



EMPLOYMENT TRIBUNALS

Claimant: Mr Karim Askar

Respondent: Playdale Playgrounds Limited

HELD AT: Manchester

ON: 1,2,3,4,5 December
2025 and 6 January
2026 in chambers.

BEFORE: Employment Judge Mellor
Miss Howarth
Mr Moules

Representation

Claimant: In Person

Respondent: Mr Boyle, solicitor.

RESERVED JUDGMENT

1. The claim for detriment on the ground the claimant made a protected disclosure contrary to section 48 Employment Rights Act 1996 is not well founded and is dismissed.
2. The claim for automatic unfair dismissal contrary to section 103A Employment Rights Act 1996 is not well founded and is dismissed.
3. The claim for direct race discrimination contrary to section 13 Equality Act 2010 is well founded in respect of the following:
 - a. Being labelled a troublemaker by Mr Mallinson on 24/7/24
 - b. Jamie Milton conducting a campaign to have the claimant dismissed
 - c. Disciplining the claimant for incorrectly reporting his absences which he reported in the same way as his colleagues
 - d. Applying a biased disciplinary process in that the claimant was invited to an investigation meeting without being told what was being investigated and the investigator was also the dismissing manager. This was part of the campaign to dismiss him.
 - e. JMc and LE made lewd comments about Egyptian women being good in bed and asked about the Claimants' wife.

- f. JMc, LE and DS used the company's EDI information that the claimant was 1.1% to single the claimant out and isolate him.
 - g. Mr Strong's comment that the claimant had been heard to say he would 'play the race card' when he was interviewed on the 2/8/23
- 4. The claim for Victimisation contrary to section 27 Equality Act 2010 is not well founded and is dismissed.
- 5. In respect of those matters listed at paragraph 3 above all apart from 3(g) were not presented within the applicable time limit, but it is just and equitable to extend the time limit in respect of each of the claims 3(a) to 3(f).

REASONS

Introduction

- 1. Mr Askar 'the claimant' brings the following claims:
 - a. Detriment on the ground he had made a public interest disclosure (s48 Employment Rights Act 1996 'ERA').
 - b. Automatic unfair dismissal section 103A ERA.
 - c. Direct Race/Religion discrimination (section 13 Equality Act 2010 'EqA') about:
 - i. Dismissal
 - ii. The handling of his absences from work and
 - iii. Not being given pay increases following requests.
 - d. Victimisation (section 27 EqA)
- 2. The claimant had also brought a claim for harassment under section 26 EqA, but he withdrew that at the start of the hearing.
- 3. The hearing was conducted in person; the claimant represented himself. Mr Boyle represented the respondent. We were provided with a bundle running to 781 pages. We heard oral evidence from the claimant; he had also produced a statement from his wife who was present throughout the hearing and assisted the claimant from time to time with his preparation. However, her evidence was largely not disputed and considering the nature of the claims she was not required to give oral evidence. For the respondent we heard from the following witnesses: Jamie Milton, team leader, Paul Mallinson, Technical and Operations Director (dismissing officer), Barry Leahey, President (Appeal officer), and Charlie Williams, HR Business Partner. We received written submissions from both parties and have taken those into consideration.
- 4. The claimant also produced an audio recording of the appeal meeting which ran to over an hour. Given one of his allegations related to the tone of Mr Leahey the tribunal (after hearing submissions) listened to a 15-minute section of the recording prior to the witnesses giving evidence. This section was agreed between the parties as being the relevant section.
- 5. The evidence took longer than anticipated, and so the tribunal was unable to conclude deliberations on the 5th day. The tribunal canvassed a further day for oral judgment to be delivered but due to availability of parties the most

expeditious way of providing a decision was to provide this reserved judgment with written reasons.

6. The following are our findings of fact. Where matters are in dispute, we have set out our finding and why we preferred the evidence of one party over another. It is not possible or practical to set out all the evidence arising from a 781 page bundle and 4 days of evidence, so we have set out the salient points; if we have not referred to a piece of evidence it does not mean we did not take it into consideration.
7. English is not the claimant's first language, but he did not have nor need the assistance of an interpreter. This was explored with the claimant at the beginning of the hearing, and he confirmed that he did not need an interpreter and that if he struggled to understand he would say so and a different question or explanation could be provided. At no time during the hearing did the claimant say he was, nor did he appear to be, struggling with language.
8. The claim was case managed by EJ Callan on 2 September 2024, at which time a list of issues was prepared. In addition to the list of issues EJ Callan ordered the claimant to provide further information (see paragraph 6 of the Case Management Order [72]). That included details of the allegation set out at 3.1.3 on page [79] regarding the 'campaign' against him. The claimant did provide that further information [24]. In this document the claimant has identified the allegations 4i to 4vii are both detriment and direct discrimination claims. Although it appeared unclear to the tribunal whether there was an application to amend to include these allegations (either made or allowed) we heard submissions from the parties on this point. The respondent provided an amended response directly addressing these allegations and addressed them in the witness evidence. Having heard from the parties it was clear to the tribunal that both parties understood these allegations to form part of the claim. If that is wrong the tribunal considered its general powers of case management and the case of **Selkent Bus Co v Moore [1996] IRLR 661** together with the President's Guidance on case management and the tribunal decided that if permission to amend is required, it is given on the basis that the balance of prejudice falls in favour of doing so. The respondent had understood and prepared its case on the basis of them being part of the claim and so are not prejudiced by them being heard at this hearing. In fairness to the respondent it was not they who identified this as an issue at the start of the claim, and so they were in a position to deal with all the allegations at this hearing.
9. In respect of the witnesses there were times when all of them were unconvincing. For example, the claimant gave a piece of evidence relating to an apparent inconsistency between his oral evidence and documentary evidence which he explained by saying that "when he said morning he meant afternoon...when he says morning he means all day meaning when the sun is up". The tribunal found that to be wholly unconvincing. However, the respondent witnesses were overall less impressive than the claimant. It was clear to the tribunal particularly from the evidence of Mr Milton, Mr Mallinson and Miss Williams that they held the claimant with utter disdain. The tribunal

had to remind Miss Williams on one occasion that whatever her perception of the claimant he is entitled to pursue his claim and put the questions he had, and she was asked if she could show the process more respect. Even allowing for the stress of giving evidence and facing allegations of discrimination the tribunal was surprised by the palpable disrespect shown by the respondent witnesses towards the claimant during the hearing.

