



# EMPLOYMENT TRIBUNALS

**Claimant:** Ilyas Yasin Hassan

**Respondent:** Royal Mail Group Ltd

**Heard at:** Cambridge Employment Tribunal (in person)

**On:** 16, 17, 18, 19, 20 February 2026 (5 hearing days)  
24 and 25 February 2026, 2 March 2026 (deliberation days)

**Before:** Employment Judge Hutchings  
Mr B. Smith (non-legal member)  
Mrs W. Smith (non-legal member)

**Representation**  
**Claimant:** Ms Ismail, counsel  
**Respondent:** Mr Chaudhry, solicitor advocate

# RESERVED JUDGMENT

It is the unanimous judgment of this Employment Tribunal that:

1. The complaint of direct religion / belief discrimination is not well founded and is dismissed.
2. The complaint of direct race discrimination is not well founded and is dismissed.
3. The complaint of harassment related to religion / belief is not well founded and is dismissed.
4. The complaint of harassment related to race is not well founded and is dismissed.
5. The complaint of victimisation is not well founded and is dismissed.

# REASONS

## Introduction

1. The claimant commenced employment with the respondent, Royal Mail Group Ltd, on 4 September 2006. He remains employed by the respondent. At the time of the events about which he complains he was an LGV driver based at the respondent's Midlands Super Hub.
2. By an ET1 claim form and Particulars of Claim dated 2 December 2023 and agreed amendment (recorded in Employment Judge ("EJ") Kelly's case management order dated 21 August 2025) the claimant brings the following complaints:
  - 2.1. Section 13 of the Equality Act 2010 ("EqA"): direct discrimination due to religion / belief;
  - 2.2. Section 13 EqA: direct discrimination due to race;
  - 2.3. Section 26 EqA; harassment due to religion / belief;
  - 2.4. Section 26 EqA; harassment due to race; and
  - 2.5. Section 27 EqA: victimisation.
3. The claimant's religion as Muslim. The claimant's race is black African and black British. The complaints relate to an incident on 6 September 2023 between the claimant and a colleague while the claimant was praying, and the subsequent handling by the respondent's managers of this incident, and a grievance and bullying and harassment complaint brought by the claimant.
4. ACAS consultation started on 11 October 2023 and a certificate was issued on 8 November 2023.
5. By an ET3 response form and Grounds of Resistance dated 21 March 2024 and amended grounds of resistance dated 28 September 2025 the respondent denies the claims. The respondent accepts there was an incident on the 6 September 2023 but denies that the manner in which its managers handled the incident and subsequent processes related to the claimant's religion or race.
6. Case management hearings took place before EJ Tynan and EJ Kelly.

## Evidence and procedure

7. The case was listed for 8 days in February 2026. Due to Employment Judge Hutchings prior listing for a part heard on 23 February 2026 the Tribunal was unable to sit on this day and the case was reduced by Regional Employment Judge Foxwell to 7 hearing days. We informed parties of this reduction on the morning of day 1; therefore we did not sit on day 6. We spent an hour on the morning of day 1 addressing preliminary matters, which are recorded below. The remainder of the day was spent reading.

8. We considered the documents in a 950 page hearing file which the parties submitted in evidence. Mr Chaudhry and Ms Ismail directed us to key documents in the hearing file index. On the morning of day 1 Ms Ismail produced a letter dated 20 November 2023 which the claimant says is the final version of the invitation to a bullying and harassment meeting, explaining that the one in the hearing folder was not the version he received. Mr Chaudhry did not object to the admission of this letter. Therefore we admitted it as evidence.
9. During the hearing it became apparent that parties disagreed on whether a door in the traffic office was faulty at the time of the alleged incident on 6 September 2023. The hearing file contained a document evidencing the report of a faulty door but no evidence of a repair. Therefore, during the hearing we ordered the respondent to undertake a search of records to identify any documents relating to the repair of the traffic office door. We considered this order reasonable as the claimant alleges the door was closed and the respondent alleges it was open (due to the fault). We considered that the status of the door may be relevant to what could be heard in the traffic office on 6 September 2023, and therefore to the issues in dispute. On day 6 the respondent emailed to the Tribunal and the claimant two screenshots recording:
  - 9.1. Document 1: "Ground floor fire exit door from office to reception is not closing properly door closer is faulty" ;and
  - 9.2. Document 2: noting that a fault with a traffic office door was resolved by the contractor on 9 November 2023.
10. The claimant did not raise any objections to the admission of these documents. We consider they may be relevant to the issues we must determine. Documents 1 and 2 are admitted in evidence.
11. We also had an agreed chronology and cast list. We note that the claimant's name is misspelt on the cast list and he was upset by this. We corrected it in the version of the cast list used by the Tribunal.
12. The claimant was represented by Ms Ismail of counsel and gave sworn evidence (day 2). Ms Ismail also called sworn evidence from Pritesh Patel. Mr Patel was unable to attend the hearing; therefore, we have afforded less weight to his evidence as the respondent has not had the opportunity to cross examine Mr Patel. At the case management hearing before EJ Kelly the claimant requested, and EJ Kelly made, 3 witness orders. On day 2, the claimant having withdrawn some factual issues, Ms Ismail told us the claimant did not rely on the evidence of these witnesses. Therefore we released them from the orders. However, on day 4 during Ms Ismail's cross examination of Mr Parker, it became apparent that the claimant was seeking to rely on Mr Kavanagh's (for whom EJ Kelly had made a witness order at the claimant's request) recollection of a meeting between the claimant and Mr Parker, at which Mr Kavanagh was present. Mr Parker was asked what Mr Kavanagh meant from the description he had given of that meeting to Ms Tebbutt (who heard the claimant's grievance appeal) by reference to the notes of that meeting. We intervened suggesting that Mr Kavanagh should be called as a witness to give direct evidence about that meeting. Accordingly, Mr Kavanagh gave evidence on day 4. The same arose for Mr Puntrello; the claimant withdrew his statement on day 1 and we released Mr Puntrello from the witness order. When the claimant sought to rely

on notes of a meeting at which Mr Puntrello was present, with his agreement he gave direct evidence.

13. The respondent was represented by Mr Chaudhry, solicitor advocate, who called sworn evidence from the following witnesses; their roles are recorded as the role they had at the time of the matters about which the claimant complains:

- 13.1. Kristian Prucnal - Traffic Office Manager (day 3);
- 13.2. Paolo Fiorello - Lead Distribution Manager (day 3);
- 13.3. Laura Burkill - Distribution Support Manager (day 3);
- 13.4. James Parker - Lead Distribution Manager (day 4 by CVP due to a health condition);
- 13.5. Mohammed Abusiddique - Traffic Office Manager (day 4 by CVP due to medical evidence he was unable to attend the hearing centre);
- 13.6. Ian Beauchamp - Transport Manager (day 4)
- 13.7. Clare Tebbutt - Case Manager (day 5); and
- 13.8. Debbie Wilson - Fleet Internal Programme Manager (day 5).

14. We followed the hearing timetable suggested by EJ Kelly in the case management order dated 1 September 2025, which we kept under review throughout the hearing.

15. On day 7 Ms Ismail and Mr Chaudhry submitted written closing statements to the Tribunal, which we spent the morning reading, deliberating for the remainder of day 7. It became apparent that, given the number of allegations, we would not conclude our deliberations on day 7, to enable oral judgement on day 8. Therefore, at 4pm on day 7 the Tribunal clerk sent an email to the parties informing them that judgment is reserved, we would continue our deliberations on day 8 and they would receive a written judgment thereafter. The clerk reminded parties that this may take several weeks due to Tribunal administration processing times. On the afternoon of day 8 we had several issues outstanding. We identified 2 March 2026 as a further day for deliberation. The Tribunal clerk sent parties an email informing them of this additional date.

16. Ms Ismail attached a plan of the traffic office with the claimant's closing submissions. In the submissions Ms Ismail told us the claimant had produced this indicative drawing (which is not to scale) to assist the Tribunal and sought our permission to admit it as evidence. We have noted the respondent's objections in Mr Chaudhry's email dated 24 February 2026, specifically that the document has not been put to any of the respondents' witnesses. By reference to the photographs in the hearing file (pages 605, 606, 607, 608 and 610 and 912-915) the position of the traffic office door by reference to where it is agreed the claimant was praying. In this regard we consider the plan a helpful visual summary. We consider it accords with the descriptions of the hallway and adjacent traffic office given by the claimant, Mr Prucnal and Mr Fiorello in evidence by reference to the photographs. Therefore, we admit the plan in this context as an aide memoire. We have not taken account of the comments on the plan.

17. The Tribunal took regular breaks, starting at 10am and finishing around 4pm each day. At the start of the hearing the claimant confirmed he did not require any reasonable adjustments. We noted that Ramadan started on the eve of 17 February 2026 (day 2) and all parties agreed that the claimant would conclude

his evidence on day 2. We also discussed with the claimant the timing of Friday prayers and whether to schedule the lunch break at a specific time to ensure the claimant could attend Friday prayers at the local mosque if he wished to do so. On the morning of day 5 the claimant told us he had a room in the Tribunal in which he could pray so it was not necessary to adjust the timetable. In any event, the hearing concluded before the lunchbreak on day 5.

### **List of issues**

18. At the case management hearings before EJ Tynan and EJ Kelly parties agreed a list of issues. Following discussion with the parties on day 1, we received an email from the claimant's representatives withdrawing some of the factual allegations. The claimant also identified which detriment linked to each protected act. On day 3 the claimant withdrew a factual allegation of harassment direct discrimination. During his evidence on day 2, in response to questions from Mr Chaudhry, the claimant clarified elements of his factual allegations. The original list of issues can be found at page 126 of the hearing file. The list below is updated to reflect the withdrawals and clarifications.

*Note on Duplication of Harassment and Direct Discrimination claims (from EJ Kelly's case management orders)*

- The claimant's complaints relating to race are largely presented as both harassment and/or direct discrimination. The tribunal will determine these allegations in the following manner.*
- In the first place the allegations will be considered as allegations of harassment. If any specific factual allegation is not proven, then it will be dismissed as an allegation of both harassment and direct discrimination.*
- If the factual allegation is proven, then the tribunal will apply the statutory test for harassment under s. 26 Equality Act. If that allegation of harassment is made out, then it will be dismissed as an allegation of direct discrimination because under s. 212 (1) Equality Act the definition of detriment does not include conduct which amounts to harassment.*
- If the factual allegation is proven, but the statutory test for harassment is not made out, the tribunal will then consider whether that allegation amounts to direct discrimination under the relevant statutory test.*

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

1.1. Did the Respondent do the following things:

1.1.1. On 7 September 2023, did Mr J Parker threaten the Claimant with adverse consequences if he reported Mr Prucnal to the police for an alleged Islamophobic hate crime?

1.1.2. On 12 December 2023 Ms C Tebbutt interviewed Mr J Parker about the Claimant's grievance. Mr J Parker told Ms C Tebbutt that the

Claimant was shaking with rage and erratic (page 344 paragraph 14 . The Claimant considers that this is 'racial profiling'. By contrast, Mr J Parker told Ms C Tebbutt that a white man, Mr K Prucnal, was naïve and harmless (page 345 paragraph 32).

**1.2. Was that less favourable treatment?**

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

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

1.2.3. The Claimant has not named anyone in particular who they say was treated better than they were and relies on a hypothetical comparator.

**1.3. If so, was it because of race?**

**2. Harassment related to religion/belief (Equality Act 2010 section 26)**

2.1. The Claimant is a Muslim.

2.2. On 6 September 2023, did Mr K Prucnal, late shift operational manager, shout at the Claimant when he was praying in a hallway at work, telling him that he could not pray in the hallway, and continue to shout at him for approximately one and a half minutes, including when the Claimant was in the prostration part of the prayer.

2.3. If so, was that unwanted conduct?

2.4. Did it relate to religion/belief?

2.5. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

2.6. If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

**3. Harassment related to race (Equality Act 2010 section 26)**

3.1. The Claimant identifies as black African and black British.

3.2. Did the Respondent do the following things:

3.2.1. On 7 September 2023, did Mr J Parker threaten the Claimant with adverse consequences if he reported Mr Prucnal to the police for an alleged Islamophobic hate crime?

