EMPLOYMENT TRIBUNALS

Claimant: Ms. B Hayes

Respondent: West Leeds Civils Ltd

HELD AT: Leeds Employment Tribunal **ON:** 24, 25, 26 and 27 November 2025

BEFORE: Employment Judge Buckley

REPRESENTATION:

Claimant: Mr Quickfall (Counsel)

Respondent: Mr Atkins, Director of the respondent

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

WRITTEN REASONS

Claims and Issues

1. The claimant brings the following claims:

    a. Direct race discrimination or harassment.
    b. Victimisation.

2. The claim of sex discrimination was dismissed on withdrawal at the start of the hearing.

3. The issues are as set out in the case management order, save that in relation to the victimisation claim:

a. I allowed an application to amend the claim to include a further protected act of an email of 6 August 2024, which attached a number of documents including the document at pages 81-84 of the bundle.

b. I amended the list of detriments in the list of issues to better reflect the claimant claim as set out in the claim form to replace 4.2.1 and 4.2.2 with the following detriment:

> 'Did the respondent pursue allegations of gross misconduct via instructions to Matt Livesey of Black Ink HR up to 21 October 2024.'

c. Detriment 4.2.3 remains as set out in the list of issues.

4. Mr Atkins did not object to the amendments, but as the respondent was unrepresented, I considered them as formal applications in any event and allowed them for the reasons given orally in the hearing.

Evidence

5. The claimant gave evidence in support of her claim. The claimant's oral evidence was consistent with the evidence in her witness statement and the version of events set out in the claim form. She gave a convincing explanation of how she had remembered the specific dates of the incidents included in the claim form and witness statement. She made concessions where appropriate. There was some inconsistency, in that the claimant said in a document in the bundle that she had 'so much respect' for Mr Atkins, and said in evidence that that was true. However taking her evidence as a whole, I do not think that this inconsistency undermines the claimant's clear evidence on the effect of Mr Atkins' conduct.

6. Overall, I find that she was doing her best to assist the tribunal and gave credible and considered evidence

7. For the respondent I heard from Mr Atkins and Mr Smith.

8. Although Mr Atkins confirmed at the start of his evidence that he had read his witness statement recently, and that it was true to the best of his knowledge and belief, he accepted during cross-examination that a number of paragraphs were inaccurate. He was unable to explain in a consistent and convincing manner why he had formed a belief in various aspects of the misconduct allegations made against the claimant. For example, his explanation of why he had told Black Ink HR that he had had no knowledge that the claimant was working for another employer was inconsistent and unconvincing. He claimed that there was a mistake of timing, but this cannot explain why he made a statement to Black Ink HR that Mr Atkins was not aware that the claimant was working for another employer while employed by the respondent, when he accepted that he was aware of that fact. Similarly his explanation of why the claimant was accused of defrauding HMRC was inconsistent and unconvincing. Overall I did not find Mr Atkins to be a convincing witness.

9. Mr Atkins accepted that he said or wrote the things that are said to amount to race discrimination or harassment, although he denies that they amount to race discrimination or harassment.

10. Mr Smith's statement is less relevant to the matters in issue, but I also had concerns about the reliability of his evidence.

11. In paragraph 8 he says that he says that he occasionally heard the claimant joke with Mr Atkins, 'calling herself a potato'. Nowhere in the witness statement does he say that he ever heard Mr Atkins calling the claimant a potato. In paragraph 12 he says 'to the best of my knowledge, I have not witnessed any derogatory or discriminatory language or behaviour in the workplace.' He amended that paragraph of his statement to say 'any further derogatory or discriminatory language' at the start of his evidence to take account of the fact that he accepted that his use of the C-word, admitted earlier in the statement, fell into that category.

12. Even with that amendment, his witness statement clearly creates the impression that he had not witnessed any of the conduct alleged to amount to harassment.

13. When Mr Quickfall put to Mr Smith the incidents that the claimant said had taken place in Mr Smith's presence, or that he had taken part in, his initial response was 'I don't recall'. When another incident was put to him his answer was 'I don't' recall any of these' but he said that 'there was a bit of back and forth' and that he 'did not make notes of dates when the word potato was used so the answer is going to be the same'.

14. That position, that he did hear Mr Quickfall using at least one of the terms alleged by the claimant, but that he did not remember the dates, is different to the clear impression created by his witness statement. The witness statement overstates the position in a way that would, if accurate, bolster the respondent's case.

15. Secondly, paragraph 10 of Mr Smith's witness statement clearly states that a 'number of financial irregularities' were raised internally for investigation, including matters which do not appear in the documents related to the investigation of misconduct in the bundle, in particular suspected overpayments and underpayments in payroll. When questioned by Mr Quickfall, Mr Smith accepted that the over and under payments had been corrected, so these matters had not formed part of the disciplinary process. Again, in my view paragraph 10 overstates the position in a way that would, if accurate, bolster the respondent's case.

16. Overall I took the view that Mr Smith's witness statement, which he confirmed was true to the best of his knowledge and belief, was intended to create a more favourable impression of the facts than that which emerged on questioning and is apparent from documents in the bundle. In my view, his evidence was given with the intention of putting the respondent's case in the most favourable light rather than with the intention of simply stating all the relevant facts as he recalled them.

17. For that reason, to the extent that it touches on relevant matters, I do not consider Mr Smith's evidence to be entirely reliable.

18. For the above reasons where there was a dispute of fact, in general, I preferred the evidence of the claimant to the respondent.

Documentary evidence

19. I also had in front of me a bundle of 333 pages, plus a number of additional pages. Some of the documents in the bundle had been disclosed late as had the claimant's remedy statement. I gave permission for the reasons given orally in the hearing. A number of documents were also added to the bundle with my permission during the hearing. I gave reasons for that during the hearing, but I note here that none of those documents were seen by the parties for the first time during the hearing.