Background

10. The respondent company designs, manufactures and installs outdoor playground equipment worldwide. It employs 108 employees across 3 sites in the UK and exports products to 52 countries and has contracts with distributors abroad.
11. The claimant is Egyptian and Muslim. He moved to the UK from Egypt in 2020 just before the first Covid lockdown. He moved to live with his wife Lisa Askar. He was employed as a lawyer in Egypt; he was unable to commence work in the UK due to the lockdown. On 12 January 2022 he was offered a job with the respondent and commenced work on 24 January 2022 as a Production Operative within the Production Department at the Playdale Playgrounds in Haverthwaite [95]. The claimant's starting salary was £18,496.
12. The claimant was managed by Jamie Milton, the team leader. Both describe their relationship as a friendship early in the claimant's employment to the extent that Jamie Milton had invited the claimant to be part of his wedding. There are messages in the bundle where they are photographed outside of work and text in a friendly manner. The relationship soured sometime in the middle of 2023 and by May 2023 Mr Milton said in a message "*Couldn't even have my back to call me. I needed you last night and you've done this to me*" [646] although 'what "this" is was never explained to us.
13. The respondent has dedicated in house HR staff. At the time the claimant commenced employment the HR Manager was Lynne Metcalfe, but she left the employment of the respondent and Charlie Williams was HR Advisor until taking up the post of HR Business Partner. The respondent uses an app called People HR. It is through this app that holiday booking is made and the respondent's online absence calendar [97]. Although the claimant was aware of this app it did not appear that he used it, and the respondent did not give us a consistent explanation about how it was used including recording or reporting of absence. We were not taken to any evidence of other staff using it to report or record absence for example.
14. The claimant's contract included, relevant to this claim, the following:
 - a. Absence from Work: To be eligible for discretionary company sick pay and/or statutory sick pay, you must comply with the following and failure to do so may result in disciplinary action.
 - b. If you are unable to attend work because of sickness, injury or any other reason you should telephone your manager within one hour of

your contractual start time on the morning in question, or earlier if operational requirements dictate. [103].

15. In addition to the contract the respondent has a sickness absence policy [119A] which states as follows:

- a. Playdale recognises that at some point in their career our employees may suffer ill health and absence related to issues. That these times, our employees will need support, and manager/team leaders will treat employees fairly and consistently whilst ensuring that business performance is maintained. Playdale will monitor attendance and manage absenteeism to meet these objectives.
- b. Notification procedures: employees are required to personally phone and notify their manager/team leader on the first day of absence, within one hour of their start time. It is not acceptable to leave a voice message text message e-mail or leave a message with another member of staff they must speak to their line manager or team leader in person. Failure to do so may result in absence being unpaid or investigated as part of the disciplinary policy....
- c. Any employee who has been absent from work for any reason other than holidays or authorised leave is required to complete a return to work interview...
- d. Please note that if the absence notification procedure is not followed, then the absence will be deemed as unauthorised. This will lead to loss of pay and will be dealt with under the disciplinary policy.

16. The claimant accepted that he had been given a copy of the sickness absence policy as part of his induction but said there was a convention or culture of texting line managers rather than phoning them. He had therefore forgotten the details of the sickness absence policy. Mr Milton in his statement, which he confirmed in oral evidence, said something similar: *"Whilst I am aware of the respondents absence reporting procedures, that an employee should telephone in one hour before their start time, I was generally happy with text messages being sent due to the shift time often starting early (usually 7:30 AM, but can be 6:00 AM), and I understand that it's not always practicable for an employee to telephone in."* (§11).

17. The tribunal is satisfied on the evidence before it that there was a convention of texting, contrary to the policy. This is unsurprising given the start times as identified by Mr Milton meaning that the office telephone would not be online. There are examples in the bundle of the claimant, and others doing this. For example, on 14 June 2023: [635] the claimant texts Jamie Milton at 11:16am to say *"Leaving this afternoon mate need to take baby to dr Lisa really struggling with her atm. I will wait until lunch time"* he received no reply to this until 5:28pm when Mr Milton asks *"How is girl mate"*. The claimant does not respond until 7:10am when he says *"Not well mate I won't be in today I will phone the office at 8 when they are in if you want me to"*. Mr Milton says *"Ok"*

so just you know all the time you have had off this week will be unpaid. I can't authorise holiday" [635].

18. Another example is 10 July 2023 Jamie Milton texts the claimant to see where he is who texts back *"Home mate. I sent u a message on people this morning"*. [636].
19. At [640] Jamie Milton and the claimant are texting about the claimant's absence in August 2022 after having tested positive for Covid. Mr Milton does say *'they asking all questions here mate...Emma came down to ask me where you were and proof of test'* at no time in the messages does Mr Milton refer the claimant to procedures or reporting policy. There are also messages of Mr Milton sharing with his colleagues that he is going to be late in (see [617]) or him seeking medical updates via text from Lewis (see [622]). It is clear therefore that Mr Milton would regularly use text messages, or WhatsApp, to communicate with his staff including about late attendance or absence.
20. At the commencement of his employment the claimant was doing well and had been given the Employee of the Moment award in January 2022 [115].