3.2.2. On 12 December 2023 Ms C Tebbutt interviewed Mr J Parker about the Claimant's grievance. Mr J Parker told Ms C Tebbutt that the Claimant was shaking with rage and erratic or words to that effect. The Claimant considers that this is 'racial profiling'. By contrast, Mr J Parker told Ms C Tebbutt that a white man, Mr K Prucnal, was naïve and harmless.

3.3. If so, was that unwanted conduct?

3.4. Did it relate to race?

3.5. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

3.6. If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

#### **4. Victimisation (Equality Act 2010 section 27)**

4.1. Did the Claimant do a protected act as follows:

4.1.1. Allege to Mr J Parker on 7 September 2023 that he had been harassed on grounds of religion/belief by Mr K Prucnal on 6 September 2023? The respondent accepts this happened as a matter of fact and is a protected act.

4.1.2. On 8 September 2023, the Claimant reported the incident with Mr K Prucnal on 6 Sep 2023 as a hate crime. The respondent accepts that this happened as a matter of fact and is a protected act.

4.1.3. Submit a grievance on 13 September 2023 alleging discrimination? The respondent accepts this happened as a matter of fact and is a protected act.

4.1.4. On 2 Dec 2023, the Claimant presented his claim form. The respondent accepts this happened as a matter of fact and is a protected act.

4.2. Alternatively, did the Respondent believe that the Claimant had done or might do a protected act by reason of those matters?

4.3. Did the Respondent do the following things:

- 4.3.1. Mr J Parker threatened the Claimant with adverse consequences if he reported Mr K Prucnal to the police for an alleged Islamophobic hate crime C relies on 4.1.1
- 4.3.2. Mr J Parker instigated a Conduct Code investigation into the Claimant's alleged conduct on 6 September 2023? C relies on 4.1.1
- 4.3.3. Mr J Parker appointed Nigel Thompson to be the investigating manager in the Conduct Code matter in the belief that he could be manipulated in the process? C relies on the first 3 protected acts
- 4.3.4. On 13 Sep 2023, Mr J Parker asked the Claimant to move to a different work location as a solution to the experience had had complained about. C relies on 4.1.1 and or 4.1.2
- 4.3.5. Mr P Firello made statements in his written statement of 3 October 2023 (page 246 of the hearing file) regarding the events of 6 September 2023 that he knew to be untrue, specifically: the magnetic catch on the door to the transport office was broken and the door was open; Mr K Prucnal did not raise his voice; the claimant was shouting; the claimant chose to pray in a peculiar and dangerous place; and the claimant was waving his hands ? C relies on 4.1.1 and or 4.1.2
- 4.3.6. Mr D Green made a written statement on 25 September 2023 regarding the events of 6 September 2023 (page 236 of the hearing file) that he knew to be untrue, specifically: that the claimant was shouting and aggressive; and that Mr D Green did not come out of the traffic office, the claimant went in? C relies on 4.1.1 and or 4.1.2
- 4.3.7. The Claimant's grievance was rejected on 13 September 2023 and again on 10 November 2023 without being considered? C relies on 4.1.3
- 4.3.8. In December 23 (after presentation of claim form), Ms C Tebbutt failed to interview all individuals whom the Claimant had identified as relevant to his claim of bullying and harassment including Mr D Green and Mr P Fiorello. C relies on 4.1.3 and or 4.1.5
- 4.3.9. In May 2024, Ms D Wilson, failed to uphold the Claimant's grievance in spite of Mr D Green's evidence that Mr K Prucnal had raised his voice during the incident on 6 September 2023. C relies on 4.1.3 and or 4.1.5
- 4.3.10. In January 2025, after the Claimant suffered an accident due to a faulty trailer door, Mr I Beauchamp, verbally discouraged him from reporting it. He threatened to initiate a disciplinary case against the Claimant if he insisted on reporting the injury (ERICA report at page

503). The Claimant did so insist. Mr I Beauchamp then omitted crucial information (faulty trailer door) from the injury report, including the fact that the door was defective. He failed to investigate the matter. He instigated disciplinary action against the Claimant. C relies on the first 3 protected acts

4.3.11. On 4 Feb 2025, Mr I Beauchamp physically intimidated the Claimant in a small room next to the traffic office while giving the Claimant documents by swiftly walking towards him, speaking loudly and standing over him in an aggressive manner with his eyes wide open when the Claimant was seated. C relies on the first 3 protected acts

4.3.12. On 5/6 Oct 2023, the Respondent allowed CCTV footage of the incident on 6 Sep 2023 to be deleted (the claimant says that Mr Parker should have made a direct request that it was not deleted). C relies on the first 3 protected acts

4.4. By doing so, did it subject the Claimant to detriment?

4.5. If so, was it because the Claimant did a protected act?

4.6. Was it because the Respondent believed the Claimant had done, or might do, a protected act?

## **5. Remedy**

5.1. What, if any, financial losses has the discrimination caused the Claimant?

5.2. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

5.3. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.4. Did the Respondent or the Claimant unreasonably fail to comply with it?

5.5. If so is it just and equitable to increase or decrease any award payable to the Claimant?

5.6. By what proportion, up to 25%?

6. Should interest be awarded? How much?

## **Findings of fact**

19. Our findings on facts relevant to the issues in dispute are below. Where events are not agreed and we have had to make a finding on the evidence, we explain our reasoning.

6 September 2023: incident involving the claimant's prayers

20. Parties agree that, on 6 September 2023, an incident took place between the claimant and Mr Prucnal in a hallway outside the transport managers' office where the claimant was praying. At the hearing we spent some time considering photographs of this hallway from different angles; the claimant indicated on the photographs where he was praying. In our deliberations we were able to triage these photographs with the plan the claimant provided with his submissions. Considering these visuals and the claimant's description of his position and the recollections of Mr Prucnal, Mr Fiorello and Mr Green (either in statements given during the subsequent investigations and / or in their evidence to the tribunal) we find that parties agree the claimant was praying in the hallway, facing towards the wall in a gap between two set of double fire doors, one leading to the car park, the other leading to the driver's side of the transport office where there is a counter from which drivers would collect their keys. The exit from this side of the transport office leads to the area where the lorries are parked. The photographs and plan show 6 exit doors in total, one of which is a single door leading to the managers' side of the transport office, where managers' desks are located. It is also agreed that the claimant was praying towards the wall, with his eyes closed and for part of the time he was in prostration; the claimant explained to us by reference to diagrams that this is the act of bowing on one's head and kneeling on the floor during prayer.
21. The claimant accepts he had not prayed in that location before, telling us he was doing so because he did not have sufficient time to go to the prayer room while an issue with his trailer was fixed. Mr Fiorello confirms this, telling us that he was in the transport office on 6 September when the claimant came in, spoke of an issue with his trailer and said he was going to prayer while this was fixed.
22. The claimant told us he had measured the gap between the doors to ensure there was sufficient room for him to pray between them even if they were opened. No-one witnessed the claimant doing so, but his evidence was not challenged. We find that had someone opened the doors they would not have touched the claimant while he was praying. However, the photographs and plan evidence that this would not have been apparent to anyone passing by. Certainly there is no evidence before us that Mr Prucnal was aware the claimant had measured the area. Indeed, in his evidence to the Tribunal the claimant acknowledges that on 6 September, after he had finished praying, Mr Prucnal told him he was "unaware that Muslim prayers should not be interrupted". We find Mr Prucnal was not aware the claimant had checked he would not be hit by the doors while praying.
23. It is agreed that Mr Prucnal sought to get the claimant's attention. However, parties disagree about the wider content of the exchange, the volume of Mr Prucnal's voice and his motivation for addressing the claimant.
24. Mr Prucnal told us he was having a cigarette outside and returning to the office an LGV driver, Kevin King, told him someone was praying on the floor in the hallway. Mr Prucnal told us he went to look, saw it was the claimant and was concerned the claimant would either be hit by the doors or that someone could trip over him. Mr Green and Mr Fiorello recall Mr King being in the transport office on 6 September at the time Mr Prucnal interrupted the claimant's prayers.

The claimant does not challenge that Mr Prucnal had a conversation with Mr King. Mr Wiffin, a union representative, confirms this in his subsequent meeting with Mr Abusiddique when the incident was investigated, telling him that: "The praying was brought to his [Mr Prucnal's] attention by someone else".

25. For these reasons we find that Mr King did raise the concerns Mr Prucnal recalls and this is what triggered Mr Prucnal going to look where the claimant was praying. Having considered the photographs and plan of the hallway and having found that Mr Prucnal was not aware at this time that the claimant had measured the space, we find it reasonable that Mr Prucnal had concerns about the location in which the claimant was praying. Indeed, his meeting with Mr Abusiddique the claimant acknowledged he would choose a better place to pray in the future. Mr Abusiddique also acknowledged that it was not somewhere he would choose to pray due to the potential risk of interruption.
26. The claimant's and Mr Prucnal's recollections of the interruption vary. In his witness evidence to the Tribunal the claimant told us Mr Prucnal shouted for about 90 seconds, close to his ear: "You can't pray here! I'm talking to you, Ilyas! Do not ignore me" and the shouting could be heard through the traffic office door, which the claimant says was locked. As part of an investigation into the claimant's reaction to the interruption, on 3 October 2023 the claimant told Mr Abusiddique that Mr Prucnal said: "Ilyas don't ignore me, I'm talking to you". Mr Prucnal denies telling the claimant he could not pray in the hallway. We prefer the claimant's more contemporaneous memory and find Mr Prucnal did not tell him "you can't pray here".
27. Mr Prucnal accepts that he called the claimant's name about 3 times, including when the claimant was in prostration and that he asked the claimant not to ignore him. Parties agree the claimant did not respond. Mr Prucnal says he was about 3 feet from the claimant and trying to get his attention but denies shouting or bending towards his ear. Mr Prucnal's evidence to the Tribunal accords with his statement to Mr Abusiddique. However in neither does he recall Mr Green coming out into the hallway. Mr Prucnal's recollection is that he was still in the hallway when the claimant finished praying, which is inconsistent with Mr Fiorello's and Mr Green's evidence.
28. It is agreed that Mr Fiorello and Mr Green responded to the incident, in that it was Mr Fiorello who was aware that Islamic prayers must not be interrupted and asked Mr Green to go and "grab" Mr Prucnal and bring him back to the transport office, which Mr Green did. Their evidence is consistent with the claimant's recollection that he went into the traffic office when he had finished praying to identify who had interrupted him. For these reasons, we prefer the claimant's recollection that the Mr Prucnal was not in the hallway when he finished praying.
29. The claimant says Mr Prucnal was shouting in his ear. Mr Prucnal denies shouting. The claimant says Mr Prucnal must have been shouting for Mr Fiorello to hear him through the locked traffic office door (the claimant says) and tell Mr Green to grab him. Mr Fiorello denies the door was locked, recalling it as partly open due to a fault with the magnetic lock.
30. We have seen documents dated 10 October 2023 which record that a fault was reported with the door. However, given the date of these documents, they do not conclusively confirm it was faulty over a month earlier. The claimant says

the door was locked because he recalls having to open it on his return to the traffic office. However, the claimant also told us that his ID card was not functioning on 6 September which meant he was unable to access the designated prayer room at the site and this is one of the reasons he decided to pray in the hallway. If his ID card was not functioning it is simply not feasible that the claimant could have entered the transport office through a locked door; he would need his ID card to release the magnetic lock. Therefore, we find that the door was not locked due to the lock being faulty at this time. In the photograph of this door taken for the purposes of the hearing the door is wedged open with a box given the weight of a fire door. Given none of the witness describe at the time the door being wedged open in this way (which would be necessary given the weight of a fire door, as this photograph demonstrates) we find that, on balance the door was not open, but likely ajar, resting against its frame, as the magnetic lock to ensure it was fully closed was not working, but at the same time it could not be fully open given its weight as a fire door. As the door was ajar we find this would not muffle the sound of Mr Prucnal's voice.