20. I also listened to a short recording of a telephone call during the hearing. The claimant produced a transcript of the call at my request. I gave the respondent the opportunity to raise any objection to the accuracy of that transcript and no objections were raised.

Relevant Law

21. Because I have found that the conduct amount to harassment, I have not needed to consider direct discrimination and so I have not set out the law on direct discrimination.

Harassment related to race

22. The relevant provision is section 26 of the Equality Act which provides that the claimant must show that she has been subjected to unwanted conduct relating to her race and having the purpose or effect of either violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment

23. There are three essential elements of a harassment claim:

    a. Unwanted conduct
    b. Having the purpose or effect set out above
    c. Which relates to a relevant protected characteristic.

24. In **Reed and anor v Stedman** and **Insitu Cleaning Co Ltd v Heads** (above) (both decided before the statutory harassment provisions came into force) the EAT held that the word 'unwanted' is essentially the same as 'unwelcome' or 'uninvited'. This is confirmed by the EHRC Employment Code (see para 7.8). The EAT in **Thomas Sanderson Blinds Ltd v English** EAT 0316/10 pointed out that unwanted conduct means conduct that is unwanted by the employee. The necessary implication is that whether conduct is 'unwanted' should largely be assessed subjectively, i.e. from the employee's point of view.

25. In deciding whether the conduct has the effect referred to in S.26(1)(b) (i.e. of. violating that claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, each of the following must be taken into account:
    51.1. the perception of the claimant;
    51.2. the other circumstances of the case; and
    51.3. whether it is reasonable for the conduct to have that effect

26. The test therefore has both subjective and objective elements to it. The subjective part involves the tribunal looking at the effect that the conduct of the alleged harasser (A) has on the complainant (B). The objective part requires the tribunal to ask itself whether it was reasonable for B to claim that A's conduct had that effect.

27. Whether or not the conduct is related to the characteristic in question is a matter for the assessment of the tribunal, making a finding of fact drawing on all the evidence before it. Where direct reference is made to an employee's protected characteristic or he or she has been subjected to overtly racist/sexist/homophobic, etc, conduct, the necessary link will usually be clearly established.

Victimisation

28. The relevant provision is section 27 of the Equality Act 2010 which provides that the respondent victimises the claimant if the respondent had subjected the claimant to a detriment because the claimant has done a protected act. The concept of a protected act includes doing something for the purposes of the EA 2010 and making an allegation, whether express or not, that someone has contravened the EA 2010.

Compensation

29. The purpose of compensation is to return the injured party to the same position they would have been in but for the unlawful conduct The purpose is not to provide a windfall for the Claimant and is not to punish the Respondent.

Financial losses

30. As set out above both financial losses and injury to feelings are compensatory. This was confirmed in **Chagger v Abbey National plc** [2009] EWCA Civ 1202 where it was said that: 'The task is to put the employee in the position he would have been in had there been no discrimination'. I cannot award financial losses caused by any other events, or losses that would have occurred anyway.

Injury to feelings

31. I have considered in detail the recent decision of the EAT in **Eddie Stobart Limited v Miss Caitlin Graham** [2025] EAT 14, at paragraphs 30 to 52, which provides comprehensive guidance regarding injury to feelings (ITF) awards. Those paragraphs are reproduced in Annex A.

32. The Claim Form (ET1) was issued on 21 October 2024. The relevant **Vento** bands for claims presented after 5 April 2024 but before 6 April 2025 are a lower band of £1,200 to £11,700 (less serious cases); a middle band of £11,700 to £35,200 (cases that do not merit an award in the upper band); and an upper band of £35,200 to £58,700 (the most serious cases), with the most exceptional cases capable of exceeding £58,700.

Findings of fact

33. For the reasons set out in my observations above, where there was a conflict of evidence, I preferred the evidence of the claimant, and the following findings of fact reflect that.

34. The Respondent is a building and civil engineering services contracting company.

35. The claimant is Irish. She started work in about September/October 2021 as an office manager/bookkeeper. She was not provided with a written statement of particulars of employment or any written contract of employment. I do not accept that the claimant was told to provide herself with a contract of employment when she started work.

36. The claimant began working for the respondent part time. The precise number of days that she worked varied. At that time she also worked for another company as a bookkeeper. As time progressed she increased her hours with the respondent and decreased her hours with the other company. Mr Atkins was aware that the claimant was working for another company at the same time as working for the respondent, because the claimant had made him aware of this. Mr Atkins had no issue with this at the time. In about June 2022 the claimant started working for the respondent full-time and stopped working for the other company.

37. In about December 2023 Marcus Smith started working with the respondent. It is unclear in what capacity he was working for or with the respondent. He is a friend of Mr Atkins. He was not employed by the respondent although he was a partner with Mr Atkins in another company, Plant and Commercial Sales Limited. His witness statement says that he was 'engaged by the respondent on 2 January 2024 to assist with their financial operations and business development'. Before Mr Smith confirmed that his statement was true, he said that that was not correct. He said he had not been engaged to assist with the respondent's financial operations and business development. It is clear from the documents in the bundle and the evidence of the parties that, in practice, he was involved in the respondent's business and in particular in communications with the Black Ink HR arising out of the claimant's disciplinary process.

38. It is clear that the claimant had a number of concerns about the involvement of and the actions of Marcus Smith. For example, in a message to Mr Atkins dated 5 March 2024 (p181) she said the following:

> ‘Whilst I have the courage! I need to talk to you today. Marcus is driving me nuts and I can't actually stand it anymore. It’s making me anxious and I can’t sleep. Don't know if I am overreacting or not. But I really need to talk about it as I don't want it getting worse. Let me know if you are about today.’