Dave Lewis

21. On 22 March 2022 Dave Lewis was dismissed (with notice) for gross misconduct *"with the threat of physical violence and aggressive behaviour and that [he] failed to follow reasonable instructions"* [117]. Dave Lewis was a colleague of the claimants and was white British. He received a warning after an incident of threatening behaviour towards a colleague *"as you had said that you would hit him"*. Mr Lewis was told that his conduct was not appropriate, and he was warned about future conduct and potential repercussions. Only an hour later he had continued with threatening behaviour towards the colleague at the bio-mass hopper. He was also seen following this colleague.
22. It was agreed evidence that the colleague referred to as the recipient of the threat is the claimant.
23. Mr Lewis's letter of dismissal explains *"this is not an isolated incident and this is not the first instance of threatened behaviour in the workplace, it is an exact replica of a previous instant which I had witness firsthand and had actually needed to step in between you and the other individual. Following this incident we had a formal conversation about your conduct and you were advised that there would be serious consequences should there be a further incident [sic]"* [116].
24. Mr Lewis, therefore, had a formal conversation and a warning, after behaving in a threatening manner. He was suspended and invited to a disciplinary hearing at which he was dismissed. The respondent did not assert he had longer than 2 years' service.

25. The conduct described in the letter, which was agreed by the parties before us, amounts to gross misconduct according to the respondent's own policy. Examples of gross misconduct in the respondent policy include: *"Threat of or actual physical abuse, or verbal abuse towards any colleague, customer, supplier or the public in the course of business"*. [553].
26. The claimant successfully completed his probationary period in August 2022 [127]. He received a pay increase from 1 September 2022 to £20,500 and increased again on 1 January 2023 to £22,148 [135].

EDI Information

27. In September 2022, as part of its EDI monitoring the respondent published and circulated a report titled "Top Facts About Our Company". This showed there were 93 employees and provided the gender split, ages etc. It reported *"Our national background is" 88 British, 4 other and 1 Egypt* that equated to 1.1% Egyptian.
28. The tribunal is satisfied there were discussions about the 1.1%. The claimant alleges that his colleagues JMc, LE and DS, would use it to belittle him as *"not being important I am only the 1.1%"*, or *"You're 1.1% Egyptian...if you don't like it you should go home"*. This was around October 2022, and into 2023. The respondent's own evidence supports that such comments were made. As part of the post dismissal grievance for example in August 2023 Jamie Milton said *"I don't feel like he brought across the issue that he was offended he just questioned it"* [383] It also seems that Jamie Milton recalled the claimant saying he was going to Lynne Metcalf about JMc and LE [385]. In the disciplinary meeting the claimant identified this issue as follows:
- "Then got the statistics about the British workforce/Egyptian I felt that I was being singled out by being the only 1% there are jokes that I am a lawyer back home/why am I not there/it's sunny there."*
- It didn't put me down it made me want to prove to the company that I can do the job just like a British person. I want to prove that I can do the job, my background does not make me less capable."* [361]

Complaints to Jamie Milton

29. In October 2022 the claimant was expressing in WhatsApp Messages to Jamie Milton that he felt he was *"being treated very unfair band people think oh he's forghen [sic] fuck him"* and Johnny told the claimant's wife that the claimant had *"been treated very bad and people take the piss out of him because his a foreigner!"* in a further message he said *"I have had enough of feeling that people stepping on me take advantage of me being a foreign"* [655]. He also indicated he was going to write a formal letter following the grievance policy [656].
30. Jamie's response is *"Don't be down mate, Its that group of people who work there. All losers mate going nowhere in life. Don't let them break you down"* [656].

31. When Mr Milton gave evidence the claimant put to Mr Milton that he (the claimant) had raised issues about racism and discrimination. Mr Milton said *"this is not about discrimination this is about general issue with the lads; you were both causing issues in the day. Certain individuals like JMc his approach and attitude to work in terms of him being a team player"*.
32. However, as part of the WhatsApp exchange in October 2022 the claimant wrote: *"If things continue until Tuesday I will hand official complain about all this shit including Racially discriminated"* [658]. When the tribunal asked Mr Milton what he understood the claimant was complaining about when he wrote this Mr Milton's response was to shrug and say: *"can't remember my response"*. The claimant very clearly was complaining about race discrimination.
33. Mr Milton's witness statement also underplays this reporting. He says *"the only thing that I overheard was JMc and LE having a conversation about what the women were like in Egypt and the claimant responded to this. I do not recall the other allegations being reported to me"*. It is plain as set out above that the claimant did raise issues of race discrimination to Mr Milton. We found Mr Milton to be very dismissive in his evidence about this, and that he was trying to downplay his knowledge as well as what was happening at the time.

WhatsApp

34. In addition to the private messages between the claimant and Jamie Milton there was a group WhatsApp in which the claimant is on occasion the butt of the joke:
- a. When commenting on an Antony Joshua fight August 2022 [662]
 - i. Bobby: did you see him throw the belts out the ring?
 - ii. Jaimie: fucking hell, like Karim in his review, shit the fuck up.
 - b. When discussing an incident on the forklift July 2023 [663]
 - i. Tom: How's that happened?
 - ii. Jamie: Would blame Karim but I can't
 - iii. Bob: sure you can.
 - iv. 20/7/2023 Claimant was removed from the chat.
 - c. When discussing a Christmas night out December 2022 [664]
 - i. If you don't wear an Xmas jumper you have to drink sparkling water all night.
 - ii. Lewis: my religion I'm not allowed to wear Christmas jumpers or drink sparkling water
 - iii. Jamie: Jewish?
 - iv. Bobby: My religion is beating Karim up
 - v. Jaimie: Snap
 - vi. Lewis: Yeah but they let me keep my foreskin for party tricks.
 - d. There is evidence that Jay (Jamie) sent a message that he's going to the hospital sick because he's been infected with the gayness disease from being around gays too much" [724].

