualified in *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 CA, in which it was pointed out that the legislation posited no rigid dichotomy between facts and allegations and that 'information' may comprise both: a disclosure which makes an allegation will be protected provided that it has sufficient factual content and specificity.

25 I have borne in mind the authoritative guidance of the Court of Appeal in *Chesterton Global Ltd & another v Nurmohamed* [2017] EWCA Civ 979 on the requirement for the putative whistle-blower to hold a reasonable belief that the relevant disclosure is made 'in the public interest'.

The Key Facts

Background

26 The night cleaning team consisted of Night Cleaners only. There was no supervisor or team leader, but it seems that a degree of direction was provided by more experienced members on occasions. Mr Boafor (already mentioned) had been employed by the Respondent for some 14 years at the time of the material events and, when working, would typically provide guidance to other, less experienced, team members.

27 The Night Cleaning team was managed by Ms Ashmead (already mentioned). She worked day shifts but would arrive by about 7 a.m. and so had the opportunity to catch up on events and issues arising during the night shift (which ended at or about 8 a.m.)

28 The Respondent's workforce was and is exceedingly diverse, ethnically and racially. Ms Mallozzi's unchallenged evidence was that it comprised individuals with 44 different national origins. The Night Cleaning team was also very diverse, including at least six members of black African descent and Mr Lloyd (already mentioned), who describes himself as of Caribbean descent.

29 The Claimant was initially a popular member of the team. He was enthusiastic and hard-working. He introduced a number of changes (with the agreement of the other team members), which he saw as ways of improving orderliness and hygienic standards in the kitchens.

30 Generally, the Night Cleaning team was harmonious and friendly throughout the Claimant's period employment up to about April 2024.

31 The Respondent's managerial structure included the role of Assistant Back of House Manager. That post became vacant in or about April 2024, and the Claimant applied. He was unsuccessful. Unfortunately, he took that disappointing outcome very badly.

32 In the same month, the Claimant suffered another personal blow when his dog, to which he was greatly attached, died.

33 At around the same time, as he told me without challenge, the Claimant was experiencing a number of other stresses in his personal and family life (including a newly-diagnosed physiological health condition) and his mental health was adversely affected.

34 I have no doubt that this combination of factors contributed to a deterioration in the Claimant's behaviour towards those around him in the workplace, which soured the atmosphere.

35 By an email written to Ms Ashmead on the night of 16/17 May 2024, the Claimant gave notice of his resignation, citing racial treatment by 'certain members' of the team and alleging that one (described as 'from Ghana') came in 'half drunk' every night and 'had hate' for him (the Claimant) because he was white. He described the atmosphere in the workplace as 'toxic' and remarked, 'you put 4 Africans in a team, what you think [gonna] happen? As a way forward, he proposed that he be released from his duties and paid at once for his notice period and outstanding leave entitlement. The idea did not find favour and, after being reminded of his notice obligations, he abandoned it.

36 On the morning of 17 May 2024 Ms Ashmead interviewed the members of the team who had just completed the night shift, who included Mr Lloyd and Mr Ramos, both colleagues about whom the Claimant has spoken favourably. None of

those interviewed reported any overtly discriminatory or racist language or conduct. Mr Lloyd remarked that the Claimant had been spoken to 'harshly' on occasions. According to the note relied on by Ms Ashmead, no witness directly corroborated the allegation that a member of the team attended work drunk. Mr Lloyd said in evidence that in fact he had provided such corroboration, and the note was false in that regard.

37 Following interviews with other members of the team, and certain managers, Ms Ashmead concluded that the Claimant's allegations were not established on evidence.

38 As a result of further correspondence from the Claimant repeating and developing the complaints of 16 May 2024, Ms Mallozzi asked Mr Thomas Varo, HR Officer, to conduct a further investigation.

39 In time, the tone of the Claimant's correspondence became both erratic (veering between fulsome praise and fierce condemnation) and disturbing. He accused Ms Ashmead of running 'an apartheid' (she is a white woman who appears to have been born in South Africa) and, in a separate message, referred to her and three team members of black African descent, saying, '[they were] not born here; how dare they treat me like this in the United Kingdom?'. At this point, Ms Mallozzi blocked messages from his email address.

40 Between 16 and 18 July 2024 Mr Varo conducted interviews with eight members of the Night Cleaning team and Ms Ashmead. All interviewees were shown notes of their interviews and approved them. The replies given did not substantiate the Claimant's complaints. Four main trends or themes can be drawn out from the answers given. First, no witness had seen or heard at first hand any overtly race-based treatment or language within the team. (Mr Lloyd did say that the Claimant had told him on one occasion that Mr Boafor had said to him that he was being treated as he was because he was white.) Second, while it was common ground that, at the start, the Claimant had been a popular member of the team, there was some evidence of a degree of resentment of, or at least resistance to, changes which he had brought in. Third, interesting observations were made about the tone of communications within the team (see for example Mr Lloyd's remarks contrasting 'Prince's' 'hard' training style which, he thought, the Claimant found disagreeable, with his own 'softer' manner). Fourth, there was a widely-held perception that the Claimant's relationship with the team had deteriorated severely after his unsuccessful application for the Assistant Manager position.