39. The claim of racial harassment is based on comments made by Mr Atkins spanning a period of 6 months from the end of December 2023 to the end of June 2024. The incidents take place at intervals of between a few days to, at the most, three weeks. The language used by Mr Atkins is either ‘potato’ ‘paddy’ ‘stupid paddy’ or ‘pikey’. Mr Atkins did not deny that he said or wrote any of the comments alleged by the claimant to amount to race discrimination or harassment. In addition, the written comments are evidenced by messages included in the bundle.

40. I find that Mr Atkins said the things set out in paragraphs 16 – 42 of the claimant’s witness statement took place.

41. I find that the claimant told Mr Atkins on a number of occasions that she did not find his comments funny.

42. I find that the claimant did not *regularly* use the term ‘potato’ to describe herself. I do not accept that these conversations were, in general, ‘back and forth’ as Mr Smith described it. I accept the claimant did, on two occasions, ‘join in’ in the sense that she used the word potato or the potato emoji in text messages. In January 2024, after Mr Atkins had called her a potato in a text message, the claimant responded with a potato emoji. I accept that her reason for doing this was to fit in and to ‘make it seem ok’. On one more occasion, in February 2025, after Mr Atkins had called the claimant ‘potato’, she replied, some days later, with a potato emoji. I accept that the claimant was attempting to make light of the situation.

43. On Monday 1 July 2024 the claimant was unwell and too sick leave. She messaged Mr Atkins on 2 July 2024 as follows:

> “So we probably need to speak. I know you are busy, so let me know a good time, so we have time to go through it together. I do want to leave, I am sorry. Life is too short and I have been unhappy for some time, and it's not fair on either of us to let that continue. I have so much respect for you, and appreciate everything you've ever done for me. I don't have another job, so would be more than happy to do the right thing and help you get someone else and show them the ropes. If you don't want that, obviously that's fine too. I appreciate it's your business, so entirely up to you. I will leave the ball in your court. But if you do want to talk I would prefer face to face as I find that easier.

44. Mr Atkins did not respond to this message. It is clear from the claimant’s grievance letter dated 4 July 2024, which I set out below, that the concerns referred to in this message that she wished to discuss with Mr Atkins were primarily concerns about what the claimant terms in that letter ‘organisational change’, and which related in essence to the involvement of Mr Smith.

45. On 4 July 2024, the claimant raised a formal grievance about organisational changes in the business since Marcus Smith became involved. The letter reads:

> "The issue which has led to me lodging this grievance concerns organisational changes and began on 18 December 2023. The organisational change resulted A fundamental change to my day-to-day job. I have previously tried to resolve these problems at work informally:
> - I raised the issue informally with Mr Atkins, we discussed it and he completely dismissed my concerns.
> - I raised the issue again, by text and in person, and I was told that nothing was going to change, so I needed to accept it and get on with my work
> - During sickness absence I raised the issue again and have been completely ignored.
>
> I have not had any success to resolve trying to resolve matters in this way, so I'm now pursuing a form or formal route.
>
> I would very much like to address the problem without the need for any legal action. I would like to propose the following method of resolving the current situation so that I can focus on my job without being affected by these issues:
> - the director of the business should take my concerns seriously and listen with a view to reaching a reasonable conclusion for both parties."

46. The reference to raising the issue by text must be a refence to the message of 5 March set out above.

47. Mr Atkins replied to that letter on 9 July 2024, in which he asked for further information about the grievance, because the letter did not set out what the changes to the claimant's role were that she was unhappy about.

48. The next day, on 10 July 2024, the claimant sent an email to Mr Atkins, which said as follows:

> "Dear Mr Atkins thank you for your letter of 9th July 2024 you will be aware, as am I, that you operate an open inbox and the subject of my grievance, and other staff, have access to your e-mail. I therefore cannot make this confidential as it should be treated. Hence, my reluctance to elaborate on my formal grievance. I feel extremely uncomfortable sending this information by e-mail however you've left me with no other option - and I do so against my better judgement - as I have requested a meeting twice now, and you have ignored it on both occasions. You do also have brief details of the nature of my complaint in my text message to you on 5th February 2024, which you failed to reply to. I also raised this issue verbally with you in February 2024."

49. Pausing there, it is clear that the primary complaint is against Mr Smith, not Mr Atkins – this is clear from the refence to 'the subject of mu grievance; (which

must be Mr Smith) having access to the email inbox and also to the message of 5 March 2024.

50. The claimant continues by setting out complaints about the involvement of Marcus Smith since December 2023 and the changes to the claimant's role that this had involved. The claimant states that Mr Smith, for example, undermined her work causing her significant mental health issues. The claimant states that Mr Atkins has ignored her concerns and sent her instead intimidating messages outside of working hours making her feel bullied and harassed which has affected her mental health. She says that when it was clear she was struggling she was offered no support and was made to feel bullied and harassed by receiving passive aggressive texts while she was off sick which affected her mental health. She complains that Mr Atkins has told Mr Smith privately and outside the work environment every time she made a complaint which has affected her mental health and made her working life more difficult. She also says that Mr Smith's personality is bullish he is arrogant and created a toxic work environment which has affected her mental health.

51. At the end of that e-mail she says 'As an addendum to my original grievance I want to add the following. I would like to raise a further grievance of indirect harassment related to a protected characteristic. Please let me know if you would like further details or if you would prefer to wait until we've dealt with the current grievance'.

52. That addendum is the first protected act relied on.

53. Mr Atkins acknowledged the e-mail of 10 July 2024 in a letter of 15 July 2024. In that email he summarises her grievance regarding organisational changes and asks that the claimant provide full written details of the further grievance in relation to harassment relating to a protected characteristic. The letter invites the claimant to a meeting at the respondent's premises to investigate the grievance with Mr Atkins on 29 of July 2024.