31. Mr Fiorello told us he heard Mr Prucnal say the claimant's name, and could see him standing behind the claimant (which accords with both the claimant's and Mr Prucnal's description of where he was praying), trying to get his attention. Realising this would interrupt the claimant's prayers Mr Fiorello asked Mr Green to go into the hallway and "grab" the claimant. Ms Ismail challenged Mr Fiorello's use of the word grab, suggesting this "denotes urgency" in support of the claimant's recollection Mr Prucnal was shouting. Mr Fiorello disagreed the word denotes urgency, telling us "I knew from own knowledge that someone who was praying should not be disturbed and explained he was using the word in the same way as saying he grabs a packet of crisps. Ms Ismail suggested the fact Mr Prucnal was "grabbed" shows he was being disrespectful. In his evidence to the Tribunal the claimant acknowledges that on 6 September, after he had finished praying, Mr Prucnal told him he was "unaware that Muslim prayers should not be interrupted", something he repeated at the hearing. As both the claimant and Mr Prucnal spoke of a warm relationship prior to the incident and given his comment at the time, we find that Mr Prucnal was not aware Muslim prayers should not be interrupted, we find his actions were not intentionally disrespectful. For these reasons we find that nothing can be read into the use of this word. It certainly does not denote that the Mr Prucnal was shouting. We find that Mr Fiorello recognised it was not appropriate for Mr Prucnal to try and get the claimant's attention while he was praying.
32. Mr Fiorello told us Mr Prucnal did not raise his voice; this is consistent with his statement in the subsequent conduct process. Mr Greene did not give evidence to the Tribunal but in his statement dated 25 September 2023, made as part of the same investigation, he recalls Mr Prucnal speaking to the claimant while he was praying and being asked by Mr Fiorello to get Mr Prucnal. He says he told Mr Prucnal they would speak to the claimant once he had finished praying. Mr Green told Ms Wilson, who interviewed him on 14 February 2024 as part of the claimant's internal bullying and harassment complaint that the claimant was a "little on edge" prior to praying due to the issues with his trailer and subsequent delay, acknowledging this was likely due to the claimant's conscientious nature. He describes sitting at his desk in the transport office speaking to Mr Fiorello and hearing Mr Prucnal "trying to get the Ilyas' attention in the foyer". Mr Green told Ms Wilson that: "[Mr Prucnal] wasn't shouting but he was getting slightly louder as he said Ilyas three times". When Ms Wilson asks Mr Green if Mr

Prucnal was shouting, Mr Green tells her that Mr Prucnal was speaking louder to get his attention and that his tone was different more than his volume.

33. We find that Mr Green's recollection accords with that of Mr Fiorello. Their recollection is different from Mr Patel, who says Mr Prucnal got up from his chair in the transport office, went into the hallway and shouted "again and again" at the claimant while he was praying. Mr Patel did not attend the hearing. As the respondent has not had the opportunity to cross examine this differing account we must afford Mr Patel's recollection less weight. Furthermore, we have found Mr King told the Mr Prucnal where the claimant was praying when Mr Prucnal was on his way back from the transport office. Therefore, it is simply not feasible that Mr Prucnal first came into transport office before then going back out into the hallway to call the claimant's name. Taking account of the claimant's plan, Mr Prucnal would have to pass the claimant first, at which point he would have addressed him. We find Mr Prucnal did not come into the transport office before addressing the claimant. We prefer Mr Prucnal's recollection that he spoke with Mr King on the way back from having a cigarette. For these reasons Mr Patel's recollection is not credible and we have given it no weight.
34. The question remains did Mr Prucnal shout. Recollections vary and the ability to recall events fade with time. Recollections may be fallible and an honest witness may be giving evidence as they see it. We have summarised about the accounts of 6 September 2023 above. We have considered all documents relating to these accounts to which we were referred at the hearing, even if we do not mention them specifically (mindful of rule 3 of the Employment Tribunal Procedure Rules 2024 it would not be proportionate to do so) and we have considered the evidence given in cross examination.
35. We have found that Mr Prucnal was trying to get the claimant's attention because, having been alerted to the location of the claimant's prayers by Mr King, he was concerned that someone may trip over the claimant. We have found his concern this concern was reasonable given the location the claimant was praying in and the fact Mr Prucnal was not aware at the time that the claimant had opened the adjacent doors before praying to ensure he was clear of them. We have found that Mr Green recalls Mr Prucnal's voice getting louder the more times he said the claimant's name. We have found that Mr Fiorello heard Mr Prucnal saying the claimant's name through a thick fire door, albeit partially open. We have found Mr Prucnal an honest witness but his recollection of the event unreliable as he recalls still being in the hallway when the claimant finished his prayers while Mr Fiorello and Mr Green's evidence is that he was back in the traffic office, something the claimant's recollection accords with as he says he came back into the traffic office to find out who had interrupted his prayers. Taking account of these findings, we find that, on balance, Mr Prucnal did raise his voice. It is logical he would do so after first saying the claimant's name and not getting a response and given the fact he was saying the claimant's name to his back and the fact this was heard in the traffic office. Whether the rise in volume amounted to a shout is semantic. The use of the word shout must be considered in the context of its use: Mr Prucnal seeking to get the claimant's attention due to concerns we have found he had about the claimant's location. We have also taken account of the fact that the claimant told Mr Abusiddique that he was praying "loudly".

36. We have also taken account of the fact that there is an element of subjective interpretation and perception in the use of the word shout. The Cambridge University dictionary defines “to shout” as using a loud voice to make yourself heard in noisy situations, or when the person you are talking to is a long way away, or cannot hear very well, or to try to attract attention. We find that is exactly what Mr Prucnal did; he called the claimant’s name 3 or 4 times, raising the volume each time when he did not get a response, while the claimant was facing away from him praying with his eyes closed. Mr Prucnal raised his voice as he did not get any response when he first said it, trying to make himself heard above the sound of the claimant’s prayers. It is plausible that the fact the claimant had his eyes closed may have caused him to think Mr Prucnal’s voice was louder than it actually was as other sensory distractions are reduced. This may account for the claimant’s recollection that Mr Prucnal shouted for 90 seconds. This is simply not feasible. Several witnesses recall, and we have found, Mr Prucnal said the claimant’s name 3 or 4 times before Mr Green intervened. Quite simply, given Mr Fiorello’s concern about interrupting prayers it is implausible that Mr Fiorello would have allowed Mr Prucnal to continue saying his name for 90 seconds. Taking account of the fact we have also found that Mr Prucnal asked the claimant to stop ignoring him, we prefer Mr Fiorello’s recollection that the whole incident, including taking Mr Prucnal back to the traffic office, lasted 90 seconds.
37. Mr Fiorello and Mr Green also gave their recollections of the claimant’s reaction when he had finished praying as part of the conduct process, the claimant’s appeal and to the Tribunal. Their evidence is broadly consistent.
38. Mr Fiorello told us on his return to the traffic office, having been told it was Mr Prucnal who tried to interrupt him, the claimant “began to scream and shout about what has happened...his voice was raised...he was moving his arms a lot in Krystian’s face...” Mr Fiorello describes the claimant as “seeing red.”
39. In his 25 September 2023 statement Mr Green recalls the claimant shouting at the end of his prayers and recalls trying to calm the claimant down. He told Ms Wilson that:
- “Ilyas stood up and was emotional and angry. He said it’s disrespectful and against his culture to interrupt prayer. I managed to get Ilyas into a room with Andy Wiffin, CWU Rep, as he had overheard what happened....
- ...it took [Ilyas] a long time to calm down and he was very upset. He didn’t realise he was as aggressive as he was.”
40. The claimant’s recollection differs. He told us that he said to Mr Prucnal that he had expected better of him, as he “was like a brother to the [claimant]”. He accepts that Mr Green took him into a small meeting room, where he was “visibly shaking”. The claimant says he remained in control, insisting Mr Prucnal apologise.
41. All witnesses to the incident agree that the CWU representative, Andy Wiffin, that was present. Mr Wiffin was not called to give evidence to the Tribunal. He accompanied the claimant to his meeting with Mr Abusiddique. We have considered the written record of that meeting, including the annotations made by the claimant after the meeting. Mr Wiffin comments that, when the claimant returned to the traffic office to ask who had interrupted his prayer and is told it

is Mr Prucnal, the claimant acknowledging he “raised his voice...was shaking”, Mr Wiffin comments: “You were shouting quite a bit at that point....I would say I had seen you mentally and emotionally..”. Mr Wiffin goes on to note his view that this reaction was due to Mr Prucnal disturbing the claimant’s prayer: “Krystian was the one who created the problem and Ilyas had just reacted”.

42. Ms Burkill also witnessed some of the events once the claimant had finished praying. In an undated statement it is agreed was made around the time of Mr Abusiddique’s investigation she says she heard shouting from the small meeting room where the claimant had been taken by Mr Green, accompanied by Mr Wiffin. She says she believes the raised voice to be the claimant. This accords with Mr Wiffin’s recollection that the claimant was shouting. In her evidence to the Tribunal Ms Burkill said when the claimant returned to the traffic office he appeared calmer and said to her “I apologise I am not usually like this”.
43. The claimant’s recollection he did not shout once he finished his prayers is simply not credible. All other witnesses who saw the claimant at that time describe, with various explanations, the claimant shouting and shaking. We find that the claimant was angry and upset (understandably so, his prayers having been interrupted) and as a result was shouting and shaking with both anger and emotion. Indeed, he acknowledged this in his comment to Ms Burkill (which he has not denied he made). Parties agree that before he went home the claimant and Mr Prucnal went outside for a cigarette and the claimant apologised.
44. It is agreed Mr Parker was not present on 6 September. Both Ms Burkill and he told us they spoke on the telephone several times that evening. Ms Burkill was new to her role and sought advice from Mr Parker as the more experienced manager, telling Mr Parker about the incident in the first call and seeking his advice on how to deal with the situation in subsequent calls. Mr Parker says Ms Burkill told him that after the claimant had finished praying he shouted at Mr Prucnal for a prolonged period. In a subsequent call Ms Burkill reported that the claimant had calmed down, but was still “shaking with rage” and sought Mr Parker’s advice in next steps. Mr Parker says he advised Ms Burkill to send the claimant home, which she did. Their evidence is consistent and we find accurately reflects their interaction.
45. The decision to send the claimant home was appropriate in all the circumstances as we have found them at that time, particularly the claimant’s reaction and the fact he acknowledged he was in no state to drive an LGV.
46. Ms Burkill recalls hearing a very raised voice which she believed to be the claimant. She says she went outside to speak to Mr Parker. Their evidence is consistent; we find in their telephone conversation she told Mr Parker that she was sending the claimant home to cool off as he was not in the right frame of mind to drive she describes him as “Shouting” and that she thought this was appropriate action as “he sounded angry...he still appeared to be shaking and agitated”. We find that the claimant accepted he was not, and agreed to go home, telling Ms Burkill: “I apologise, I am not usually like this”. This accords with the evidence of several witnesses that the claimant was angry and upset and shaking, including Mr Wiffin, how told Mr Abusiddique that the claimant was “physically and mentally upset, he was shaking because he was in shock”. Ms Burkill told us she called Mr Parker as she was new to the role and wanted

support. She says she told him what she had seen and what had been reported to her about the claimant's conduct after he had finished praying. Ms Burkill also told us Mr Parker asked about Mr Prucnal's behaviour and she reported that he was not rude or inappropriate, he was trying to get the claimant's attention.

47. Ms Burkill told us where an employee is to seek an explanation meeting would follow automatically. This accords with the respondent's conduct policy, which confirms Mr Parker's evidence that "seek an explanation" meeting forms part of the respondent's conduct process. We have considered the policy; we find this is not an investigation and holding this meeting does not denote there has been misconduct. It is the start of a fact finding process triggered when managers consider an employee's behaviour needs explanation. Given the claimant's apology to Ms Burkill about his reaction and the fact he was in no state to drive an LGV, we find it was appropriate for the respondent to seek an explanation for the claimant's reaction. Depending on that explanation further action may be taken by the respondent, including possible suspension, under the policy.

7 September 2023: seek an explanation meeting

48. In his evidence to the Tribunal the claimant alleges that when he returned to work on 7 September the respondent accused him of breaching health and safety requirements and made an allegation of misconduct. This is factually inaccurate. No accusation of a breach of health and safety was made and he was not accused of misconduct at this stage or at all in relation to his prayer and reaction to the interruption. The following happened: the claimant was invited to a meeting to explain why he was shouting after he finished praying the previous day and Ms Burkill took the decision to send him home to cool off as he was not in the right frame of mind to drive an LGV. It was appropriate for the respondent to find out why, and, in any event, when an employee is sent home to cool off the respondent's policy provides that a seek and explanation meeting, part of the respondent's conduct process, follows automatically.
49. Mr Parker told us that he referred to health and safety concerns on the PCM record as it was part of the wider context. We find that the reference to Mr Prucnal's concerns about the location of the prayer are referred to as this concern, and Mr Prucnal's attempts to interrupt the claimant are what triggered the claimant's reaction. The claimant seems to have extrapolated the fact the seek an explanation meeting sits within the respondent's conduct process to conclude he was being accused of misconduct. He was not. Mr Abusiddique told us while this fell within the conduct process it was a not formal disciplinary matter
50. The claimant's and Mr Parker's recollections of their conversation at this meeting differs. The claimant says he told Mr Parker that he intended to report the incident to the police as a hate crime and he wanted to make a formal complaint against Mr Prucnal, Mr Parker told him there would be "adverse consequence". Mr Parker told us his response to the claimant telling him he intended to report the incident as a hate crime was a surprise as he did not see it that way. Mr Parker also recalls the claimant saying he wanted to raise a complaint against Mr Prucnal.