Comments made by JMc LE and DS

35. When considering the evidence in the round, including that the claimant raised the 1.1% issue in his dismissal hearing (so prior to proceedings); there are contemporaneous messages in which he raises being treated poorly because he is foreign and was going to write to HR about it; Jamie Milton's statement after the dismissal and the manner of text messages set out above the tribunal is satisfied that there were comments made to the claimant in or around October 2022 to the tenor that he was "less important" because he was "only 1.1%". He did say he would contact Lynne Metcalfe, and that he did have an informal discussion with her, but he did not formalise a grievance.
36. Around the same time Jordan and Lewis also asked the claimant questions about his wife and Egyptian women. The tribunal accepts the claimant's allegation that they made comments that were vulgar towards Egyptian women (about them being good in bed). We do not accept that they were only asking polite questions to enquire about the claimant because when Jamie Milton was asked about this in August 2023 he was asked "*have you witnessed any racial discrimination towards KA?*" Mr Milton replied "*He tried to bring something up about 2 other lads – they made a comment about what Egyptian women were like. They said they were getting to know him, asked if his wife was Egyptian, **He lost his head over that***" (emphasis added) [383]. Mr Milton later added "*He said he was going to go to HR about the situation about the 2 lads asking about his wife. The way me and him spoke about it, he was very blasé about it. They asked if she was Egyptian, he said no she is English. I think that upset him. One of the lads said that KA said don't speak about my wife like that, so I went for a chat with them*".
37. Mr Milton therefore recalled (in August 2023, so before this claim was issued) that Jordan and Lewis had spoken to the claimant about his wife, which upset the claimant and he lost his head. That is contradictory to the notion that he was blasé and to the content of the text messages between the claimant and Mr Milton, we have already set out, in which the claimant is clearly upset about what he perceives is poor treatment due to his foreign nationality. It is the tribunal's finding that Jordan and Lewis did make vulgar comments about Egyptian women and in that context asked if the claimant's wife was Egyptian. This clearly upset the claimant.
38. LE and JMc both ceased to be employees of the respondent. Mr Milton described them as disruptive. Jordan handed his notice in, Lewis was dismissed. Other than this limited information the respondent has produced no evidence about their conduct or reasons for their employment contracts terminating.
39. In his further and better particulars, the claimant has raised other allegations namely: that JMC and LE would insult his accent; that Jamie Milton called him the 1.1% and the following:
- a. 29th March 2023 he said 'you are the last person to be talking about health and safety coming from Egypt where people drive without seatbelts.

- b. 19th April 2023 he said 'I would rather be in Yemen right now and not be at work or run naked on the Gaza Strip at least you do not come from here and can just go back home. I would go back home if I were you.
 - c. 24th May 2023 he said, 'I cannot help you and I will not put your request for a pay rise because the lads will be jealous as you only came from Egypt five minutes ago and the lads who have been here a long time have not been awarded like you'.
 - d. 29th June 2023 we were ordering pizzas at work and Jamie, Bobby and Dylan were saying they needed to order 'Muslim pizzas' because I won't eat their bbq chicken pizza or pepperoni and will need to order special for me Bobby commented or I can starve and not eat and Jamie said he has his Egyptian lunch bag he can just enjoy that for lunch
40. We don't find that these comments were made, at least not in the way the claimant now seeks to allege. The reason for that is:
- a. it seems at odds with the rest of the claimant's case that he felt he could raise the 1.1% issue with Mr Milton if he was also using it to segregate the claimant.
 - b. The claimant did not set these comments out in his witness statement, nor did he explore them with Milton in evidence.
 - c. The claimant did not mention these comments in his disciplinary hearing or grievance or appeal.
 - d. They are set out with specificity, and the claimant in the hearing referred to having messages to prove it, yet he did not at any time provide screen shots of messages. We find that surprising given there are other screen shots in the bundle.
 - e. There may have been discussions about food including questions about why the claimant drank on a night out, but the claimant has provided insufficient evidence for us to conclude that there were comments made about 'Muslim pizzas/fake Muslim'. We therefore do not make findings that Jamie Milton, Dylan Saunders made those comments as alleged.
41. The claimant has not satisfied us that BA made the comment "*you covered the place in dust do you want to turn us all brown like you*". Such a comment does not feature anywhere else in the papers, and we consider that if such a comment had been made, he would have highlighted this in the dismissal or appeal. The claimant sets out over 1.5 pages in his witness statements the treatment he experienced and issues he raised with Jamie Milton, but does not reference this in his statement at all.

Health and Safety incidents

42. On 6 June 2022 Jamie Mitlon lifted a contractor on a pallet using his forklift truck. It is not in dispute that this happened, indeed there is a photograph of it in the bundle [612]. What is in dispute is whether the claimant raised it with Mr Milton or Mr Mallinson.