54. On 19 July 2024, the claimant asked a colleague, Molly Simpson, to look in a drawer at work for her marriage certificate, because she needed a copy for her divorce. While looking through the documents in the claimant's drawer Ms Simpson discovered an undated letter on the respondent's headed paper, which appeared to be from Mr Atkins, and included his signature stamp. The letter is addressed to 'to whom it may concern' and includes the claimant's address. The letter states ' Please note that the above employee will receive a salary of £45,000 as from 1st April 2024'.

55. There is no dispute that the claimant did not receive a pay rise of £45,000 on 1 April 2024. I do not need to resolve the precise circumstances surrounding this letter. The claimant said in evidence that following her divorce she had had a discussion with Mr Atkins in relation to taking a mortgage on a property on her own, and Mr Atkins had said 'you can pay yourself whatever you want'. The says she replied 'I don't need too much more I only need £45000' and Mr Atkins said that was 'fine, you do that'. She says that following that conversion she typed up the letter in case she needed it for a mortgage application, but never used it.

56. Mr Atkins was adamant that he did not and would not have said to the claimant that she could pay herself what she liked, and that he did not authorise her to write the letter or put his signature on it.

57. I do not need to resolve that factual dispute, but in my view, on finding such a letter in July 2024 that the signatory had not seen or approved and in circumstances when the claimant's pay had not increased to £45000 in April 2024, it would not be unreasonable for an employer to have concerns and at the very least ask the claimant about the circumstances in which that letter had been written.

58. I turn now back to the chronology, and the grievance.

59. The claimant requested that the meeting took place at a neutral location. The respondent agreed to a meeting, which was intended to take place on 29 July 2025.

60. By letter dated 27 July the claimant indicated that she was not well enough to attend and wanted the grievance procedure to be undertaken in writing. She also pointed out that Mr Atkins would have a conflict of interest in investigating himself, and asked him to appoint an independent HR company to undertake the investigations.

61. On 5 August 2024 the claimant, who still had access to the respondent's emails, saw an e-mail from Marcus Smith to Mr Atkins headed 'new Bernie'. Which included a copy of a CV for another individual.

62. The respondent's evidence was that the claimant's access to emails was removed when she went off sick. No reason was given as to why the respondent would have removed the claimant's access to her work emails while she was off sick and the claimant's evidence was clear that she still had access. I accept her version of events.

63. The claimant provided further details of her grievance attached to an e-mail of 6 of August 2024. this Included a four-page document which sets out the grievance. It has 6 headings: background, grievance, changes in my role, race sexism, disability and other

64. Under the heading 'grievance' the claimant says:

> 'I suffer from anxiety and depression. The last six months at this job has made me feel like I have suffered a death by 1000 cuts. Due to working in a hostile and toxic environment my GP signed me off work with work related stress on 29th July 2024. This is after months of harassment and bullying, which has led me to have panic attacks, stop sleeping and stop eating. As a result, I have lost 2 stone in weight. I am 55 and I've been in menopause for two years. However I started bleeding and was subsequently referred to an urgent cancer pathway for the symptoms. I had to endure invasive tests and weeks of worry. Fortunately all was clear but the symptoms exhibited are attributed to stress. I passionately believe that this was caused by the actions of Mr Atkins Mr Smith. I had to increase my medication sertraline

from 100 milligrams to 200 milligrams, in an attempt to control the symptoms. I have a reasonable belief that Mr Atkins is in breach of my contract of employment. His actions and those of Mr Smith have undermined, eroded and impinged my trust and confidence.'

65. The claimant lets then sets out detail under all the different headings. Under race the claimant states relevantly as follows.

> 'Throughout my time at West Leeds Civils, Mr Atkins did make occasional comments about me being Irish. Most in gest, and whilst I knew it was wrong, I tried to accept it as humour. However throughout the last six months, since Mr Smith has been involved in the businesses this has ramped up.
> (1) If we had a disagreement, he would shout potato in a strong Irish accent over and over again. He done this in front of other members of staff. He would shout potato as soon as he walked in the office without having me having even spoke to him.
> (2) This totally eroded my self-respect and my self esteem. It made me feel small, insecure violated and extremely anxious. It also made me feel embarrassed. I was also afraid to ask him to stop as he is an intimidating volatile character. I had a huge change in my personal circumstances, and I needed my job. I felt trapped, and this added to my anxiety. I used to remain quiet so as not to draw attention to myself but even this did not work.
> (3) He even sent potato in a WhatsApp exchange.
> (4) Mr Atkins further called me a gypsy/traveller due to my Irish heritage. He would constantly say that I was lusting after the travellers outside the office. I felt bullied and harassed by this'.

66. This attachment to the e-mail of 6 of August 2024 is relied on as the second protected act.

67. On 9 August 2024 Mr Smith emailed a friend who was also a recruitment consultant with details of a job description for an administrator to work with the office manager. This was not the claimant's role. This was a role intended to assist the claimant. The email shows that this was intended to be a permanent post with a salary of 22–25,000 per annum. Mr Smith said that the friend was often used to give advice on potential recruitment adverts.

68. There is then a series of correspondence in August 2024 between IPS Finance Recruitment and Mr Smith, on behalf of the respondent, in relation to recruitment of a temporary and a permanent bookkeeper.

69. The claimant also had a discussion with the recruitment agent about that role, in which the transcript shows that the agent says that the respondent is looking for "two recruits": an interim in the short term, and then says that "they will focus on the permanent recruit when they have got an interim in post, in any instance they do need to make a permanent hire".

70. Mr Smith's evidence was that the reference to a permanent post was a reference to the administrator to work with the office manager, as described in the job

description that was sent to his friend on 9 August 2024. He says that they decided to increase the salary to the level of the claimant's role because they were struggling to recruit. The claimant says that they were trying to replace her and that is an action of victimisation. In Mr Atkin's statement he says that they only instructed IPS to recruit for a temporary role. This was not what was said in evidence.