41 Having received from Mr Varo the evidence generated by his investigation, Ms Mallozzi wrote to the Claimant on 25 July 2024 stating that the further evidence was again inconsistent with his allegations and that his complaints of discrimination or any other form of prejudice were rejected.

Facts specifically relevant to the direct discrimination and harassment claims

42 The Claimant relies on seven alleged detriments for the purposes of his direct discrimination claim and makes parallel complaints, based on the same acts or

events, for the purposes of his harassment claim. My findings, adopting the lettering in the list of issues, are as follows.

43 Detriment (a) states: on 26 February 2024, Solomon Boafor said to the Claimant, 'Are you stupid, Paul?... Do you not know how to do your job?'. The Respondent's first objection was that Mr Boafor was away on sick leave on 26 February 2024. The Claimant appeared not to challenge this proposition, saying that he had given the date of 26 February 2024 at the preliminary hearing, having been put on the spot by the judge. He added that 'the abuse' from Mr Boafor occurred daily and that he (Mr Boafor) was 'managing' the work even when away on sick leave. I find that the evidence is hopelessly inadequate to make good the Claimant's allegation under detriment (a). The date is not established. The circumstances are not established. No witness is identified. The general complaint of daily abuse (in any form) is not plausible in the absence of persuasive, corroborative evidence. The allegation was first made months after the relevant event is supposed to have occurred. The Claimant's own witness does not substantiate detriment (a).

44 Detriment (b) alleges that, on 19 May 2024, Mr Boafor told the Claimant that he was being treated as he was because Ms Ashmead (said to be South African) 'treats us like dogs'. This allegation is not substantiated. In the first place, Mr Boafor was off work on the date named and for more than a month thereafter. Moreover, in the context of the evidence as a whole, the remark attributed to him is, in my view, quite implausible. The allegation is in conflict not only with the Respondent's evidence (from several sources) but also with the Claimant's case, which has at its heart a theory of a race-based policy to *favour*, not disadvantage, a clique of employees of black African descent.

45 Detriment (c) asserts that, on 18 or 19 April 2024, on hearing from the Claimant that his dog had just died, Mr Boafor replied, 'just buy another one, we just throw them in the bush in Africa.' Again, I reject the complaint as not made out in fact. The response attributed to Mr Boafor is not consistent with the amicable relationship which, I find, existed between the two individuals. I accept that Mr Boafor's condolences, which seem to have been conveyed by text message (see Ms Ashmead's witness statement, para 14) may have been, by the Claimant's standards, a little perfunctory, but I do not accept that they were dismissive. Again, no arguable detriment is established.

46 Under detriment (d), the Claimant complains of Mr Boafor giving him 'all the worst jobs', including unblocking drains, cleaning toilets, and cleaning ovens using acid without a protective mask. Again, these alleged acts are not proved on the evidence. The work of unblocking drains and cleaning ovens was, like the other routine tasks, shared out in an equitable way. I find no evidential basis for the suggestion that the Claimant was treated less favourably than any other member of the team in the matter of assignment of tasks. The evidence generally, including that of Mr Lloyd, is entirely to the contrary. As for being required to clean ovens without protective equipment, again, the Claimant provides no detail or context. In the circumstances, I am also not persuaded that any detriment occurred.

47 By detriment (e), the Claimant complains that Ms Ashmead 'blanked' him 'every morning'. Again, no context is offered. I do not accept that this represents his

true experience. Of course, there may have been occasions when, on arriving at work, she may have been busy or distracted and so not acknowledged him directly. But her very purpose in arriving about an hour before the end of the night shift was to make contact with the night cleaning team and pick up on any material developments before starting her day's work. It would have made no sense for her to dissociate herself from the team or any member of it. I reject as unsubstantiated the assertion of a general practice of 'blanking' him.

48 Detriment (f) rests on the allegation that, on 18 or 19 April 2024, after the Claimant had told her that his dog had just died, Ms Ashmead just shrugged. I prefer her account that, as a dog-lover, she understood his sense of loss and responded empathetically. No detriment is made out.

49 Detriment (g) alleges that, 'every day during the Claimant's employment', Mr Heymann came to work drunk, shouted in his face and tried to fight him. Here again, I reject the Claimant's case. It is belied by the evidence of numerous witnesses who worked alongside the Claimant and Mr Heymann. It is also belied by common sense. The notion that Mr Heymann could have got away with such outrageous, routine conduct over a period of about three months (he joined the team in February 2024), attracting no criticism from any quarter, is, to my mind, implausible to the point of absurdity.

Analysis and Conclusions

Rationale for findings of fact

50 I have already explained many of my findings in my narrative above. Generally, I have had regard to the plausibility and consistency of the cases advanced on both sides and have had particular regard to the extent to which contemporary documents shed light on the main areas of dispute. On all of these criteria, I find that the evidence given on behalf of the Respondent is consistently and markedly more reliable than that given by the Claimant. The Respondent's witnesses struck me as careful and responsible. Their evidence was generally consistent with documentary evidence generated at the time of the material events. It was also rational and inherently plausible. By contrast, the Claimant was a thoroughly unimpressive witness who showed himself willing to make strong allegations which he was quite unable to defend.