43. The claimant says in his statement that *"I spoke to Mr Milton about it on the same date, but it was laughed off as not big deal. I worried about it over night as I had tried to bring up many issues and was never believed which was why I took photographs because with proof maybe I would be believed"*. In his further and better particulars, he said *"I discussed with him (Jamie) on the same date as I was worried about the man could have fallen and been seriously injured or worse"* [65].
44. Jamie Milton denied that the claimant said anything to him about it. He says that he was uncomfortable lifting the contractor up on the pallet in this way but followed the contractor's advice. He said he raised it with Phil Fowler at the time but did not know why Mr Fowler didn't follow it up, amend the RAMS or direct a cage be used (which is what happened after the claimant was dismissed having raised this issue in his appeal).
45. As Mr Milton points out though at this time the relationship between the claimant and him was good, there was no reason for the claimant not to have a discussion with him or indeed send him the photograph. There is no evidence that anyone did anything or reported any health and safety breaches at this time. There is no message on the WhatsApp group or the private chat between Mr Milton and the claimant. The claimant was unable under cross examination recall or repeat what specific information or detail he raised with Mr Milton or how long afterwards (other than it being the same day). In those circumstances we are not satisfied that the claimant did say anything to Mr Milton on the 9 June 2022 about this incident.
46. Nor do we find that he mentioned it to Mr Mallinson. It is the claimant's case that having been laughed off by Mr Milton, he spoke to Mr Mallinson *"but he was not interested in speaking to me even though I was showing him the photograph"*. The claimant has not detailed what he said or what information he passed on, how he 'showed' him the photograph and/or whether Mr Mallinson looked at the photograph or why the claimant didn't forward the picture on to anyone. If he felt the need to go to Mr Mallinson after having tried to raise it with Mr Milton and having gone to the effort of taking a photograph, why didn't he document it?
47. On 29 March 2023 Jamie Milton got inside the CNC machine and the claimant took a photograph. It is agreed that Mr Milton is in the CNC machine, he says there was a fault with it and so was fixing it to get it back up and running there is no evidence before us to find that is not true. We note that when Mr Milton was asked about this incident at an investigation meeting on 18 September 2023 and he was shown the photograph his initial response was *"can you say that is actually me?"* this seemed to the tribunal to be Mr Milton's attempt to get out of the issue, or that he was not taking it seriously, but equally the investigation minutes read as though this was the first time he saw the photograph.
48. Mr Milton was also asked about the forklift truck incident. He gave us a slightly more robust account of that than as appears at [498]. When he gave the

interview, he was asked *“Part of this is to make sure you understand what we’ve done wrong in this process, do you?”* [498]. He was told there is a cage outside if someone asks again we can use that, and the risk assessment would be updated.

49. In evidence Mr Milton tried to suggest to us that the cage was already available and in use prior to this meeting in September 2023. We reject that considering the investigation notes, which clearly do not reflect the cage being used earlier. Nor does it reflect Mr Milton’s suggestion to us that he raised his concerns at the time with anyone. We found Mr Milton’s evidence at times to be unreliable and dismissive, and this is one such example. He was not a wholly convincing witness.
50. The claimant’s says in his witness statement: *“Further example of poor health and safety by Mr Milton continued to happen and I took more photographic evidence in case anything bad happened this included Mr Milton inside the CNC machine which I had been told was extremely dangerous and none of us should ever go inside the CNC machine especially whilst it was powered on as it could result in serious injury or even death.”* (page 3) The claimant therefore did not allege in his witness statement that he raised this with Mr Milton or Mr Mallinson.
51. In his further and better particulars [65], the claimant explained *“When I told him about how dangerous his act was and he could of resulted in severe injuries or death if machine moved he again jokes about it...”* the claimant did not explain when he said this, or what the context was i.e. was it whilst Jamie was in the machine or later on? Did he show him the photograph at the time?
52. In his appeal letter the claimant does not refer to the health and safety incidents at all, in his grievance letter he references health and safety issues as follows:
- “I also feel I am getting unfair treatment compared to my coworkers. In my dismissal meeting, my manager accused me of recklessly driving the forklift, referring to an accident I had several months prior. My accident was purely that- an accident, which I stayed behind to put right. I have personally witnessed and documented and have got evidence of many people repeatedly and intentionally misusing the forklift and other machines and equipment, yet they received no consequences when damaged results. These serious health and safety breaches go unnoticed or at least they are not acknowledged by senior members because the staff involved are clearly favoured.”* [377]
53. The claimant makes no reference therefore to having blown the whistle or raised health and safety concerns to anyone. He is referencing the health and safety matters to highlight what he asserts is inconsistent treatment.
54. On the balance of probabilities, we therefore find the claimant did not raise with Jamie Milton, or anyone else, issues with Mr Milton being in the CNC until after his dismissal.

Request for Pay Rise

55. The claimant did pursue a pay rise, he WhatsApp'd Jamie about it, the tribunal finds the claimant felt he was entitled to a higher salary and was actively seeking one. Although we did ask about the method of pay rises within the company the answer we were given was unclear. In the end, we do not think it is determinative to this claim. What we know is the claimant did receive pay rises during his employment; those appear to be in line with standard metrics (passing probation, annual pay rise, half yearly/annual reviews). There is no evidence that other staff were getting pay rises over and above these standard trigger points.
56. In June and July 2023, the claimant and Jamie Milton communicated about pay rises:
- a. 28 June 2023 Jamie Milton to the claimant: Will talk open about pay rise and support but I need your promise.
 - b. On a date in July Jamie Milton wrote: "Yeah mate I hear you. I have told them if anyone in my team need more pay it's you. I am in a meeting with them all next week to discuss my teams scores and pay so hopefully should find out then."
57. On 3 July 2023 the claimant wrote an email to Paul Mallinson asking for his pay to be looked at. He sets out that he had taken on more responsibility (which the respondent accepted, although pointed out that this did not alter his job title or contract of employment). He said *"I was under the impression this would be reflected in my pay whoever I have since learnt from my team mate who is a new lad without a year and a half's experience without any responsibilities and not working goods in as I am and he is on just £600 a year less. This makes me feel all of the extra work I am putting into the business...makes me feel underappreciated and consider moving on"* [342]. He does not appear to have received a reply to that email.
58. The claimant did not receive a pay rise in July 2023. He has alleged that Mr Milton conducted a campaign and deterred him from pursuing a pay rise. We do not find this to be correct. The contemporaneous evidence supports the opposite; that Mr Milton was saying that he would support it. The claimant was seeking a pay rise outside of normal parameters, and he was able to raise it in email with Mr Mallinson. There is nothing to show that he was deterred from pursuing it. The only possible evidence of this is the claimant's allegation that Mr Milton said to him *"I cannot help you and I will not put your request for a pay rise because the lads will be jealous as you only came from Egypt five minutes ago and the lads who have been here a long time have not been awarded like you"*. As we have already explained we do not find this allegation proven, but considering the text messages that we have been able to cite above, we also consider this allegation to be so contradictory to those messages it makes it inherently unlikely.