51. There are no minutes of this meeting. However, the claimant's union representative, Liam Kavanagh also attended as the meeting. He recalls that the claimant was still very upset from the events of the previous day. He told us the meeting was a "run of the mill" seek an explanation; when the claimant said he intended to go to the police Mr Parker acknowledged this was serious and told the claimant he would need to make a formal complaint and if he didn't Mr Parker said he would investigate without a formal complaint given the severity of the allegations the claimant was making. Mr Kavanagh told us Mr Parker was not threatening in the meeting and there was nothing untoward, had there been he would have stopped the meeting, telling us: "if meeting was heated or hostile I would call an end to the meeting and we would meet another day – we have principles of conduct."
52. Mr Kavanagh's recollection of the meeting accords with Mr Parker's, not the claimants. Mr Kavanagh was there as the claimant's support at the meeting and had no reason to misrepresent the conversation. For these reasons we prefer Mr Parker's and Mr Kavanagh's recollection and find that Mr Parker did not threaten the claimant with adverse consequences if he reported the 6 September incident as a hate crime. Indeed, he took this intention seriously and advised the claimant to make a formal complaint internally.

8 September 2023: police report

53. On 8 September 2023, the claimant did report the incident to the police. The respondent accepts that this happened as a matter of fact and is a protected act. The police took no further action.

13 September 2023

*Conduct investigation*

54. The claimant says that in a telephone conversation that day Mr Parker asked him to move to a different work location (Coventry) as a solution to the incident on 6 September, which was unacceptable to the claimant due to the long commute time from home. Mr Parker told us that he does not recall the specifics of this conversation but he may have suggested an alternative location.
55. Certainly the claimant's phone records show that the claimant and spoke on 13 September. Mr Parker acknowledges that there may have been a conversation about the claimant's work location given the 6 September incident. We find that there was and it was suggested to the claimant that he could move location. However, nothing came of this conversation; there is no suggestion by either party, or documentary evidence, that this was taken any further and the claimant continued to work at the Super Hub.

*Claimant's grievance*

56. It is agreed that on 13 September 2023 the claimant submitted a grievance about the 6 September 2023 incident. The respondent accepts the grievance is a protected act.

57. The respondent accepts that it rejected the claimant's grievance when he tried to submit it on 13 September 2023 and again on 10 November 2023. The respondent's policy accords with the explanations by the respondent's witnesses' evidence and the advice of HR to Mr Parker that it was rejected because as the incident complained about was part of the same factual matrix it would be dealt with as part of the conduct fact finding process.
58. At the hearing we established the chronology of the conduct process and the submission by the claimant of his grievance as follows:
- 58.1. The claimant first submits his grievance, which is rejected on 13 September 2023 by the respondent on the basis of its policy that the complaint would be considered as part of the conduct process;
- 58.2. On 12 October 2023 Mr Abusiddique concludes the conduct process, uploading his outcome and files to the central HR system; no findings are made about the claimant's grievance.
- 58.3. On 10 November 2023 the claimant resubmits his grievance. HR view the conduct case on the HR system (11:41). Subsequently (16:33) HR reject the grievance on the basis "issues have already been addressed in the conduct case".
59. The claimant submits that Mr Parker's and Ms Tebbutt's explanation that the responses to the claimant's grievance submissions were due to confusion are "not plausible, particularly as HR viewed MA's conduct case documents the day they rejected [the grievance complaint] 10 November 2023". Notwithstanding that the timings of when HR viewed the system and the claimant's submission that from this HR knew the conduct process did not address the grievance were not put to Mr Parker or Ms Tebbutt after the Tribunal established the timeline, we disagree that this explanation is not plausible.
60. The September submission of the grievance predated Mr Abusiddique's fact finding. Therefore, at this time we find the respondent was following its process. Mr Abusiddique told us he was not tasked with looking at Mr Prucnal's behaviour, only the claimant's reaction's to it and his chosen prayer location. In this regard we find that that the claimant was failed by the respondent. His concerns were not addressed as he had been told by Mr Parker and HR, not was the conduct investigation compliant with the respondent's only policy due to HR failing to task Mr Abusiddique with looking at what had happened from the claimant's perspective. Without question, there was a failing of the respondent's policy and processes which meant that, had it not been for the claimant's persistence in pursuing his grievance, it may never have been considered. Quite simply, in not tasking Mr Abusiddique with looking at Mr Prucnal's behaviour as well as the claimant's the respondent had failed to follow its own policy and had let the claimant down at best.
61. In rejecting the second attempt by the claimant to submit his grievance in November 2023 the respondent again quoted it's policy. This attempt by the claimant was after the conduct fact finding process had completed, the conduct process having been discontinued at the fact finding stage on 12 October 2023. Contrary to what the claimant had been told in the September, his concerns about Mr Prucnal's behaviour had not been investigated as part of this process and an outcome about them considered. At this point the respondent had failed

the claimant on two fronts: first in not investigating his concerns as he had been told; and rejecting the grievance a second time on the basis this had been considered when it had not. At the very least rather than “computer says no” the respondent’s HR provision should have checked whether the grievance had been considered as part of the conduct process. The timings of when they accessed the system do not confirm that someone actually checked whether the grievance was addressed by Mr Abusiddique. On the evidence presented to us, and given the fact the timings were not put to the respondent’s witnesses during the hearing, the Tribunal cannot determine whether HR checked just the status of the conduct fact finding or the contents. Therefore, we must conclude that the second submission of the grievance was done on the basis of the policy, however misguided.

62. Again, it is testimony to the claimant’s dogged pursuit of his grievance, and explanation that his concerns were not addressed in the conduct process, that on 13 November 2023 the respondent finally accepts his grievance.

25 September 2023: Mr Green’s statement

63. The claimant alleges that Mr Green made a written statement on 25 September 2023 regarding the events of 6 September 2023 that he knew to be untrue, specifically: that the claimant was shouting and aggressive; and that Mr D Green did not come out of the traffic office. However, in his closing submissions the claimant concedes that in his statement Mr Green says: “I went and got Krystian” and so he no longer pursues this part of the allegation. In submissions the claimant says that the statement was untrue because, while he accepts he raised his voice, he was not shouting or aggressive and that while Mr Green recognised his anxiety in the interview with Ms Wilson as part of the harassment appeal process, he did not mention this in his original statement.
64. While the claimant did identify the alleged untrue statement, he does not say why he considers Mr Green knew the statement to be untrue. Furthermore, the credibility of the allegation is invariably compromised by the fact that the statement does record Mr Green coming out of the traffic office when the claimant initially alleges Mr Green lied that he did not, when Mr Green did no such thing.
65. We consider Mr Green’s role on the 6 September key. We have found, and it has not been challenged by the claimant, that Mr Green was in the traffic office when he was asked to go out into the hallway to grab Mr Prucnal to stop him trying to interrupt the claimant’s prayer. He tried, with Mr Fiorello, to deescalate a situation in the claimant’s interests, to prevent further interruption to his prayers. He had no reason to misrepresent what he recalled at the time. As we have discussed above, sometimes recollection of the same event vary. There is also a subjective element to recollections; people may use different words to describe seeing the same thing due to their subjective interpretation of what is happening. The approach the claimant seems to taking is if someone’s recollection does not accord with his own version of what happened on 6 September he accuses them of lying. Yet, we have found that some of his recollections are not reliable. Further, he does not present any explanation as to why Mr Green would lie in his account. On 6 September 2023 both Mr Green and Mr Fiorollo sought to act in the claimant’s best interests by trying to stop Mr Prucnal from interrupting his prayers. To suggest they lied in recalling the account is simply not credible nor has the claimant presented any basis other

than a different recollection to him and use of slightly different language between accounts given over a period of time. For these reasons, we find Mr Green did not lie; he gave his account when asked. There is no significant discrepancy between his 2 accounts; in the second he simply provides more details.

3 October 2023: Mr Fiorello's statement

66. The claimant alleges that Mr P Fiorello made the following statements he knew to be untrue statements about 6 September in his written statement of 3 October 2023, specifically that:

- 66.1. The magnetic catch on the door to the transport office was broken and the door was open;
- 66.2. Mr Prucnal did not raise his voice;
- 66.3. The claimant was shouting;
- 66.4. The claimant chose to pray in a peculiar and dangerous place; and
- 66.5. The claimant was waving his hands.

67. To allege statements are knowing untrue is a very serious allegation, and indeed one which the claimant himself has got wrong. In his closing submissions the claimant accepts that this statement does not refer to the magnetic catch nor does he say the place for prayer was peculiar. magnetic catch nor does he say the place for prayer was peculiar. Again, the claimant has taken issue with those parts of the statements which do not accord with his own account and told Ms Tebbutt the reason he considers Mr Fiorello made false statements is to protect the respondent.

68. In making this finding the same points about Mr Fiorello being a neutral figure on 6 September who tried to deescalate the situation and prevent further interruption to the claimant's prayers. Mr Fiorello was the person who told Mr Green to grab Mr Prucnal, thereby acting in the claimant's interests at that time. He was also instrumental in trying to calm the claimant when he came into the transport office. These are not the actions of someone who would go on to intentionally lie about what he had seen. By his actions, done to support the claimant, it is simply not credible that he would lie in his account of the incident. Furthermore, in an interview in the bullying and harassment process on 6 December 2023 the claimant tells Ms Tebbutt that Mr Fiorello is a decent human being.

69. There is no evidence before us to support a suggestion that Mr Fiorello lied. The claimant relies on minor discrepancies in accounts given by Mr Fiorello at different points in time. As we have found, the claimant himself gave a different account to the Tribunal about what Mr Prucnal said to him on 6 September to what he told Mr Abusiddique. That is not unusual. It does not mean he lied.

70. For these reasons, we find that Mr Fiorello's account of the 6 September was not knowingly false; he gave his honest account at the time based on his recollection. He had no reason to do otherwise, not least as he was instrumental in trying to deescalate the situation by asking Mr Green to go out into the hallway to grab. Certainly in an assessment of the tone and volume of someone's voice and whether it was a dangerous place to pray involve an element of perception and subjective opinion, and it is usual for this to be reflected in a witnesses account. Indeed Mr Abusiddique concluded it was not

somewhere he would chose to pray given the risk of interruption. Incorrect evidence can also be honestly given. We have found the same with the claimant's recollection; he recalls being shouted at for 90 seconds. He was not. On his own case Mr Prucnal shouted his name 3-4 times; we have found it was not credible this lasted 90 minutes, but we have no doubt the claimant honestly believed it felt like 90 seconds. The same principle applies to our assessment of Mr Fiorello's evidence.

5 October 2023: CCTV

71. The claimant alleges that on 5 or 6 October 2023, the respondent allowed CCTV footage of the incident on 6 Sep 2023 to be deleted, in that when he made his request to Mr Parker, Mr Parker should have made a direct request that it was not deleted. We have considered the claimant's subject access request; it does not include direct request that any CCTV footage be preserved. Mr Parker forwarded that request to the relevant team, who subsequently responded to the claimant telling him the footage had been deleted. We find that Mr Parker followed usual processes in forwarding the request. The claimant says that he told Mr Parker in a telephone conversation that it was necessary for Mr Parker to request the footage is preserved. The claimant did not identify when this conversation was or why, even the footage was important, as he subsequently told Ms Wilson, he did not include a request to preserve it in the subject access request. For these reasons we find he did not make an express request to have it preserved, likely because at the time he was not aware it would be deleted after 28 days. Given the importance, had he know it would be deleted, the claimant would have stated this in the request itself.