71. I am not persuaded by the respondent's explanation. The transcript and the emails in the bundle clearly show that the respondent was looking to recruit, in the short term, an interim appointment and ultimately a permanent appointment to the same role. That is the important point. It is not only the same salary - which might be explained away by the respondent's decision to increase the salary because they were struggling to recruit - but the emails from the recruitment agent are clearly talking about recruiting to the same job description, the same position, with the only difference being permanent or temporary. It is not a discussion about two different roles, one, albeit at the same salary, in a more junior or assistant position. In addition, the use of the phrase "new Bernie" in the heading of an email is telling.

72. On that basis I accept that they were advertising to recruit a permanent replacement for the claimant.

73. On 16 August Mr Smith emailed the claimant's previous employer, Option Box, to ask about a "discrepancy" about her submission to HMRC regarding her start date and asking them to confirm the date of her resignation from Option Box as 20 June 2022.

74. On a date in August 2025 Mr Smith, on behalf of the respondent, contacted an independent HR company, Black Ink HR, about potential disciplinary action against the claimant. I do not know what was discussed over the telephone or when the first contact took place. On 29 August Matthew Livesey from Black Ink HR emailed Marcus Smith with a proposed letter to the claimant inviting her to a hearing to discuss one potential gross misconduct allegation. That allegation was: Fraud – off payroll working.

75. Mr Smith replied, on behalf of the respondent, saying 'Please could you include the mortgage letter stating an increase in salary as of April 2024 which didn't occur (pay slips) along with a copy of the resignation letter with the picture highlighting the last person to edit the document and the date. Finally, I feel we should insert in the reasons for the hearing to include not only the fraud – off payroll working – but also various fraudulent documents and non-disclosure of other employment'.

76. That was then the basis for the disciplinary invite letter that was sent to the claimant on 29 August, which included the following allegations:
    82.1. Fraud – off payroll working
    82.2. Fraudulent documents
    82.3. Non-disclosure of other employment

77. Those proceedings continued up until the date of the claim form. Ultimately, they led to claimant's dismissal because of the mortgage letter. The other allegations were not upheld.

Findings of fact about injury to feelings

The claimant's description of their injury

78. The discrimination took place over a period of 6 months between the end of December 2023 and the end of June 2024. During that period, the comments about being Irish and imitations of her accent made the claimant feel anxious and nervous.

79. During that period I accept that the claimant hated going into work. As soon as she woke up on a working morning, she began thinking about the comments and felt nervous for what would happen that day. She didn't want to attend work but knew she needed to. She found herself delaying going into work. She often would sit in her car outside work prior to her working day trying to encourage herself to go into the building.

80. She would wait to see who was in the carpark and hope she didn't see Mr Atkin's car. She would also check her emails to see if she could figure out if Mr Atkin would be away from the office.

81. She felt physically sick walking into the office when Mr Atkins and Mr Smith were both there as she dreaded them mocking her. She would walk into the building with her head down and try to go into the office really quietly and quickly to avoid entering into conversation with Mr Atkin or Mr Smith. As soon as she sat down at her desk she would start making work phone calls and checking emails to avoid entering into conversation.

82. I also take account of the findings made above in relation to what was stated in the grievance letter.

83. Between July 2024 and 21 October 2024, a period of approximately 4 months, the claimant was absent from work. The sick notes in the bundle show the reason for her absence from 25 July was work-related stress, and a letter from the GP dated 14 September confirmed this.

84. While the claimant was off work, she began reflecting on the impact of attending work. She had difficulty sleeping and when she did sleep she had nightmares about returning to work. She was worried about everything and found herself becoming more and more isolated. She reflected on the comments that had been made every day.

85. There was no evidence before me of any ongoing impact on the claimant after her dismissal.

Discussion and conclusions

Victimisation

86. There are clear allegations of discrimination made in the two letters relied on, which makes them protected acts.

87. I deal firstly with the pursuit of the disciplinary process.

88. Mr Atkins was asked in detail about the allegations, other than the mortgage letter, including other fraudulent documents including a P60, about non-disclosure of other employment and fraud – off payroll working.

89. It is clear from his evidence that these allegations were completely baseless. I will not repeat his evidence here, but his explanation of why he thought the P60 was a fraudulent document made no sense. He accepted that the claimant had disclosed her other employment and was unable to provide any satisfactory explanation of why he had told Mr Livesey that she had not disclosed her other employment. Further, he accepted that the record of payments to the claimant showed that she was paid net and that his problem had been with her using a different payroll system.

90. As I have said above, it was not unreasonable to consider that the mortgage letter needed some explanation or investigation. What Mr Atkins, with assistance of Mr Smith, did - instead of simply asking the claimant about the mortgage letter, or inviting her to a meeting to discuss that letter, or even setting up a formal investigation meeting to discuss that letter - was to attempt to cobble together a series of entirely baseless and historic allegations of gross misconduct, supported at least in part by an admittedly false statement (i.e. the untrue statement by Mr Atkins to Mr Livesey that he did not know that the claimant had had another employer) and in other parts unsupported by any coherent explanations.

91. That unexplained and irrational action by the respondent is what has persuaded me that the instigation of disciplinary action was triggered by the complaints made by the claimant. Some of those complaints were not protected acts and I am sure that the other complaints also played their part in the decision, but there is in my view a clear causal link between the protected acts and the pursuit of that disciplinary process.

92. I find that part of the victimisation claim succeeds.

93. In relation to the decision to try to recruit a replacement, I am not persuaded that the claimant has established any causative link between the complaint of discrimination and the decision to advertise for a permanent replacement. The claimant had said that she wanted to leave at the start of the grievance process. She had stated in terms that the relationship of mutual trust and confidence had been undermined. The relationship had not improved since that date. Against that background, I am not persuaded that there is a causative link between the fact that the claimant had made allegations of discrimination and the decision to begin the process of looking for a permanent replacement. I do not accept that that detriment was by reason of the protected act.