The Disciplinary Process and Dismissal

59. On the 14 June 2023 the claimant sent a message to Jamie Milton that he would be leaving after lunch time to take the baby to the doctors. The next day he did not come into work, but that was not recorded as an absence at all [341].
60. Also, on the 14 June 2023 Mr Milton took a photograph of the claimant's car at the National Park Fell Foot. The photograph was taken at 5:26pm, so after the claimant's shift finished.
61. Mr Milton's explanation for the photograph in his statement is as follows: *"I did, however, start becoming concerned with the number of absences the claim it was taken and in particular the genuineness of the claims absences for example, on the 14th of July 2023 [sic], the claimant informed me he needed to go home to look after his children as his wife was unwell, but then I later saw his car parked at fell foot."*
62. Mr Milton in his evidence gave a fuller account of this: he said he was walking through the canteen and saw the claimant drive away from the company premises and turned in the opposite direction to his home. Mr Milton, therefore, drove in that direction after he finished work (around 5 hours later) and took the photograph of the car. He says he showed it to the claimant the next day who apologised and so Mr Milton *"mutually ended it there, I never raised the matter until when it was submitted to the line manager"*.
63. We note that all the respondent's witness statements refer to the date of the claimant's car being spotted at Fell Foot was attributed to 14 July 2023, which is patently incorrect. They also say that the claimant had told the respondent the claimant needed to go home to look after his children – which again is not what he said at the time. He said he needed to take his baby to the doctor (see above Mr Milton's statement and Mr Mallinson's statement at para 12).
64. An informal discussion took place between Phil Fowler and the Claimant on the 26 June 2023. There is no contemporaneous note of this conversation. There is an "Investigation Statement" prepared for the appeal [340].
65. The matter under discussion was the claimant's short notice absences. The claimant accepted that a conversation took place but *"there was no sanction or telling me I needed to follow procedure. He was the first time to tell me I needed to seek flexible time. There was no conversation about not following the procedure. If there had been an issue, why no warning. This was just an informal conversation"*.
66. The investigation statement says: *"I recently spoke with KA about him being unreliable and not fulfilling his contract of employment by taking time off at short notice. Since he has not followed the correct procedure, these have gone down as unauthorised absences. I requested evidence of his unauthorised absences from HR Prior to this meeting attached"*. The statement was dated 27 June 2023 and signed by Charlie Williams.

67. The respondent accepted it could not have been taken on the date she put on it – not least because the ‘attached unauthorised absences’ [341] include dates after the 26 June 2023.
68. Phil Fowler did not give evidence. The statement is unclear as to which parts of it he discussed with the claimant as opposed to his commentary. On neither the claimant’s account, nor according to the content of this statement was the claimant given a warning about his unauthorised absences.
69. Nor was he asked about specific absences during this meeting.
70. On the evidence available to the tribunal, we accept the claimant’s description of this meeting. That it was an informal discussion, with no warning given, and no direction that the procedures are to be followed or he would face a disciplinary sanction.
71. We further find the HR information containing the dates of the unauthorised absence were not given to the claimant on 26 June 2023, or indeed any time thereafter, which we will come back to.
72. There has been no explanation from the respondent as to why, if the discussion on the 26 June 2023 was a warning, they did not act on the next occasion the claimant was absent i.e. 10 July 2023. It was not until the 17 July 2023 that matters seemed to escalate.
73. The claimant did not attend work on the 17 July 2023. He did not contact Jamie Milton, or the office. It was not until 5:45pm that he wrote an email to Paul Mallinson in which he apologised for not being in, said he had sent an email from his personal address but wasn’t sure if he received it then *“I’m not well at the moment and I’m waiting for results from my doctor”* [343] The claimant also refers to ‘the meeting tomorrow’ in this email, but we have seen no reference to a meeting having been arranged prior to the 17th July 2023 either in email form or in witness evidence.
74. Mr Mallinson explains in his statement the respondent had become concerned about the number of absences the claimant had and his failure to report his absence in accordance with company policy. In addition to this he had been made aware of text messages between Jamie Milton and Lisa Aksar on the 17 July 2023 and of the ‘Fell Foot’ sighting. He therefore sent an email to the claimant on 18 July 2023, that email reads:

“Unfortunately, I have no trace of the e-mail you say you have sent. Do you have a copy that you could please resend or are you able to provide a dated hard copy? Please understand that you are not following the agreed reporting procedure for sickness. Procedure is that you call and make verbal contact with your team leader or your manager if you cannot get hold of your team leader to verbally report the absence within one hour of your start time on the first day of your absence. This conversation needs to take place so we can understand the nature of the sickness and try and gain an indication on duration of the absence for important business planning purposes.

It is now important that you make contact, and we are able to hold a meeting with you to investigate the current situation around significant reoccurring absence of late and the incorrect reporting of that absence.

Please make contact with either Charlie or myself so we can arrange this meeting."