December 2023: claimant's grievance

72. Ms Tebbutt was appointed investigating officer in the claimant grievance. The respondent accepts that on 12 December 2023 she interviewed Mr Parker, who told her that the claimant was shaking with rage and erratic or words to that effect. The respondent accepts that Mr Parker told Ms Tebbutt that Mr Prucnal was naïve and harmless. The claimant alleges Mr Parker's description of him was racial profiling by reference to his description of Mr Prucnal, a white man. To racially profile is to make a statement because of race. This equates to the legal test for direct discrimination. In this context, we must interrupt racial profiling as the comment relating to race and determine whether Mr Parker racially profiled the claimant in our analysis and conclusions below, applying the legal tests.
73. In his H1 grievance document the claimant identifies people he says should be interviewed. He repeats this request when he is interviewed by the Ms Tebbutt. She accepts she did not interview them. She says this is because they had already been interviewed as part of the conduct fact finding process and so it was not necessary as she had a comprehensive set of witness evidence to inform her fact finding investigation into the claimant's. We disagree. It is clear on the face of the conduct investigation statements and notes of the meetings that the interviews were focused to the claimant's behaviour (indeed, that is inherent in the title of the process) and not Mr Prucnal's behaviour in interrupting his prayer, which is the subject matter of the claimant's grievance. The fact Mr Abusiddique's report records that he was tasked only with considering the claimant's conduct confirms this. Due process would have been to ensure that evidence was also captured from the perspective of the

grievance and the complaint about Mr Prucnal's behaviour (which was not before Mr Abusiddique, even if it meant interviewing witnesses a second time, not least as the respondent's policy required the process to be thorough.

May 2024: grievance appeal

74. Ms Wilson accepts that in May 2024 she did not uphold the claimant's grievance appeal. The claimant alleges that this was despite Mr Green's evidence that Mr Prucnal had raised his voice during the incident on 6 September 2023. When Ms Wilson asked him to recall the incident, Mr Green told Ms Wilson that Mr Prucnal was "not shouting" but was "getting slightly louder as he said Ilyas 3 times" and he goes on to say "he had a raised voice but it wasn't as loud as Ilyas.

75. The report states the grounds of appeal included "whether any further evidence has come to light that would materially affect the outcome. In his appeal document dated 15 January 2024 the claimant states that:

"Ms Tebbutt had no right to exclude Mr Fiorello and Mr Green..."

76. Ms Wilson addresses this by interviewing Mr Fiorello and Mr Green.

77. In his written statement dated 25 September 2023 in recalling the incident Mr Green says that Mr Prucnal "continued to try to speak to Ilyas" when he was praying. Ms Tebbutt accepts that it was this statement she relied on as part of her decision that Mr Prucnal did not bully and harass the claimant. Therefore, we find that Mr Green's recollection is different and Ms Wilson did not uphold the appeal despite Mr Green now telling her that Mr Prucnal raised his voice. This was not a point of appeal because at the time the claimant appealed, Mr Green's evidence was that Mr Prucnal was speaking. However, when Mr Green told Ms Wilson that Mr Prucnal raised his voice, thus the claimant says corroborating the claimant's recollection of the incident that Mr Prucnal was shouting.

78. We have considered her appeal decision which was sent to the claimant on 15 March 2024; it does not address this discrepancy. In submissions the claimant says that the report places continuing reliance on the accuracy of what the respondent's never testing it with other witnesses or setting out why she preferred the account given by the respondent's witnesses and not the claimant's recollection. Ms Wilson told us that Mr Green telling her that there was a raised voice did not accord with claimant's recollection that Mr Prucnal was shouting and that when she explored this in a further interview with Mr Fiorello he did not support the claimant's recollection that Mr Prucnal was shouting.

79. The notes of the interviews Mr Green and Mr Fiorello record that Ms Wilson did put to both the claimant's case that Mr Prucnal was shouting. Neither corroborated this. She told us this was the reason she did not uphold the appeal, although she does not address this point directly in her outcome report

80. We find she did pursue the alleged change in evidence made by the claimant in his appeal (whether Mr Prucnal was shouting) with Mr Green and Mr Fiorello, concluding on the basis of their accounts that Mr Prucnal was not shouting. Ms Wilson told us that she was aware throughout the appeal that the claimant was

going to ACASs but was not aware of the Tribunal proceedings until the end of appeal process . There is no evidence she knew the contents of the claim. We find she did not when reaching her appeal decision.

January 2024: incident with the trailer door

81. It is agreed that on 25 January 2025, after the claimant suffered an accident due to a faulty trailer door. The claimant was checking his trailer door, using a hand torch held in his mouth when the door swung back as he tried to open it and he hit the torch which caused his tooth to chip. The claimant says that when he reported this to Mr Beauchamp, he verbally discouraged the claimant from reporting it. Mr Beauchamp says in this conversation he warned the claimant that reporting it may result in a conduct investigation as the claimant should not have had the torch in his mouth. We find that this was cautioning the claimant about the possible consequence of the incident being reported. We find that it is reasonable that the claimant did feel discouraged, even though Mr Beauchamp was seeking to make the claimant aware of the potential ramifications.
82. The claimant says that Mr Beauchamp threatened to initiate a disciplinary case against the Claimant if he insisted on reporting the injury. On 30 January 2024 Mr Beauchamp invites the claimant to a fact finding meeting. This is before the incident report has been agreed by both parties. Given the timeline, at best this is premature and we find it reasonable that the claimant felt threatened. This results in the claimant being invited to a formal conduct meeting on 13 February 2023.
83. The incident is reported using the respondent's ERICA form the following day. The claimant alleges that Mr Beauchamp then omitted crucial information from the injury report, specifically that the door was defective. We have considered the ERICA report that the claimant signed on 4 February 2024. This is an amended version of the original form (which we have also seen) at the claimant's request. The section completed by the claimant has changed. The claimant is asked to "summarise the events that led to the injury as you currently understand them". There is no mention of the faulty door. The claimant signs it on 4 February confirming the contents of this ERICA form fully completed to the best of his knowledge.

February 2024: meeting with Mr Beauchamp

84. On 4 February 2025 the claimant says Mr Beauchamp physically intimidated the claimant in a small room next to the traffic office while giving the claimant documents by swiftly walking towards him, speaking loudly and standing over him in an aggressive manner with his eyes wide open when the claimant was seated. Mr Beauchamp denies this, saying the claimant called him a liar several times, he asked him not to. The claimant denies calling Mr Beauchamp a liar.
85. The claimant was accompanied to the meeting with by an experience union representative (with 28 years service), Mr Puntrello. We have also seen the notes of this meeting. Mr Puntrello told us that the meeting started ok then not long into meeting the claimant mentioned a few times that Mr Beauchamp had lied and this must be what was written in ERICA form about the incident with the trailer. At this point Mr Beauchamp showed the claimant the ERICA on his laptop and the claimant again accused Mr Beauchamp of lying. This accords

with Mr Beauchamps evidence that the claimant called him a liar. As the neutral in the room we prefer Mr Pruntrello's recollection. Mr Pruntrello also told us that Mr Beauchamp did not threaten the claimant and, had he done so, he would have stopped the meeting. Again Mr Pruntrello's recollection accords with Mr Beauchamps. We find Mr Beauchamp did not physically intimidate the claimant or speak to him in an aggressive manner. Had he done so Mr Pruntrello would have called time on the meeting. He did not so as this was not necessary.

## **Relevant law**

### Section 13 Equality Act 2010: direct discrimination

86. Section 13 of the EqA provides:

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*
- (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.*
- (3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.*
- (4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.*
- (5) If the protected characteristic is race, less favourable treatment includes segregating B from others.*
- (6) If the protected characteristic is sex—*
  - (a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;*
  - (b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy, childbirth or maternity.*
- (7) . . . . .*
- (8) This section is subject to sections 17(6) and 18(7).*

87. In a complaint of direct discrimination, first a claimant must establish facts to evidence they were treated less favourably a real or hypothetical comparator in materially the same circumstances of the claimant but without the protected characteristic relied on by the claimant. (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337; Governing Body of Sutton Oak Church of England Primary School and ors v Whittaker EAT 0211/18).

88. The case of Burrett v West Birmingham Health Authority [1994] IRLR 7) confirms that a claimant's subjective belief that he or she has been less favourably treated is not sufficient to establish less favourable treatment. There must be a link (consciously or unconsciously in the mind of the perpetrator) between the protected characteristic relied on by the claimant and any less favourable treatment found by the Tribunal.

89. The tribunal must consider what the employer's conscious or subconscious reason was for the treatment (Nagarajan v London Regional Transport [1999] ICR 877).

90. Lord Nicholls in Nagarajan v London Regional Transport [1999] ICR 877 (at 886), notes that it is not necessary for the claimant's protected act to be the sole reason for any established less favourable treatment, unwanted conduct or detriment, noting that liability may be established if a protected characteristic (or a protected act) is a significant influence/more than trivial reason for the treatment complained of. The discriminatory reason need not be the sole or even principal reason for the employer's actions. If the protected characteristic was a substantial cause, a tribunal can find that the action was discriminatory.
91. A difference in treatment is not sufficient to establish that direct discrimination has occurred unless there is "something more" from which the Tribunal can conclude that the difference in treatment was because of the claimant's protected characteristic. However, if there are facts from which the court or tribunal could conclude that discrimination occurred, the burden of proof shifts to the respondent to provide an adequate non-discriminatory explanation for its actions. (Madarassy v Nomura International plc [2007] IRLR 246 (CA)).
92. Ms Ismail directed us to the case of Dr. C. Anya v University of Oxford and Anr. 2001] EWCA CIV 405, 2001 WL 415496 as guidance on how a Tribunal should draw inferences from the primary facts as following in a complaint of direct race discrimination (citing Qureshi v University of Manchester:
- 92.1. Did the act complained of actually occur? In some cases there will be a conflict of direct oral evidence. The Tribunal will have to decide who to believe. If it does not believe the applicant and his witnesses, the applicant has failed to discharge the burden of proving the act complained of and the case will fail at that point. If the applicant is believed, has he brought his application in time and, if not, is it just and equitable to extend the time?
- 92.2. If the act complained of occurred in time, was there a difference in race involving the applicant?
- 92.3. If a difference in race was involved, was the applicant treated less favourably than the alleged discriminator treated or would treat other persons of a different racial group in the same, or not materially different, relevant circumstances?
- 92.4. If there was difference in treatment involving persons of a different race, was that treatment "on racial grounds"? Were racial grounds an effective cause of the difference in treatment? What explanation of the less favourable treatment is given by the respondent?
93. Ms Ismail submits that "Anya recognises the difficulties for a claimant faced with discharging the burden of proof in the absence of direct evidence on the issue of racial grounds for the alleged discriminatory actions, particularly one of institution-wide discrimination which, if it exists, may be inadvertent and unintentional. In such cases, the Tribunal should consider what inferences may be drawn from all the primary facts. The process of inference is itself a matter of applying common sense and judgment to the facts, and assessing the probabilities on the issue whether racial grounds were an effective cause of the acts complained of or were not."
94. Mr Chaudhry directed us to the case of Amnesty International v Ahmed [2009] IRLR 884 regarding the assessment of less favourable treatment because of a protected characteristic, noting the following guidance in this case:

“The fact that a claimant’s sex or race is a part of the circumstances in which the treatment complained of occurred, or of the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason for that treatment.”

Section 26 Equality Act 2010: harassment

95. Section 26 of the EqA provides:

*(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.*

*(2) A also harasses B if—*

*(a) A engages in unwanted conduct of a sexual nature, and*

*(b) the conduct has the purpose or effect referred to in subsection (1)(b).*

*(3) A also harasses B if—*

*(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,*

*(b) the conduct has the purpose or effect referred to in subsection (1)(b), and*

*(c) because of B’s rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.*

*(4) In deciding whether conduct has the effect referred to in subsection (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.*

*(5) The relevant protected characteristics are—*

- age;*
- disability;*
- gender reassignment;*
- race;*
- religion or belief;*
- sex;*
- sexual orientation*

96. In considering the words “intimidating, hostile, degrading, humiliating or offensive” a Tribunal must be sensitive to the hurt comments may cause but balance so as not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase: Richmond Pharmacology Ltd v. Dhaliwal [2009] IRLR 336. Where a claim for harassment is brought on the basis that the unwanted conduct had the *effect* of creating the relevant adverse environment, section 26 has been interpreted as creating a two-step test for determining whether conduct had such an effect; Pemberton v Inwood [2018] EWCA Civ 564. The steps are:

96.1. Did the claimant genuinely perceive the conduct as having that effect?

96.2. In all the circumstances, was that perception reasonable?

Section 27 Equality Act 2010: victimisation

97. Section 27 EqA provides:

*(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*

*(a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.*

*(2) Each of the following is a protected act—*

*(a) bringing proceedings under this Act;*

*(b) giving evidence or information in connection with proceedings under this Act;*

*(c) doing any other thing for the purposes of or in connection with this Act;*

*(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

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

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

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

98. The acts that are protected by the victimisation provisions are set out in section 27(2) of the Equality Act 2010. They are: bringing proceedings; giving evidence or information in connection with proceedings under the; doing any other thing for the purposes of or in connection with the Equality Act; and making an allegation (whether or not express) that A or another person has contravened the Equality Act.