51 I should add that, as I explained more than once to the Claimant during the hearing, my findings are directed to the legal claims which I have to resolve. Time and again, his preoccupation with side-issues of little or no relevance to the legal claims distracted him (and me) from the issues on which the claims turn. I warned him that I would not be drawn into making findings on such points. If he is disappointed that I have held to that assurance, at least he should not be surprised.

Direct race discrimination

52 On my findings already given, the Claimant suffered none of the seven detriments which he asserted.

53 It follows that the direct race discrimination claim fails without more. But, for completeness, I further hold that, even if I am mistaken in finding no arguable detriment, the discrimination claim fails because there is no possible basis for saying that the Claimant suffered any adverse treatment because of his racial characteristic of being white, or that he was less favourably treated (in respect of any of the seven matters relied upon, or at all) than were the five 'actual' black comparators identified in the list of issues ('Prince', 'Emanuel', 'Mohammed', 'Ibrahim' or Toyin) or than any imaginary non-white comparator sharing his circumstances would have been treated. In short, there is simply nothing pointing to a tendency or disposition to discriminate against him because of his colour.

Race-related harassment

54 The requirement to make out a detriment for the purposes of direct discrimination sets a much lower standard than the corresponding requirement under s26 to prove conduct capable of amounting to unlawful harassment. It follows that my conclusions on detriment are immediately fatal to the race-related harassment claim. In short, the Claimant fails by a wide margin to establish behaviour by the Respondent which, even if it were shown to be race-related, was serious enough to amount to harassment.

55 That disposes of the harassment complaints but, again for completeness, I record that even if I had found any treatment capable of amounting to harassment, I would have held that there was nothing to link it to the Claimant's racial characteristic of being white or the racial characteristics of the black comparators. There is simply no evidence suggestive of any connection, in the conduct complained of or the motivation behind it, which points to his race, or race generally, being a material factor.

Direct race discrimination/harassment – time

56 On the face of it, the claims based on detriments (or acts of harassment) (a), (c), (d) and (f) are out of time. In his favour, I treat the Claimant as relying on the 2010 Act, s123(3)(a) to argue that his complaint was about 'conduct extending over a period' and that accordingly time ran from the last act relied upon. If this argument were right, all claims would be in time, but it is not right. Having considered the merits of the case, I have concluded that no claim under the 2010 Act is well-founded. There was no relevant (*ie* unlawful) conduct. So s123(3)(a), which is concerned with unlawful conduct extending over a period, is inapplicable. That leaves the discretion under s123(1) to substitute a longer period than the 'default' three months, but it would plainly be idle even to consider exercising that power to bring within time claims which have already failed on their merits. It follows that the late claims fall outside the Tribunal's jurisdiction.

'Whistle-blowing'

57 In my view, the Claimant fails to establish a protected disclosure. I agree with Ms Redman that the disclosure concerned the inner workings of a very small part of a minor private commercial organisation. I do not accept that he believed that the disclosure was made in the public interest. In fact, I am confident that that thought

did not cross his mind. And even if I am wrong about that as a matter of fact, I am entirely satisfied that, any belief that the disclosure was made in the public interest was, or would have been, unreasonable. It follows that the ‘whistle-blowing’ complaint does not get off the starting blocks, there having been no protected disclosure satisfying the language of the 1996 Act, s43B(1).

58 There are two further reasons why the ‘whistle-blowing’ claim is unsustainable. The first is that the detriment relied upon is not made out. That detriment was said to consist of a failure to investigate the disclosure. Plainly and obviously, there was no such failure. The Respondent carried out not one investigation, but two. The fact that the investigations reached conclusions unfavourable to the Claimant cannot satisfy the requirement of a detriment, given the way in which the case has been put. The second difficulty is that usually faced when a claimant complains of ‘whistle-blowing’ detriment in respect of any alleged defect in the way in which a disclosure has been addressed. To succeed, such a claimant must show that the *reason* for the defect is the fact of the disclosure having been made. Typically, this is very hard to do. Typically, the disclosure is the *context* for the investigation or the *sine qua non* cause of it: but for the disclosure, the investigation (and the defect) would not have arisen. But that does not make the disclosure the *reason* for the defect. Common sense here, as in most cases, argues strongly against the fact of the disclosure itself being the *reason* for the alleged deficiency in the investigation. The matter can be tested by asking whether, had the disclosure been similar to that made but, for any reason, not attracted the protection of the ‘whistle-blowing’ provisions, would the Respondent’s treatment of it have been any different? Here, as in most cases, the answer is obviously no.

59 In summary, the ‘whistle-blowing’ detriment claim fails for three reasons. First, there was no protected disclosure. Second, there was no detriment. Third, even if there was a protected disclosure and a detriment, the Claimant was not subjected to the detriment ‘on the grounds that’ he had made the protected disclosure.

Outcome

60 For the reasons given, all claims are dismissed.

Employment Judge Snelson

Date: 14 January 2026

Judgment entered in the Register and copies sent to the parties on 17 February 2026

..... for Office of the Tribunals