75. There is no indication in this email that the respondent was concerned about honesty. The claimant responds to that e-mail on the 20th of July 2023 indicating that he was unaware of Playdale's official calling policy. *"You can confirm with Jamie that anytime I've ever called in, it's just been through a quick text to him, and that seemed to suffice. However, rest assured that now that I am aware of the policy, I will follow it from this point forward. As far as a meeting regarding my attendance, I suggest we combine it with the meeting we had already planned to discuss my salary, since my salary, my attendance, and now the sickness are allelated. I have attached my doctor's note and as previously assured I will keep you up to date regarding my return date"*.
76. The sick note is not in the bundle, but in the ET3 the respondent accepted the 18 July 2023 was a genuine sickness [50] although that is inconsistent with Mr Mallinson's evidence, who said he did not accept it as genuine.
77. Mr Mallinson emailed on 20 July 2023: *"I would like to try and organise the investigation meeting for Monday the 24th of July possible. Either late morning or early afternoon either 11:30am or 1:30pm. Please let me know what time works best"*. The claimant asked for 11:30am.
78. Also on the 20 July 2023 the claimant was removed from the group WhatsApp.
79. Mr Mallinson confirmed the date and time of the meeting by email on 21 July 2023. The meeting was to be held at 11:30am on 24 July 2023. Mr Mallinson states:

"Please understand that we are now treating the meeting as a capability meeting due to the nature of the issues we wish to discuss and additional issues that have been brought to my attention. I am concerned about the levels of absence but more importantly failure to follow the correct absence reporting procedure despite and being clear in your contract of employment. Additionally, there are concerns that the reason for some of the recent absence may have been falsely claimed. This is additional to some previous issues such as extensive damage caused to the building and facilities due to reckless driving on the forklift truck.

This meeting is being convened to discuss the reasons behind these issues. These issues have created significant disruption and impact to the business carrying large costs. You will be given an opportunity to state your reason in response to this at the meeting and put forward any mitigating circumstances

that you feel should be taken into account. Please note that as a consequence of this meeting, the company may decide to terminate your employment.” [354]

80. At the disciplinary meeting, on 24 July 2023, when Mr Mallinson set out the allegations and introductions he said:

Allegations: Unauthorised absence, failing to follow procedure, breach of trust and confidence.

PM- reads invitation, introduces everyone, confirms that it is a disciplinary meeting. Kaa's wife is here as a Rep by way of support but she cannot answer for him. She agrees. PM asks any questions? KA no.

81. The meeting therefore morphed from an investigation meeting to a capability meeting, to a disciplinary meeting. When the tribunal asked Mr Mallinson how it changed from one to the other Mr Mallinson said: *“I feel the reasons for the meeting were clear”*. We disagree.

82. Mr Mallinson's evidence about the disciplinary process and hearing was singularly unimpressive.

- a. He was the investigating officer and the dismissing officer, in a company with nearly 100 employees and a dedicated HR manager, that is surprising.
- b. When he was asked about why there was no independent investigation Mr Mallinson said *“the situation was evolving fast, the severity of the impact on the business I decided to deal with it in the way that I did”*.
- c. He explained there *“was clarity and the nature of what I had seen didn't tally with the reasons given for absence. It was sufficient to terminate employment.”*
- d. He did not answer the question as to whether he had the text message exchange between the claimant and Jamie Milton on the 14 June 2023.
- e. He disagreed there were no return-to-work meetings even though the only conversation he could point to was the 26 June 2023, which was not described as a return to work meeting, nor did it follow a return from absence.
- f. He could not explain or recall what investigation he undertook regarding the failure to follow procedures – he was asked if he had established with Jamie Milton whether others text him, he said *“I wasn't able to establish – as much as I possibly could I tried to establish that...I cant' recall as to how much I went into that with Jamie at the time”*.
- g. When he was asked if he established what time the GP appointment on the 14 June 2023 was he said *“No, I had seen the messages prior to the meeting from Lisa to Jamie with all sorts of claims that led me to believe there was a lot of dishonesty in what we were being told, this photograph was taken when the car was parked”*.
- h. He repeatedly said *“I felt that the dismissal hearing was dealt with in an appropriate manner considering the known facts around the absence,*

the lack of reporting and how genuine those claims were being made and the reason why I dealt with it as I did was because of the length of service. I was well aware that Karim had less than 2 years service". It seemed to be a rehearsed answer.

- i. When the claimant asked him how it is fair to have the messages but not provide them or discuss them to allow me to defend myself he replied: *"I made the informed decision around the level of absence not reported correctly and the fact that I had heard and reported a lot of things that led me to question you're dishonest"*.
- j. The text messages between Lisa and Jamie did influence his decision, he said *"I had seen with my own eyes, 'we had sources'"* he accepted that he did not show the messages to the claimant.
- k. As to the other sources that included comments from Gary Strong that *"other staff had informed him that Karim had said he was going to be off in a day or two"* He did not ask the other staff *"because of the length of service involved the level of absence and the unauthorised nature"*.

83. Mr Mallinson repeatedly stated that he had made an informed decision, but it wasn't informed at all. He did not show the photograph of the car to the claimant in the hearing; indeed, the claimant did not have a copy until these proceedings. In the disciplinary hearing Mr Mallinson said, *"one of your absence and your car was seen at Fell Foot when your reasoning was to go and attend to your child"* the claimant's response was *"I don't know when that was, but I have never left work apart from the absence I have reported"*.

84. That photograph has the date and timestamp on it, which shows it was taken outside working hours. It therefore is no proof whatsoever that the claimant was there in working hours, nor did the respondent ask or consider whether there is any contradiction or inconsistency between caring for a child and being at a National Park on a hot summer's day.