99. In respect of section 27(1)(d) the allegation need not explicitly state that discrimination has occurred. What is required is that the allegation relied upon should have asserted facts capable of amounting in law to an act of discrimination by an employer within the terms of the [EA 2010] (Waters v Metropolitan Police Comr [1997] IRLR 589), telling us that a complaint of general unfair treatment does not suffice. The use of the word 'discrimination' is not sufficient for something to be a protected act (Durrani v London Borough of Ealing UKEAT/0454/2012/RN). It depends on the circumstances of the complaint.

100. The case of Beneviste v Kingston University UKEAT/0393/05 (related to the Sex Discrimination Act 1975 and Race Relations Act 1976 but there is no material difference in the wording of the legislation on this point) where the EAT gave the following guidance on what was required for an allegation to qualify under (d):

*"There is no need for the allegation to refer to the legislation, or to allege a contravention, but the gravamen of the allegation must be such that, if the allegation were proved, the alleged act would be a contravention of the legislation. If a woman says to her employer, 'I am aggrieved with you for holding back my research and career development' her statement is not protected. If a woman says to her employer, 'I am aggrieved with you for holding back my research and career development because I am a woman' or 'because you are favouring the men in the department over the women',*

*her statement would be protected even if there was no reference to the 1975 Act or to a contravention of it."*

101. A detrimental act will not constitute victimisation, if the reason for it was not the protected act itself, but some properly separable feature of it. There is no requirement that the circumstances be exceptional for such a case to arise: Page v Lord Chancellor and anor [2021] IRLR 377 (CA), per Underhill LJ at paras.55-56.
102. A claimant seeking to establish victimisation must show:
  - 102.1. That they have been subjected to a detriment; and
  - 102.2. They were subjected to that detriment because of a protected act or because the employer believed the claimant had done or might do a protected act.
103. There has been a detriment and a protected act, but the detrimental treatment was due to another reason, a claim of victimisation will not succeed.
104. The question of whether something amounts to a 'detriment' requires both an objective and subjective analysis of the treatment: 'Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment"' (Shamoon v Chief Constable of the Royal Ulster Constabulary (HL) [2003] ICR. 337 at [35]).
105. The test is a 'reason why' test. The Tribunal must look at the mental processes of the alleged discriminator (Nagarajan v London Regional Transport [2000] 1 AC 501). It is not a causation question. The but-for test is not appropriate (Chief Constable of the West Yorkshire Police v Khan [2001] ICR 1065). .
106. The essential question in determining the reason for the claimant's treatment is: what, consciously or subconsciously, motivated the employer to subject the claimant to the detriment? This will require an inquiry into the mental processes of the employer. If the necessary link between the detriment suffered and the protected act can be established, the claim of victimisation will succeed.
107. The case of Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065, HL is relevant to our assessment. The House of Lords guides that a tribunal must identify "*the real reason, the core reason, the causa causans, the motive*" for the treatment complained of. What is the real reason for the detriment?
108. The case of Chief Constable of Greater Manchester Police v Bailey 2017 EWCA Civ 425, CA provides guidance on how a Tribunal should apply the reason why test and reiterates the well-established legal test for victimisation that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome. The case cautions an Employment Tribunal from making an error of law, reminding (and perhaps cautioning us) that:

*"It is trite law that the burden of proof is not shifted simply by showing that the claimant has suffered a detriment and that he has a protected characteristic or has done a protected act...."*

109. The case is helpful to this Tribunal not least as Underhill LJ recites the key statutory provisions, noting that in section 27 of the Equality Act 2010 the question is whether a detriment was done 'because of' a protected act. The decision directs us that 'because' is the key word. Crucially, this is not identical to a 'but for' test; Ahmed v Amnesty International [2009] ICR 1450. One is looking for the 'reason why' the treatment occurred. Where treatment is not inherently discriminatory, one must look into the 'mental processes' of the decision maker. We must be satisfied, and have sufficient evidence before us, that the decision-maker's 'mental processes' were discriminatory if we make a finding of victimisation. It was held that the correct test we must apply is that the detriment occurred "because of" the protected act. A tribunal must first decide whether a claimant has established a *prima facie* case of unlawful victimisation; if he has, the burden shifts to the respondent to prove a non-discriminatory explanation. For an alleged discriminator to treat someone poorly 'because of' a protected act, they must have knowledge of the protected act.
110. An alleged discriminator needs to be aware that it was a grievance about discrimination (South London Healthcare NHS Trust v Al-Rubeyi UKEAT/0269/09/SM). It is not sufficient for an alleged discriminator simply to be aware there was a grievance.
111. It is important that a Tribunal has the burden of proof foremost in its mind when making a decision about a victimisation complaint. The victimisation claim is subject to the provisions of section 136 of the Equality Act 2010 relating to the burden of proof: this is set out below.
112. The protected act does not have to be the sole or the principle cause. It is enough if it was a significant part of the alleged discriminator's reason for acting (Nagarajan v London Regional Transport [2000] 1 AC 501).
113. Lord Nicholls in Nagarajan v London Regional Transport [1999] ICR 877 (at 886), notes that it is not necessary for the claimant's religion or any protected act to be the sole reason for any established less favourable treatment, unwanted conduct or detriment and noting that liability may be established if a protected characteristic (or a protected act) is a significant influence/more than trivial reason for the treatment complained of.
114. Therefore, we note that, as with direct discrimination, victimisation need not be consciously motivated. If the respondent's reason for subjecting a claimant to a detriment was unconscious, it can still constitute victimisation (Nagarajan v London Regional Transport and others [1999] IRLR 572). Further, the protected act need not be the main or only reason for the treatment; victimisation will occur where it is one of the reasons (paragraph 9.10, EHRC Services Code).

#### Section 136 Equality Act 2010: burden of proof

115. Section 136 EqA 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.*
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.*
- (5) This section does not apply to proceedings for an offence under this Act.*
- (6) A reference to the court includes a reference to—*
  - (a) an employment tribunal;*
  - (b) the Asylum and Immigration Tribunal;*
  - (c) the Special Immigration Appeals Commission;*
  - (d) the First-tier Tribunal;*
  - (e) the Education Tribunal for Wales;*
  - (f) the First-tier Tribunal for Scotland Health and Education Chamber .*

116. The Court of Appeal in the case of Igen v Wong [2005] ICR 9311 interprets section s136 as follows:

- 116.1. the claimant must prove, on the balance of probabilities, facts from which the Tribunal could conclude that the employer has committed an act of discrimination, in the absence of an adequate explanation (para 79(1));
- 116.2. the outcome of stage 1 will usually depend on “what inferences it is proper to draw from the primary facts found by the tribunal” (para 79(4));
- 116.3. “in considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts” (para 79(6));
- 116.4. where the claimant has satisfied stage 1, it is for the employer to then prove that the treatment was in no sense whatsoever on the grounds of the protected characteristic and for the tribunal to ‘assess not merely whether the employer has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question’ (para 79(11)-(12)); and
- 116.5. ‘[s]ince the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof’ (para 79(13)).

117. Mr Ismail reminded us that in Igen v Wong the Court of Appeal cautioned tribunals “against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground” (para 51).

118. In a complaint of a direct discrimination claim, to shift the burden of proof from the claimant to the respondent, the claimant must prove:

- 118.1. difference in status;
- 118.2. a difference in treatment; and
- 118.3. evidence to satisfy the ‘something more’ test.

119. The case of Madarassy v Nomura International Plc [2007] EWCA Civ 33 guides us that the 'something more' must not simply be something from which a Tribunal 'could conclude' but one that 'a reasonable tribunal could properly conclude' that such an inference can be drawn. Unreasonable treatment without more is not sufficient alone to infer discrimination (see Bahl v Law Society [2003] IRLR 640).

### **Analysis and conclusions**

120. We note EJ Kelly's comments in the list of issues that the claimant's complaints relating to race are largely presented as both harassment and/or direct discrimination and the Tribunal will determine these allegations as follows:
- 120.1. Considered the allegations of harassment. If any specific factual allegation is not proven, then it will be dismissed as an allegation of both harassment and direct discrimination.
- 120.2. If the factual allegation is proven, then the Tribunal will apply the statutory test for harassment under s. 26 Equality Act. If that allegation of harassment is made out, then it will be dismissed as an allegation of direct discrimination because under s. 212 (1) Equality Act the definition of detriment does not include conduct which amounts to harassment.
- 120.3. If the factual allegation is proven, but the statutory test for harassment is not made out, the tribunal will then consider whether that allegation amounts to direct discrimination under the relevant statutory test.

### Harassment related to religion/belief

#### *6 September 2023 incident*

121. The claimant is a Muslim. He alleges that, on 6 September 2023, Mr Prucnal shouted at him when the claimant was praying in a hallway outside the transport office, telling him that he could not pray in the hallway. The claimant alleges that Mr Prucnal continued to shout at him for approximately one and a half minutes, including when the claimant was in the prostration part of the prayer.
122. It is agreed that the claimant was praying in the hallway, facing towards the wall in a gap between two set of double fire doors, one leading to the car park, the other leading to the driver's side of the transport office where drivers would collect their keys. The exit from this side of the transport office leads to the area where the lorries are parked. We have found that Mr Prucnal raised his voice when he repeated the claimant's name to get his attention as he did not get any response when he first said it. We have found Mr Prucnal did so having been alerted to the location of the claimant's prayers by Mr King and because he had a reasonable concern that someone may trip over the claimant and that he was not aware at the time that the claimant had opened the adjacent doors before praying to ensure he was clear of them. The claimant had his eyes closed, his back to Mr Prucnal and he was praying loudly. We have found Mr Prucnal was not was aware Muslim prayers should not be interrupted. We have found that given the claimant had his eyes closed it may be his perception that Mr Prucnal was shouting.

123. As we have found that the claimant's factual allegation is proven in part (that Mr Prucnal raised his voice to try to get the claimant's attention while he was praying, although not shouting), first we must consider if this was unwanted conduct. We have found that the claimant was shouting and shaking after he had finished praying, angry and upset at Mr Prucnal's interruption. Objectively it is unwanted conduct to interrupt Muslim prayers; Mr Fiorello recognised it was so, directing Mr Green to go into the hallway, grab Mr Prucnal and bring him back into the traffic office. The claimant's reaction demonstrates Mr Prucnal trying to get his attention was unwanted. Objectively and subjectively we conclude Mr Prucnal's behaviour was unwanted.
124. Next we must consider whether Mr Prucnal raising his voice to a shout to get the claimant's attention related to the claimant's religion. We remind ourselves that the question of whether conduct is 'related to' a protected characteristic is a matter for the appreciation of the tribunal, making a finding of fact drawing on all the evidence before it (Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor 2020 IRLR 495, EAT). The fact that the complainant considers that the conduct related to a particular characteristic is not necessarily determinative, nor is a finding about the motivation of the alleged harasser. A Tribunal had to decide that for itself on the evidence before it and the facts as found. We remind ourselves that we must evaluate the evidence in the round (Hartley v Foreign and Commonwealth Office Services 2016 ICR D17, EAT).
125. In considering whether Mr Prucnal's conduct raising his voice related to the claimant's religion, we have considered the case of Omar v London United Busways Ltd ET Case No.3301535/10. O, a practising Muslim, was employed by LUB Ltd as a bus driver. His colleague, W, was employed as a bus controller. O claimed that W's actions in allowing passengers onto a bus that he was due to drive while he was upstairs praying amounted to harassment on the ground of his Islamic faith. He had asked W to wait to board passengers until he had completed his prayers. However, although she waited for a brief period, she did not allow him to finish. The Tribunal found that the decision to board the bus, thus interrupting the driver's prayers, was not related to his religion because the reason for it was to do with the operation of the bus service. We also directed ourselves that there is no requirement for a mental element equivalent to that in a claim for direct discrimination when considering whether conduct is 'related to' a protected characteristic (Carozzi v University of Hertfordshire 2024 EAT 169). The EAT noted that there may be circumstances in which harassment occurs where the protected characteristic did not motivate the harasser. Our focus must be on the conduct itself rather than the reason for the conduct. Considering these decisions, we conclude that the fact the reason for conduct is not related to a relevant protected characteristic (we have found the reason for Mr Prucnal raised his voice to get the claimant's attention was his concern that someone would trip over the claimant due to where the claimant was praying not that he was praying) does not necessarily mean that the conduct itself is not so related.
126. Therefore, we find in all the facts of this case the decision of Mr Prucnal to interrupt the claimant was related both to a business need (the tripping concerns which is a health and safety matter) and the claimant's religion (when calling his name it was evident to Mr Prucnal by the lack of reply that the claimant was focused on praying).