Harassment

Unwanted conduct

94. Although I have accepted that the claimant did 'join in' on a small number of occasions, most of the time she did not. I have accepted that this was an attempt to make light of the issue and to 'fit in'. I have also accepted her evidence that the conduct was not, in fact, wanted. On that basis I find that it was unwanted conduct.

95. Turning to the effect of that conduct, I have accepted the impact that this conduct had on the claimant set out in evidence above. From a subjective point of view, it clearly created a hostile, humiliating and offensive environment for her. In my view, taken as a whole, it is reasonable for an individual of Irish heritage to find the repeated use of the terms "potato", "Paddy", "stupid Paddy" and "pikey" offensive and humiliating.

96. These phrases are overtly linked to race, particularly when considered together rather than in isolation. On that basis I find that the conduct was linked to race.

97. On that basis the harassment claim succeeds.

98. Having found that he conduct amounts to harassment, it cannot also amount to direct discrimination and that claim is dismissed.

Time limits

99. This is very clearly a course of conduct. It is perpetrated by the same individuals throughout, the same comments are used repeatedly and it occurs on a frequent basis through the entire period. On that basis, none of the complaints are out of time.

Assessment of injury to feelings

100. I was not addressed separately on injury to feelings flowing from the harassment and injury to feelings flowing from the victimisation. In my view that is the right approach – it is not possible to separate the two and I am awarding a global sum, not apportioned between the two claims.

101. The manner of the discrimination is neither determinative of nor a proxy for the injury to the claimant, but it can be a tool for inferring the level of injury. The factors in this case that suggest that the middle bracket would be appropriate are the frequency and duration of the conduct, the overt nature of the comments, and the humiliating language which references not only race but also stupidity both of the claimant individually and of the Irish race. That sort of conduct is more likely to cause more significant distress.

102. The evidence from the claimant has been set out in detail above. The impact over the 6-month period while the claimant was at work is significant, but did not prevent the claimant from working. She felt anxious and nervous and physically sick when coming to work. There were clearly other significant unpleasant and

non-discriminatory matters going on at work which were contributing to that anxiety and I take that into account.

103. There was then a period of 4 months where the claimant was too stressed to work. Some of that was as a result of other factors, although I accept below that the work-related stress and therefore the absence was materially caused by the discrimination. During that period, she was unable to work, and there were more serious impacts, set out above in detail.

104. Overall this lasted for a period of about 10 months. This is not a case where continuing impact beyond that is evidenced either in terms of upset or in terms of ability to work or in terms of effect on ability to carry out hobbies etc.

105. In my view, for all those reasons, although I accept this does fall in the middle band, taking account of the factors set out above, in my view it falls towards the lower end of the middle band, and an appropriate amount is **£13,000.**

106. I have had regard, as a sense check, to the Judicial College Guidelines for the assessment of general damages for personal injury, currently in the 17th edition. Without seeking to equate an award of injury to feelings with any particular type of personal injury, I consider that the sum of £13,000 meets the requirement for broad similarity with the figures found in the guidelines having regard to the nature, extent and duration of the claimant's injury.

Loss of earnings

107. On the basis of the evidence of the claimant, I am satisfied that there is a causal link between the discrimination and, once disciplinary proceedings started, the detriment and the claimant's absence from work. It was not the only factor, but it clearly played a significant part, or in other words, materially contributed to the "work-related stress" that the claimant's sick notes show to be the reason for her absence. There were clearly other factors at play, but there is no evidence on the relative impact on the claimant's mental health of the other conduct by, for example, Mr Smith, to the extent that I can, in any sensible way, say that there is X percentage chance that she would have been off work in any event. There is simply no evidence on the relative contribution of those factors. For those reasons, and taking into account my findings on the impact of the discrimination in particular, I am satisfied that her absence was materially caused by the acts of discrimination, and there is no evidence upon which I seriously consider making a percentage deduction.

108. I therefore award an amount of **£6,014.13** which is the net difference in pay between what the claimant would have received if she had been able to continue working and what she actually received.

Failure to provide a written statement of terms and conditions

109. It is admitted that no written statement was provided. I have rejected the respondent's explanation that the claimant was told to provide her own. On that basis it is appropriate to award 4 weeks' pay, taking into account the statutory max of £700 that amounts to **£2,800**.

Interest

110. I award interest on the award of injury to feelings from the last act of discrimination which is the date that the claim form was submitted, to the date of the hearing, which is 400 days = 1.0959 years at 8%:
£13,000 × 0.08 × 1.0959 = **£1,139.71**

111. For the financial losses, I award interest from the halfway point between the start and the end of the loss. The midpoint is 9 September 2024.

442 days = 1.210 years

£6,014.03 x 0.08 x 1.210
= **£582.16**

Approved by Employment Judge Buckley

Date 8 January 2026

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ANNEX A

Paragraphs 30 to 52 of Eddie Stobart Limited v Miss Caitlin Graham [2025] EAT 14

30. By section 124(2)(b) **EqA**, the remedy for discrimination may encompass an order by an ET that the respondent pays compensation. Compensation is assessed in the same way as any other tortious claim, corresponding to the amount that can be awarded by a County Court or Sheriff: it should return the injured party to the same position they would have been in but for the unlawful conduct. This applies equally to awards for injury to feelings (see, generally, **Ministry of Defence v Cannock** [1994] IRLR 509). Such awards address non-pecuniary losses, and so are a form of general damages (in Scotland, "solatium"): a sum to compensate for pain, suffering and loss of amenity. They can also be made for claims of detriment under Part V **ERA** (see **South Yorkshire Fire & Rescue v Mansell** UKEAT/0151/17), and which would include section 47C **ERA**.

