



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MR IBRAHIM ALI

AND

Respondent
STAFFLINE RECRUITMENT LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 26TH FEBRUARY 2026

**EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)**

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MS C FISHER (COUNSEL)

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claims of direct race discrimination pursuant to s13 Equality Act 2010 are not well founded and are dismissed.

Reasons

1. By this claim the claimant brings a sole claim of direct race discrimination pursuant to s13 Equality Act 2010.

2. The tribunal has heard evidence from the claimant, and for the respondent from Ms Petronela Gurzun (Performance Manager). In addition there is a bundle of documents to which I have been taken and considered.

Background

3. The claimant was employed by the respondent and its predecessors between 18 November 2022 and 4 February 2025 as an Order Picker at the GXO / Sainsbury's warehouse in Emerald Park, Bristol. The claimant complains that he was targeted by Ms Gurzun, who is Romanian, for unfair and untrue criticism of his performance, and that she favoured the Romanian workers within his team who did not perform as well as him, despite the fact that he was consistently the picker with the highest pick rate percentage and best performance.
4. The case came before EJ Midgely for a TCMPH on 26th November 2025. He identified the claims as set out below:

Employment status

- 1.1 It is accepted that the Claimant was an employee of the Respondent within the meaning of section 83 of the Equality Act 2010.

2. Time limits

- 2.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about any act or omission which took place more than three months before that date (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the Tribunal may not have jurisdiction.
- 2.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 2.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?
 - 2.2.2 If not, was there conduct extending over a period?
 - 2.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 2.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 2.2.4.1 Why were the complaints not made to the Tribunal in

time?

2.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

3. **Direct race discrimination (Equality Act 2010 section 13)**

3.1 The Claimant self describes as Black African.

3.2 Did the Respondent do the following things:

3.2.1 Did Petronela Gurzun criticise the claimant's performance on the:

3.2.1.1 30 October 2024?

3.2.1.2 On or about 12 to 14 December 2024?

3.3 Was that less favourable treatment?

The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant says he was treated worse than Romanian staff working at Emerald Way.

3.4 If so, was it because of the claimant's race or nationality?

3.5 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to the claimant's race?

Facts / Evidence

5. The evidence of Ms Gurzun is that as performance Manager she manages all of the respondent's 300 staff at the warehouse.
6. There are three broad areas of work within the warehouse, Produce, Chilled and Ambient. Each member of staff primarily uses a handheld device to scan products being picked, having entered a unique four digit ID. There are additional methods of recording which involve the use of watches or headsets, but whichever method is used the individual employees picking performance (the pick rate) is recorded each shift.
7. The requirement of GXO is that staff hit 100% of picking targets each shift. Staff are given realistic targets, and care is taken to ensure that tasks are set in a logical

- order to avoid unnecessary and time consuming travel between picks. Achieving 100% is realistic and is regularly met. Whilst 100% is the target anything above 90-95% is acceptable. If the pick rate drops below that percentage the member of staff will be spoken to. There are two forms these conversations can take. The first is simply an informal conversation in the warehouse to obtain any explanation. The next stage is an individual one to one meeting with Ms Gurzun in her office. These meetings are reflected in Coaching Forms, which are also used to record concerns about conduct and sickness absence. In the bundle there are anonymised Coaching Forms for other colleagues between 6th September 2024 and 5th January 2025, which deal with performance concerns particularly in relation to pick rates, many of which were better than the claimants. Whilst these are anonymised it is the respondents evidence that they concern employees of many different nationalities, which has not been challenged and which I accept.
8. The question of whether there is in fact a dispute as to the claimant's pick rate is not entirely clear. The respondent's evidence is that between 3rd November 2024 and 30th January 2025 the claimant's average pick rate was 73%. He only achieved over 90% once during the period; and that at the point at which the formal meeting took place on 12th December 2024 that he had a daily percentage of 73% and a weekly percentage of 66%. This is supported by the data / documentary evidence in the bundle.
 9. As set out below in his email of 18th December 2024 the claimant appeared to accept the 66% figure as accurate, and did so initially in cross-examination when he was taken to the data/documentation. However he later appeared to assert that it was not accurate, and that he maintained that he had achieved the highest pick rate in the Ambient team, and had an acceptable level of performance. His evidence was that it was possible for an employee to check their own pick rate on a screen in the warehouse, which he did, and the figures it showed are not those asserted by Ms Gurzun and which appear in the documents in the bundle. Ms Gurzun's evidence, which I accept, is that the figures are not possible to manipulate and that they record each pick. They are necessarily correct; and in any event this was the information before her and on which she acted on in the meeting on 12th December 2024, and which at the time the claimant did not dispute. There is no evidence before me that the information as set out in the documents as to the pick rate is not correct, and I accept that it is.
 10. 30th October 2024 – The first allegation of unfair performance management relates to 30th October 2024. The Coaching Form for that day in fact concerns a meeting with another manager, not Ms Gurzun, and was not concerned with performance but absence on the 30th October 2024 which the claimant explained saying he had a very strong headache and was unable to continue working. In cross examination the claimant accepted that the meeting on 30th October 2024 was not about performance, and was not with Ms Gurzun.
 11. 12th December 2024 – Although there was originally some confusion about the date, there is now no dispute that the meeting in question took place on Thursday 12th December 2024. Ms Gurzun accepts that she spoke to the claimant about