127. Next, we must consider whether this had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

128. We conclude it did not. Mr Prucnal's motivation is key. We have found the reason that he called the claimant's name, raising his voice and shouting when doing so, was to get the claimant's attention because he was concerned someone may trip over the claimant, having been alerted to the same by Mr King. His knowledge about Muslim prayers is also key. We have found he did not know interrupting the claimant's prayers was offensive. Therefore, we conclude that while Mr Prucnal's conduct did not have the effect of offending the claimant and violating his dignity (evidenced by the claimant's reaction shaking and shouting, it did not have that purpose.

129. Therefore, we must consider whether, in all the circumstances as we have found them on 6 September 2023, it was reasonable for the claimant to find Mr Prucnal's conduct offensive. We conclude it was not. Mr Prucnal was not aware at the time of the interruption that the claimant had checked whether the doors would open on him. Mr Prucnal had been told by Mr King where the claimant was praying and on finding him had reasonably concluded someone may trip over him. Mr Prucnal did not know it was offensive to interrupt a Muslim when they are praying, something he told the claimant when his prayers had finished. Mr Prucnal raised his voice to get the claimant's attention because the claimant was not replying and he was concerned about the claimant's location. When Mr Green came out of the transport office to get Mr Prucnal, he went into the office allowing the claimant to finish his prayers, he did not refuse to or continue calling his name after this intervention. Mr Prucnal and the claimant had a cigarette later that day and Mr Prucnal apologised.

130. For these reasons we find that Mr Prucnal did not harass the claimant while he was praying and the complaint of harassment related to religion / belief fails..

#### Harassment related to race

131. The claimant identifies as black African and black British.

#### *7 September meeting*

132. The claimant alleges that on 7 September 2023 Mr Parker threatened him with adverse consequences if he reported Mr Prucnal to the police for an alleged Islamophobic hate crime. We have found that Mr Parker did not threaten the claimant with adverse consequences or at all. The meeting was a run of the mill seek an explanation meeting about the claimant's conduct the previous day. As the meeting did not take place as alleged by the claimant and there was no threat or anything untoward about the meeting we do not need to apply the legal test for harassment.

133. For these reasons the complaint of harassment related to race fails. Therefore we consider these facts as a complaint of direct discrimination below.

#### *12 December interview*

134. It is agreed that on 12 December 2023 Ms Tebbutt interviewed Mr Parker about the claimant's grievance. The respondent accepts that Mr Parker told Ms Tebbutt that, on 6 September the claimant "was shaking with rage and erratic" while he described Mr Prucnal in the same interview as "naïve and harmless". The claimant alleges that in so doing Mr Parker was racially profiling him.
135. To be described in this way is evidently unwanted to the claimant. While he did not bring a grievance against Mr Parker, in his the conduct investigation and his grievance concerning Mr Prucnal the claimant takes issue with witness statements which described him as angry.
136. Therefore, we must consider whether Mr Parker's description of the claimant related to his race. In so doing, we have taken account of Ms Ismail's reference to Glasgow City Council v Zafar [1998] ICR 120 , 125

*"Claims [of race and sex discrimination] present special problems of proof for complainants since those who discriminate on grounds of race or gender do not in general advertise their prejudices"*

137. We have found the description was related to the claimant's behaviour which Mr Parker says was reported to him by Ms Burkill. In this regard it is arguable that it is not related to the claimant's race but it is hearsay, recounting a description used by someone else. However, Ms Burkill did not use the word rage. However, she did describe the claimant as angry and shaking. Rage is defined as intense anger involving a loss of control. We conclude on balance the comment was not related to the claimant's race but it was based on a description given to Mr Parker by Ms Burkill. Mr Parker did describe Mr Prucnal in more favourable terms, he says based on the description that was recounted to him. We find that the description related to what he had been told by Ms Burkill about how each man was behaving. In this regard it related to their conduct reported second hand, not their race.
138. However, mindful of the claimant's submission and taking account of the fact that Mr Parker's description of Mr Prucnal, who is of a different race, was objectively more positive we have, in any event, considered whether the comments had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Based on the claimant's evidence in the conduct and grievance process we find it had this effect on the claimant. However, this perception was not reasonable. The claimant knew Mr Parker's was not present on 6 September and therefore his description to Ms Tebbutt was based on descriptions he received from others. We have found the words he used to summarise these descriptions align with what he was told by Ms Burkill, that the claimant was shouting, angry and shaking. This accords with the accounts of Mr Green and Mr Fiorello; what Mr Parker was recounting, was factually accurate albeit hearsay. There is no evidence before us that his purpose in using these words to describe the claimant he was racially profiling him or intending to create an offensive, humiliating or intimidating environment; he was reporting what he had been told. For these reasons, this complaint of harassment related to race fails. Therefore we consider these facts as a complaint of direct discrimination below.

#### Direct race discrimination

*6 September 2023 incident*

139. The claimant alleges that, on 7 September 2023, Mr Parker threatened him with adverse consequences if he reported Mr Prucnal to the police for an alleged Islamophobic hate crime. We have found that Mr Parker did not threaten the claimant with adverse consequences or at all. As we have found that this allegation did not happen as a matter of fact, we do not need to apply the legal test for direct discrimination. Therefore, this complaint of direct religious / belief discrimination fails.

*12 December interview*

140. It is agreed that when Ms Tebbutt interviewed Mr Parker on 12 December 2023 he told her the claimant was shaking with rage and was erratic or words to that effect and that Mr Prucnal was naïve and harmless. We have found that Mr Parker was not present at the incident on 6 September and his account to Ms Tebbutt is second hand, based on the description Ms Burkill recounted in their telephone conversations that day. We have found that Ms Burkill told Mr Parker that the claimant was agitated, shaking and that she attributed the shouting to the claimant being angry. We conclude that Mr Parker based his perception that the claimant was shaking with rage on what he had been told by Ms Burkill.

141. We must consider whether this was less favourable treatment. The claimant has not named a comparator. Mr Prucnal is not a suitable comparator as there must be no material difference between Mr Prucnal and the claimant's circumstances. There is. They are on opposite sides of a dispute. Therefore we must consider a hypothetical comparator. The claimant has not explained why Mr Parker would have treated someone of a different race involved in a workplace altercation differently when that person gave a second hand account of what happened. In the claimant's submissions Ms Ismail says that in describing Mr Prucnal as naïve, Mr Parker was relying on what he knows of Mr Prucnal's personality, but that Mr Parker did not afford the claimant the same treatment nor did he consider whether the claimant could be exhibiting shock or distress. However, these bases for establishing why the treatment was less favourable were not put to Mr Parker in cross examination, despite the Tribunal (mindful that the claimant was not legally represented until the final hearing) making it clear, using an example related to sex discrimination, that the claimant has to identify "something more" than a difference in race and difference in treatment.

142. Therefore, we consider that the claimant has not switched the burden to establish "something more". That said, taking the claimant's case at its highest, mindful of Ms Ismail's submission that "Anya recognises the difficulties for a claimant faced with discharging the burden of proof in the absence of direct evidence on the issue of racial grounds for the alleged discriminatory actions, particularly one of institution-wide discrimination which, if it exists, may be inadvertent and unintentional. In such cases, the Tribunal should consider what inferences may be drawn from all the primary facts. The process of inference is itself a matter of applying common sense and judgment to the facts, and assessing the probabilities on the issue whether racial grounds were an effective cause of the acts complained of or were not" we have in any event

considered whether Mr Parker's description was because of his race, and therefore racial profiling of him.

143. In our judgment, on balance, Mr Parker's description of the claimant was based on Ms Burkill's account on 6 September, that he was shouting, which she attributed to anger and shaking. For these reasons we consider that the facts fallen within the guidance in the case of Amnesty International v Ahmed [2009] IRLR 884; the fact the claimant's race formed part of these events (a description of the claimant, a black man, which was less favourable than that of Mr Prucnal, a white man) does not necessarily mean that it formed part of the ground, or reason for that treatment. The difference in description was because of the difference in reports Mr Parker received from Ms Burkill, not because of his own assessment of the situation. He was not present. For these reasons, this complaint of direct discrimination fails.

Victimisation (Equality Act 2010 section 27)

Protected acts

144. The respondent accepts that on 7 September 2023, the claimant told Mr Parker that he had been harassed on grounds of religion/belief by Mr K Prucnal on 6 September 2023 and that this is a protected act. We agree. This conversation satisfies the legal test in section 27(2)(d) EqA "making an allegation (whether or not express) that A or another person has contravened this Act". (Protected act 1).
145. The respondent also accepts that on 8 September 2023, the claimant reported the incident with Mr Prucnal on 6 Sep 2023 as a hate crime and that this is a protected act. We agree. The report to the police satisfies the legal test in section 27(2)(d) EqA "making an allegation (whether or not express) that A or another person has contravened this Act" because it relates to the claimant's complaint Mr Prucnal's attempt to interrupt his prayers was motivated by the claimant's religion. (Protected act 2).
146. On 13 September 2023 the claimant submitted a grievance about the 6 September 2023 incident. The respondent accepts the grievance is a protected act. We agree. The grievance satisfies the legal test in section 27(2)(d) EqA "making an allegation (whether or not express) that A or another person has contravened this Act" as it related to the claimant's complaint he was bullied and harassed by Mr Prucnal while he was praying he says because of his religion. (Protected act 3).
147. On 2 December 2023, the claimant presented his ET1 claim form in these proceedings. The respondent accepts this is a protected act. We agree. It satisfies the legal test in section 27(2)(a) EqA. (Protected act 4).

Alleged detriments

7 September meeting

148. The claimant alleges that because he told Mr Parker he had been harassed by Mr Prucnal the previous day (protected act 1), Mr Parker threatened him with adverse consequences. We have found Mr Parker did not threaten the

claimant at this meeting or at all. Therefore, as the claimant's allegation did not happen as a matter of fact, this complaint of victimisation fails.

149. The claimant also alleges that Mr J Parker instigated a Conduct Code investigation into his alleged conduct on 6 September 2023 because the claimant told him on 7 September he intended to report the incident with Mr Prucnal the previous day as a hate crime (protected act 2). Here, chronology is important. We have found that the meeting on 7 September was a seek an explanation meeting. It took place as a result of Ms Burkill's decision to send the claimant home on 6 September due to her concerns about the claimant's reaction to Mr Prucnal interrupting his prayers and her concern that the claimant was not in a fit state to drive an LGV. We have found this was a necessary decision given the claimant was shouting, upset and shaking. We have found this decision automatically triggered a seek an explanation meeting within the respondent's conduct policy, to understand the reasons for the claimant's reaction. Ms Burkill and Mr Parker agreed that Mr Parker meet with the claimant as he was experienced in dealing with seek an explanation meetings while Ms Burkill was new to the role. In this regard a conduct process was instigated by the holding of the seek an explanation meeting and Mr Parker's decision there needed to be a further opportunity to establish the facts of what had happened on 6 September.

150. In starting this process the respondent did subject the claimant to a detriment, as one possible outcome of the fact finding process was suspension or other disciplinary sanctions. While the claimant was not in fact subjected to any sanction, we conclude that the possibility of one at some later date in the process, depending on what facts were established, amounts to a detriment as this would undoubtedly cause the claimant concern and worry.