31. The five key points of principle were established by the EAT, nearly 30 years ago, in **Armitage, Marsden and HM Prison Service v Johnson** [1997] IRLR 162 (at paragraph 27):

> (1) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.
>
> (2) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could, to use Lord Bingham's phrase, be seen as the way to untaxed riches.
>
> (3) Awards should bear some broad general similarity to the range of awards in personal injury cases. We do not think this should be done by reference to any particular type of personal injury award; rather to the whole range of such awards.
>
> (4) In exercising their discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.
>
> (5) Finally, tribunals should bear in mind Lord Bingham's reference to the need for public respect for the level of awards made.

32. These principles were approved by the Court of Appeal in **Vento v Chief Constable of West Yorkshire Police (No.2)** [2003] IRLR 102, which further said this (at paragraphs 50 and 51):

> "It is self-evident that the assessment of compensation for an injury or loss, which is neither physical nor financial presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise.
>
> Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury. In these circumstances an appellate body is not entitled to interfere with the assessment of the employment tribunal simply because it would have awarded more or less than the tribunal has done. It has to be established that the tribunal has acted on a wrong principle of law or has misapprehended the facts or made a wholly erroneous estimate of the loss suffered. Striking the right balance between awarding too much and too little is obviously not easy."

33. At paragraph 65 of **Vento**, the Court of Appeal then set out the bands for which its judgment is best known and quoted daily in Employment Tribunal hearings:

33.1.1 The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.

33.1.2 The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.

33.1.3 Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

34. As the Court of Appeal said of the Vento bands in **Kemeh v Ministry of Defence** [2014] IRLR 377 (at paragraph 54): "they are designed to ensure a measure of consistency and fairness in the way in which tribunals approach their task", before adding the essential reminder that "the aim is to compensate for genuinely injured feelings, not to punish an employer for bad management or poor personnel practice".

35. By way of guidance issued annually since 2017, following the invitation of the Court of Appeal in **De Souza v Vinci Construction (UK) Ltd** [2017] IRLR 844 (paragraph 34), these figures are now annually adjusted for inflation through the vehicle of Presidential Guidance promulgated by the Presidents of Employment Tribunals. At the relevant time, the Vento band figures were those set out at paragraph 21 above.

36. As the EAT observed in **HM Land Registry v McGlue** (UKEAT/0435/11, paragraph 25), such awards are "not susceptible of close calculation" and "will not be interfered with unless they are manifestly excessive or wrong in principle".

37. It is clear that, when quantifying the appropriate amount to award for injury to feelings, the tribunal must focus on the effect of the discriminatory act upon the particular claimant. The tribunal is required to compensate for the injury suffered, not the manner of the discrimination. As the band categorisation in **Vento** implicitly acknowledges, however, it is difficult to do this without reference to whether the discrimination causing the injury is more (or less) "serious". As I will explore further below, the manner of discrimination can, in certain circumstances and if used with caution, provide a benchmark for assessing severity of the injury.

The importance of evidence of injury

38. As I am considering a case where the evidence of injury before the ET was sparse, it is worth asking how much evidence is needed to justify an award at all. The following points can be made.

39. First, there can be no award of compensation is there is no evidence of injury. As the EAT said at paragraph 90 of **Cannock**, an award "is not automatically to be made whenever unlawful discrimination is proved or admitted". There must be some evidence of injury to the non-exhaustive range of feelings discussed in **Vento**. The EAT's judgment in **Cowie and others v Scottish Fire and Rescue Service** [2022] IRLR 913 (at paragraph 91) provides an example of an appellate conclusion that it was permissible for a tribunal to make no award where the

claimants had "failed to adduce evidence of any injury to feelings such as would warrant an award under this head". (Further, at paragraph 92 of that judgment, the EAT accepted that "upset" was "the best evidence of any injury to feelings", albeit that it was unrelated to the conduct complained of in that case.)

40. Second, while tribunals should avoid making assumptions, it can properly be borne in mind that in every kind of discrimination case a claimant will usually suffer some injury to feelings. As the EAT put it in **London Borough of Hackney v Adams** [2003] IRLR 402 (at paragraph 11), with my added emphasis:

> "… Sometimes such injury will be the almost inevitable concomitant of the discrimination having occurred. For example, it can readily be assumed where someone has suffered an act of race or sex discrimination that will by its very nature have caused injury to feelings: it is demeaning to the individual and offensive to his or her dignity to be so treated. A tribunal will readily infer some injury to feelings from the simple fact of the discrimination having occurred. *Such injury may of course be compounded by the particular manner in which the discriminatory conduct itself is made manifest*. For example, harassment over a lengthy period will plainly result in more considerable distress than a single act of discrimination and should be compensated for accordingly. There will, however, have to be evidence of the nature of the discriminatory conduct."

41. The above suggests that the manner of discrimination can provide a basis for inferring the level of upset it has caused. This brings me to my third point: so long as the tribunal does not lose sight of the fact that it is compensating a claimant for the injury suffered, rather than the manner of the discrimination, the latter can be a useful guide to inferring the former when evidence is otherwise sparse. Of course the tribunal must take care not to allow its feelings of indignation to inflate the award, but having regard to the manner of discrimination can provide a control mechanism. I think this is what the EAT had in mind in an important footnote to its judgment in **Commissioner of Police of the Metropolis v Shaw** [2012] IRLR 291, when it said this (with my emphasis):

> "Practice is in our experience variable as to the extent to which claimants in discrimination cases give explicit evidence about the injury to their feelings. In principle they should certainly be asked to do so: it is wrong that tribunals should be asked to make assumptions … the fact remains that even when such evidence is given, it is often difficult to assess objectively because so much depends on the idiosyncrasies of the particular witness, including their articulacy and their levels of stoicism or self-awareness. *Some degree of standardisation is realistically inevitable*."