performance and gave him a final warning. By that stage he had been consistently underperforming for some time and his average pick rate percentage for that week was 66%. That was the reason the warning was issued.

12. That same day she spoke to three other colleagues about performance issues and issued each with Coaching Forms. Of these, two were Romanian and one was British. All three subsequently had their assignments terminated in February 2025.
13. On 18th December 2024 the claimant complained about the performance discussion in an email which encapsulated his case

I complain about my performance and the discussion that I had on 14th December 2024 on Thursday at the meeting of discussion about my weekly performance which was 66. I feel that I'm not being treated equal as the other employees and workers I was the only one selected about my weekly performance. I have asked you and I said to you I'm the only one at you I've said let's not talk about other people my hourly pick rate is higher than the other workers on my shift I have asked you about my hourly pick and then I have asked you how much I picked from the beginning of my shift till the end which was above the 1000 which was more than required which I think that that is good. As an employer and a recruiter there is a law that everyone has to follow and looked into it and the law says everybody should be treated equal at the work with the workplace. I feel that I'm not being treated equal as the other workers. I don't see no reason why I'm the only selected for my weekly performance and I don't understand while I'm the highest picker that I'm still being called to the office discussion about my weekly performance and not the other workers who doesn't have a high pick rate. In my opinion it's not right. I hope this complaint of non-disclosure will have your attention and explanation in which position I'm in. Thank you very much for your understanding and I hope for a better understanding and teamwork between us for the future coming."

14. Ms Gurzun's evidence is that she spoke to the claimant again on 4th February 2025. The claimant kept shouting at her, telling her he was going to sue her.. He did not return after the shift that day. Had he done so his assignment would likely have been terminated for his conduct on 4th February 2025. Whilst he claimant disputed shouting, he did not challenge the rest of her account.
15. Although not strictly relevant to the issues before me, the claimant relies evidentially on a job application he made on 25th February 2025. He states that he did not receive a reply and contends that this is an act of unlawful discrimination from which the tribunal can draw inferences as to the specific issues in this case. Ms Gurzun's evidence was that recruitment was dealt with by a recruitment consultant based at Emerson's Green and that if the claimant did not receive a reply she did not know why. It was not something she was involved in.