151. Therefore, we must determine whether Mr Parker started the conduct process because the claimant alleged to Mr Parker on 7 September 2023 that he had been harassed on grounds of religion/belief. By chronology alone he could not have done so as the seek an explanation process was started earlier than 7 September; we have found it started on 6 September when Ms Burkill made the decision to send the claimant home because of his reaction, triggering the seek an explanation meeting within the conduct process. Of course Mr Parker could have concluded the process at this point. We have found he did not do so because of the reports he received from Ms Burkill about the claimant's reaction, that he was angry, shouting and shaking. Therefore, we conclude that the core reason why Mr Parker moved to the next stage in the conduct process, a fact finding meeting, was not because the claimant alleged he had been harassed by Mr Prucnal, but because he was following policy given the reports he had received about the claimant's reaction.

#### *Appointment of Mr Thompson*

152. We have found that initially Mr Parker appointed Nigel Thompson to be the investigating manager in the conduct matter. The claimant says that he did so this in the belief that he could be manipulated in the process. The claimant relies on the fact he had raised previous concerns with Mr Parker about Mr Thompson's conduct towards him namely Mr Thompson contacting the claimant on his personal phone. We have seen evidence of these concerns a couple of months before Mr Thompson was appointed. Although Mr Parker told us he didn't recall these complaints, the contemporaneous documents

evidence he was aware. The claimant told us he believed that Mr Thompson could be manipulated by Mr Parker as Mr Parker was the more senior manager. However, there is no evidence before us of Mr Parker manipulating Mr Thompson at the time or in the past.

153. In any event, we have found that as soon as the claimant raised concerns about the appointment of Mr Thompson, Mr Parker replaced him immediately with Mr Abusiddique and Mr Thompson played no part in the fact finding process. There was no detriment to the claimant. As there was no detriment to the claimant, this complaint of victimisation fails.

#### *Rejection of grievance*

154. We have found, and it is accepted by the respondent that it rejected the claimant's grievance on 13 September 2023 and again on 10 November 2023 without being considered. The claimant says this was because he submitted a grievance about discrimination (protected act 3).

155. As a result there was a delay to the claimant's bullying and harassment allegations being considered and investigated and were it not for the claimant dogged approach it may not have been considered at all. The respondent's approach and failure to follow its own policy caused the claimant this detriment.

156. However, we have found it did so on the basis of its policy, which it did not follow as Mr Abusiddique was not tasked with investigating the claimant's harassment and bullying allegation as part of his fact finding into the claimant's conduct on 6 September. This sat with HR processes. The claimant has not identified the individual he says rejected the grievance. Therefore, in considering the mental processes of the decision maker we have assess the approach taken by the HR department to which the grievance was submitted. The first rejection we have found to been made on the basis of policy. There was no mental process beyond that. HR rejected the September grievance because the respondent had a policy it would be considered as part of the conduct fact finding due to the commonality of the factual matrix. It is not for the Tribunal to comment on the merits, or otherwise, of such an approach.

157. On balance, in our judgment, the HR department failed to engage with any mental process at all in rejecting the second grievance; it adopted a "computer says no" approach to rejecting the grievance when HR identified the conduct process was completed. There is no evidence the content of this fact find was reviewed before this time and the suggestion the timings of HR accessing the system was not put to the respondents witnesses. For this reason this complaint of victimisation fails.

#### *Work location*

158. The claimant alleges that because of his telling Mr Parker he intended to report a hate crime and that he intended to submit a grievance on 13 September 2023, Mr Parker asked him to move to a different work location (Coventry) as a solution to the experience had had complained about. We have found this conversation likely took place and Mr Parker suggested to the claimant he could move work location. There is no evidence this was a mandated move nor that any further action was taken. Therefore, there is no detriment to the claimant of this suggestion. In any event the claimant has not

provided any link between his conversation with Mr Parker and the earlier conversation to evidence that Mr Parkers suggestion on 13 September was because of the intention to report the hate crime and bring a grievance. Therefore, this complaint of victimisation fails as there was no detriment to the claimant of Mr Parker's suggestion.

*25 September statement*

159. The claimant alleges that Mr Green made a written statement on 25 September 2023 regarding the events of 6 September 2023 that he knew to be untrue, specifically: that the claimant was shouting and aggressive (the complaint that he said Mr Green did not come out of the traffic office having been withdrawn in the claimant's submissions. The claimant says he did so because the claimant told Mr Parker he had been harassed by Mr Prucnal and that he was going to report this as a hate crime.

160. We have found that Mr Green did not make a false statement. He gave an honest recollection. As facts are not as the claimant alleges there is no detriment to the claimant and this complaint of victimisation fails. In any event the claimant has not explained how he says Mr Green had any knowledge of his conversation with Mr Parker and why Mr Green's recollection of the events on 6 September were because of this conversation.

161. The claimant has made a very serious allegation against someone who acted in his interests to deescalate the situation without any basis. As we have found the facts did not take place as alleged by the claimant there is no detriment and this complaint of victimisation fails.

*3 October 2023 statement*

162. The claimant says that because he alleged to Mr Parker that he had been harassed by Mr Prucnal and / or because he report this incident as a hate crime (protected act 1 and 2) Mr Fiorello made the following statements he knew to be untrue statements about 6 September in his written statement of 3 October 2023, specifically (accounting for the withdrawn allegations in closing submissions) that:

- 162.1. Mr Prucnal did not raise his voice;
- 162.2. The claimant was shouting;
- 162.3. The claimant chose to pray in a dangerous place; and
- 162.4. The claimant was waving his hands.

163. We have found that the statements about the claimant shouting and waving his hands were true, based on the consistent evidence of several witnesses. We have found that his statement that Mr Prucnal did not raise his voice, while not accurate, was his honest opinion at the time he made the statement. His statement that the claimant was praying in a dangerous place was his opinion, Indeed, the claimant himself acknowledged to Mr Abusiddique that he would not pray there again and Mr Abusiddique, while acknowledging that interrupting a prayer is disrespectful, told us it is important to choose a place where interruptions are unlikely and for that reason he would not have prayer there. Therefore, we have concluded that the statement were not untrue. As we have found the facts are not as alleged by the claimant it follows there is no detriment. For these reasons this complaint of victimisation fails

CCTV

164. The claimant alleges that on 5/6 October 2023, the respondent allowed CCTV footage of the incident on 6 Sep 2023 to be deleted, in that when he made his request to Mr Parker, Mr Parker should have made a direct request that it was not deleted. The claimant alleges Mr Parker did not so because of protected acts 1, 2 and 3. We have found that the claimant did not make a subject access request but it did not include direct request that any CCTV footage be preserved. Mr Parker forwarded that request to the relevant team. He was not aware of the importance of the footage to the claimant as the claimant only made this known to Ms Wilson as part of the appeal process. Furthermore, as a matter of fact, the respondent did not “allow” the CCTV footage to be deleted; it was CCTV was deleted as a matter of course after 28 days and at that time we have found there was no request made by the claimant to Mr Parker or anyone that it be preserved.

165. While the deletion of the CCTV may have been a detriment to the claimant, this was only the case if it accorded with his recollection of events, some of which we have found implausible or inaccurate. In any event we have found it was not Mr Parker who deleted it and there was no request to him to preserve it so his action in simply forwarding the request to the relevant department could not have been because of any of the protected acts. .

*Disciplinary investigation*

166. As part of the grievance process Ms Tebbutt did not interview the witnesses identified by the claimant. She says she did not because they had already been interviewed as part of the conduct process. We have found that this approach was not thorough as the statements were taken from the perspective of the claimant’s conduct whereas the grievance investigation needed to focus Mr Prucnal’s behaviour to the claimant. Ms Tebbutt also relies on Mr Parker’s evidence, which is hearsay; he was not present on 6 September so reported what Ms Burkill told him. Statements focusing on what Mr Prucnal did and said, rather than the claimant. are important to ensure a thorough investigation as required by the respondent’s policy. In failing to do this we consider the claimant was subjected to a detriment; the process was not thorough.

167. The claimant says the respondent did so because he raised a grievance which alleged discrimination and Ms Tebbutt knew about these proceedings. The claimant says the causative link is that the respondent had a vested interest in carrying out an unfair process, to defeat the claimant’s allegations of harassment and to improperly strengthen its position in these tribunal proceedings. However, the claimant has not provided any evidence to corroborate that the core reason Ms Tebbutt did not interview the people on the claimant’s list was because of the grievance and /or these proceedings (protected acts 3 and 4). Ms Tebbutt’s evidence was consistent when robustly challenged; that she did not consider it was necessary because she had statements from the conduct investigation and they all “gave a view about the incident” on 6 September involving the prayers. In our judgment, while Ms Tebbutt did not do a thorough investigation, she genuinely believed this was not necessary as she had the other statements and this is why she did engage in additional interviews. We conclude Ms Tebbutt did not interview the witnesses identified by the claimant because she considered she had sufficient

evidence to determine the grievance. It was not because of protected acts 3 and 4. For these reasons this complaint of victimisation fails.

*Grievance appeal*

168. Ms Wilson accepts that in May 2024 she did not uphold the claimant's grievance appeal despite Mr Green's evidence that Mr Prucnal had raised his voice during the incident on 6 September 2023. The claimant says this was because he submitted his grievance and brought these proceedings. The claimant says that the failure to pick up on inconsistencies in interviews, or to pursue the new evidence from Mr Green resulted in a flawed outcome. However, we have found that Ms Wilson did explore with Mr Green (and Mr Fiorello) that Mr Prucnal was shouting and neither corroborated this but she did not record this in the outcome report. To the extent there is a detriment to the claimant it is that he was not aware this had been explored by Ms Wilson. There is no evidence before us that Ms Wilson did not record this in the report because the claimant brought the grievance and she was part of a cover up by the respondent. Furthermore, she was not aware of the contents of these proceedings. Ms Wilson was diligent in her review. For these reasons this complaint of victimisation fails.

*Incident with trailer door.*

169. We have found that in January 2024 Mr Beauchamp did discourage the claimant from reporting the incident with the torch and that he did initiate a fact finding investigation the following day, which it was reasonable for the claimant to conclude was a threat, given the ERICA form was not agreed until 4 February. Mr Beauchamp's approach was heavy handed and resulted in the claimant being invited to a conduct meeting. We have found that the claimant agreed the contents of this ERICA therefore if crucial information was omitted it was with his agreement.

170. We must consider whether Mr Beauchamp's conduct amounts to a detriment. We remind ourselves that the question of whether something amounts to a 'detriment' requires both an objective and subjective analysis of the treatment: 'Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment"' (Shamoon v Chief Constable of the Royal Ulster Constabulary (HL) [2003] ICR. 337 at [35]). We conclude that a reasonable employee who had suffered an injury, even if potentially due to his own conduct and was invited to a fact finding before the injury report had been agreed with him, we conclude that the process could be to his detriment.

171. Therefore we must consider the reason for Mr Beauchamp's conduct. The claimant says it was because of one or all of the following:

171.1. That the claimant told Mr Parker he had been harassed by Mr Prucnal (protected act 1); and / or

171.2. That the claimant reported the incident with Mr Prucnal as a hate crime: (protected act 2) and / or

171.3. That the claimant submitted a grievance.

172. We disagree with the claimant's submission that the conduct case, however heavy handed, provides the causative link to the protected acts relied on (protected acts 1, 2 and 3). There is no evidence before us that Mr Beauchamp was aware of the claimant's conversation on 7 September 2023 with Mr Parker or that the claimant had brought a grievance so Mr Beauchamp's decision could not have been because of these protected acts. Therefore these could not be part of his mental process in deciding to pursue a conduct enquiry about the trailer incidence. While Mr Beauchamp was undoubtedly heavy handed in his approach, we found the way he handled the trailer incident was due to the frustrations between the claimant and he regarding the ERICA and the reporting of the incident. For these reasons this complaint of victimisation fails.

*February 2024 meeting*

173. We have found that at the meeting on 4 February 2025, Mr Beauchamp did not physically intimidate the claimant. As we have found that this meeting did not take place as alleged this complaint of victimisation fails.

174. For these reasons it is the unanimous decision of this Employment Tribunal that:

174.1. The complaint of direct religion / belief discrimination is not well founded and is dismissed.

174.2. The complaint of direct race discrimination is not well founded and is dismissed.

174.3. The complaint of harassment related to religion / belief is not well founded and is dismissed.

174.4. The complaint of harassment related to race is not well founded and is dismissed.

174.5. The complaint of victimisation is not well founded and is dismissed.

APPROVED BY:

*Employment Judge Hutchings*

3 March 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON  
6 March 2026

FOR THE TRIBUNAL OFFICE

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