42. Albeit in the assessment of aggravated damages, the Court of Appeal also said this in Shaw (at paragraph 24, again with my emphasis):

> "It is natural for a tribunal, faced with the difficulty of assessing the additional injury specifically attributable to the aggravating conduct, to focus instead on the quality of that conduct, which is inherently easier to assess. *This approach is not necessarily illegitimate: as a matter of broad common sense, the more heinous the conduct the greater the impact is likely to have been on the claimant's feelings. Nevertheless it should be applied with caution*, because a focus on the respondent's conduct can too easily lead a tribunal into fixing compensation by reference to what it thinks is appropriate by way of punishment or in order to give vent to its indignation."

Relationship between manner of discrimination and injury

43. It can therefore be seen that the manner of discrimination is neither determinative of, nor a proxy for, the seriousness of the claimant's injury. To treat it as the sole mechanism for identifying the appropriate Vento band would abandon the caution advocated for in **Shaw** and distract the tribunal from its focus on the claimant's injury. That focus may mean that the same discriminatory behaviour results in different levels of compensation for injured feelings for two different individuals, as recognised by the EAT in **Cadogan Hotel Partners Ltd v Ozog** (UKEAT/001/14, paragraph 49).

44. At its highest, the point can be put this way: the manner of discrimination is a tool by which the tribunal can properly draw an inference of secondary fact as to the injury suffered by a claimant when, as often happens in such cases, there is little else to go on.

45. Many factual possibilities inhabit the territory between the "lengthy campaign of discriminatory harassment" associated with the top Vento band and the "isolated or one-off occurrence" associated with the bottom Vento band. The frequency and duration of the claimant's exposure to the discriminatory conduct are not the only measures that can support an inference of injury.

46. A relevant consideration is whether the discrimination can be described as "overt". As noted by the EAT at paragraph 10(2) of **Taylor v XLN Telecom Ltd and others** [2010] IRLR 499, it may validly be inferred that overt discrimination is more likely to cause distress and humiliation, because the victim has understood the motivation at the time to be discriminatory.

47. My experience of such cases suggests that the tribunal might also find it helpful to consider the existence of ridicule or exposure. Discrimination played out in front of colleagues or others to see may well cause greater harm. It may provide a reasoned basis for inferring as a fact the seriousness of the injury suffered, especially in respect of compensable feelings of humiliation.

48. A feature of workplace discrimination is that it can reflect or expose an asymmetry of power, influence and information. In some cases, this can be manifested in disciplinary threats that create worry, or in exclusion that causes isolation. Such features may again provide a reasoned basis for inferring more serious injury to feelings.

49. Although the parties did not refer me to this case, I note that, in the case of **Gilbank v Miles** [2006] IRLR 538 (at paragraph 42), when upholding a Vento award in the top band, the Court of Appeal accepted that pregnancy discrimination involving an unborn child gave the case "added seriousness and must have imposed an additional level of stress on [the claimant] as an expectant mother". Experiencing discrimination at such a time detracts from the joy associated with birth; the result is a greater relative diminution in happiness that merits recompense.

50. Ultimately, the tribunal is best placed to decide what evidence can properly form the basis for such inferences.

Evidence of injury

51. I have suggested above that the manner of discrimination is no more than a tool by which the tribunal may, in appropriate cases, properly draw an inference of secondary fact as to the injury suffered by a claimant when there is little else to

go on. It therefore follows that the parties can greatly assist the tribunal by giving it more to go on. The burden is of course on the claimant to show that their feelings have been injured and to what extent.

52. While not providing a checklist, the following may be helpful to consider:

52.1 ***The claimant's description of their injury***. This is an obvious starting point: what does the claimant actually say in their evidence? However, tribunals should be ready to scrutinise apparent stoicism with as much as care as apparent upset; for some individuals, stoicism is the refuge of the inarticulate. Equally, tribunals should take claimants as they find them, considering whether there is any fragility that makes them more vulnerable to upset or means that the experience is more impactful upon them. Direct evidence of effect on health may be appropriate in some cases, although the tribunal should avoid double counting in respect of a separate award for physical injury (depending on the injury described, evidence may be corroborated by a formal medical diagnosis or records of seeking clinical support, counselling and so on). But, in most cases, the description upon which the tribunal bases its award will usually be a claimant's account, in their own words, of how the unlawful treatment made them feel.

52.2 ***Duration of consequences***. A claimant's upset may be fleeting, or it may be long lasting, and much may depend on their own levels of fortitude and resilience. A claimant should be able to say how they are feeling at the remedy hearing, if time has passed since the conduct complained of. Of course there may not be a linear recovery path; there may be an acute stage, a recovery stage, and residual symptoms. If the injured feelings continue, the tribunal should consider how long they may continue to last, as well as how they are being manifested. In a serious case, or where there may be future vulnerability, prognosis will be relevant.

52.3 ***Effect on past, current and future work***. The discriminatory treatment may have affected the claimant's current enjoyment of their work, or have lessened their ability to look back warmly upon their past experiences at work, or have made them less likely to remain in the same line of work in future. It may be relevant to consider the extent to which their self-esteem was bound up in their occupational life, which differs from person to person. An evidenced wish to leave an enjoyable and fulfilling line of work due to discriminatory treatment can properly inform the tribunal's assessment of the hurt caused.

52.4 ***Effect on personal life or quality of life***. The tribunal may wish to consider whether the treatment has adversely impacted personal relationships, private activities, hobbies and the like – sometimes called a "loss of amenity". If a tribunal does consider this, it will be helpful to survey an evidential landscape comparing the claimant's life before and after the discrimination. This is where a third-party view may, in appropriate cases, be helpful, such as from a family member; obviously, the tribunal must decide what weight it gives to such evidence.