Direct Discrimination

16. The only allegations are of direct race discrimination as set out at paras 3.1-3.5 of the CMO above.
- i) Section 13 (1) Equality Act 2010 provides – *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.*
17. This requires the tribunal to identify three elements of:
- i) Less favourable treatment; which is
 - ii) “Because of” a protected characteristic;
 - iii) In comparison with a an actual or hypothetical comparator.
18. Less favourable treatment – The test for whether treatment is “less favourable” is objective, although the tribunal can take into account the claimant’s perception that it was less favourable in determining whether objectively it was.
19. “Because of” – The nature of the requirement for a finding that any less favourable treatment was “because of” the protected characteristic was summarised by Linden J in *Gould v St John’s Downshire Hill 2021 ICR 1 EAT*: *“The question whether an alleged discriminator acted “because of” a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the “reason why” question and the test is subjective... For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a “significant influence” on the decision to act in the manner complained of. It need not be the sole ground for the decision... [and] the influence of the protected characteristic may be conscious or subconscious.”*
20. Burden of Proof – S136(2) Equality Act 2010 provides: *‘If there are facts from which the court [or tribunal] 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.’* This is the requirement for the claimant to establish a ‘prima facie case’ of discrimination, ‘stage one’ of the test. If the burden does shift s136 (3) provides that s136(2) does not apply if ‘A shows that A did not contravene the provision’, “stage two’.
21. Evidentially the process required of the tribunal was summarised by Lord Nicholls in *Nagarajan v London Regional Transport 1999 ICR 877, HL*: *‘Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on [protected] grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances.*

Conclusions

22. 30th October 2024 (3.2.1.1) – The respondent submits that this allegation must fail factually. There no discussions about performance with Ms Gurzun; and the meeting was concerned sickness absence. The claimant does not dispute either, and has never made any allegation that meetings or concerns about absence were discriminatory, and it follows that there is no factual basis for the allegation as set out in the List of Issues or on any other basis.
23. In my judgement this must be correct. There is no evidence before me that the factual allegation ever occurred, and I am bound to dismiss the claim.
24. 12th December 2024 (3.2.2.2) – The respondent contends that there is no sufficient evidence to satisfy stage 1 of the Igen v Wong test; but that in fact this is an appropriate case in which the tribunal can and should focus on the “reason why” question in any event. For completeness sake however, the undisputed facts are that the claimant attended a one to one meeting with Ms Gurzun about his pick rate percentage, and was issued with a final warning. The facts from which the claimant invites the tribunal to draw an inference of discrimination are;
- i) He is Black African and Ms Gurzun is Romanian;
 - ii) He did not observe anyone else being spoken to her in her office that day and/or that no other member of the Ambient team was spoken to; and concludes, and invites the tribunal to infer, that he was singled out by Ms Gurzun.
 - iii) The lack of response to his email of 25th February 2025;
25. The respondent submits that the first is not sufficient to allow any inference to be drawn; the second is factually incorrect as at least three other people were spoken to in her office that day, and that in any event as Ms Gurzun stated from the Ambient section the claimant could not see her office and would have no way of knowing who she held meetings with; and the third did not involve Ms Gurzun, and the tribunal could not draw any inference from it, as it is of no relevance to events on 12th December 2024.
26. Even if they are wrong about that, and/or if the tribunal simply concentrates on the reason why question they contend that:
- i) The data shows a consistent pattern of underperformance very significantly below the accepted standard for a considerable time by the claimant, and provides a complete explanation as to why the final warning was issued;
 - ii) It is demonstrably true, based on the documentary evidence that numerous other employees were spoken to and received at least Coaching Forms arising from their performance; many of whom had higher pick rate percentages than the claimant;

- iii) Three others of Romanian and British nationality were spoken to about performance on the same day as the claimant;
 - iv) Five employees of a number of nationalities were dismissed for underperformance between October 2024 and February 2025;
 - v) That being spoken to in a one to one performance meeting is standard practice and (as set out above) was applied to other employees of different nationalities;
27. It follows that there is a wealth of documentary evidence that demonstrate both the specific reason why the claimant received the final warning, and the fact that employees of all racial backgrounds and nationalities were treated in the same way.
28. In my judgement the respondent is correct, and there is no evidence before me which would allow me to infer or conclude that the raising of performance concerns and/or the issuing of the final warning on 12th December 2024 were in any way at all influenced by the claimant's race or nationality. There is particularly, no evidence before me at all of the claimant being treated less favourably than Romanian workers which is the specific allegation set out in the ET1/Claim form. Even if the burden of proof has shifted I accept the respondent's evidence as to the reason for the meeting and the decision to issue a final warning.
29. It follows that the claimants claims must be dismissed.
30. In the circumstances it is not necessary to determine any time points.

Employment Judge Cadney

Date: 2 March 2026

Reasons sent to Parties on

7 March 2026

Jade Lobb

For the Tribunal Office