85. At no time in the meeting does Mr Mallinson take the claimant through the dates of his absences, the claimant did not know which absences he was being challenged about. Indeed, when the tribunal asked Mr Mallinson if he had established which of the unauthorised absences on the list at [341] where 'falsely claimed' or had not been reported, Mr Mallinson was unable to answer instead saying he felt he had enough to dismiss the claimant.

86. In the meeting Mr Mallinson says: *"You have been with Playdale for over a year, I feel I have been flexible and even when you have challenged me over pay. I cannot increase pay when the non negotiables aren't being met."*

87. *Even though you have progressed we can't progress if these issues are arising I have had to get involved with situations like wrong Dave/ Jordan/ Lewis and I have tried to understand. There has been 3 situations and you have been involved."*

88. The claimant responds to these three situations including noting following; *"Jordan/ Lewis- I have received racist jokes about me being Egyptian/ Muslim about my house, my wife and very inappropriate comments. I spoke to you*

and was going to go down the grievance process and was told it was to be dealt with by Phil Fowler when he had finished his induction. Lynn got the statistics about the British workforce/ Egyptian I felt that I would be singled out being the only 1% there are jokes that I am a lawyer back at home/ why am I not there/ it's sunny there" [361].

89. At least one, if not two, of the "situations" Mr Mallinson "had to get involved in" included occasions when the claimant had, as we have already found, raised informal complaints that he was being treated poorly because he was foreign/of his race.
90. The respondent did not think to stop the disciplinary hearing at this point to understand or explore his allegations of racist behaviour towards the claimant. Given Mr Mallinson was relying in part on information from 'other sources' that is surprising.
91. The claimant was told he was dismissed after a short adjournment. Mr Mallinson said *"Considering all the facts we have been through and points you have raised. Levels of absence, not followed procedure, serious doubt of honesty – that's the most concerning one. There are other things but the decision is to terminate your employment"*.
92. The letter of dismissal, also 24 July 2023, sets out in similar terms only introduces "breach of trust and confidence". It explains *"there has been a serious breach of trust and confidence, which is also a matter of misconduct, where I have reason to believe that you haven't been honest in your reasons for absence"* [366].
93. The information that led to the respondent concluding the claimant had been dishonest came from the claimant's wife. On 17 July 2023 she texted Jamie Milton asking for a private chat. She said *"Is Karim booked off on holiday or called in sick do you know? Like he has done same he did last year apart from this year I know exactly where he is and that he is with a woman and I am about to head there but have a baby in tow"* [344]. She goes on to say he's with a woman in a hotel for the next 10 days, that he is in drugs rehab and *"he just keeps telling lies he has not had Amira or looked after her she hasn't been sick and the one day I asked for help cos I had tonsillitis and was sick he didn't come"*.
94. Mr Milton asks about the two days the claimant had off last week, but Mrs Askar does not reply to that question.
95. None of the text messages between Mrs Askar and Mr Milton were shown to the claimant. He was denied an opportunity to give his account or reason why his wife may be making such serious allegations. The respondent took what she said and concluded the claimant had been dishonest without making any enquiries with him. That cannot be described as an 'informed decision'.
96. We also accept the text messages shown to Mr Mallinson by Mr Milton did not include some of his own messages where he describes the claimant as a

child and suggests he is not welcome back on his team if he “*managed to keep his job*” [674-680].

97. Ms Williams was the HR advisor throughout the disciplinary and appeal processes. When she gave evidence her disdain for the claimant was palpable. At one point she answered a proper question put by the claimant with a tut and “whatever”. She was sullen and uncooperative. She is young, and this may well have been the first time she has given evidence, but her demeanour was difficult to reconcile with the level of professionalism Mr Leahy asserted his company demonstrated. He told us that he prides his company for its professionalism and that their policies are award winning. The respondent at no time sought to argue that there had been any failings or matters that with hindsight they could have done better and that is why the claimant was treated in the manner he was.
98. When Ms Williams was asked about the process leading up to the claimant’s disciplinary hearing and lack of investigation, or providing the evidence to the claimant she pointed to the disciplinary procedure and said that in a case of gross misconduct
99. The disciplinary policy provides “*where appropriate the manager/team leader as advised by HR will appoint an independent person to conduct the investigation. Investigations need not be time consuming but speed should not be at the expense of thoroughness.*” [550]
100. She referred to gross misconduct “*In cases of gross misconduct, the previous stages of the formal procedure will be omitted, and dismissal would be without notice, with immediate effect*”. It appeared she understood this to mean that the investigation stage could be skipped, but the formal procedure contains three stages: written warning, final written warning, dismissal. It does not relate to the need for the employer to satisfy itself there are reasonable grounds to believe misconduct has occurred. We found her answer, as HR Business Partner, to be odd. Either she genuinely thinks that the investigation step can be skipped, or she was trying to paper over the respondent’s poor investigation/dismissal.

Appeal and Grievance

101. On 30 July 2023 the claimant appealed the decision [372]. Raising the lack of previous warning, the lack of evidence provided to him regarding false reasons for absence. He also asserted that he was being punished for reporting discrimination in the workplace, and that his request for pay rises may have prompted his termination.
102. He does not allege that his dismissal was connected to whistleblowing.
103. On the same date he raised a grievance, which set out allegations of race discrimination in particular the 1.1% issue and Jordan and Lewis’s comments about Egyptian women.

104. There was an appeal hearing on the 8 August 2023. The claimant covertly recorded this meeting. In preparation for this Charlie Williams undertook an investigation and she met the following people and asked them if they were aware of any discrimination:

- a. Mark Todd (who accepted they had spoken about his religion and that the claimant was upset about the 1.1% report [380] he also described rumours which fit the text messages from Mrs Askar – that can only have come from Jamie Milton).
- b. Dylan Saunders [382] also recalled the claimant making a comment about the 1.1%.
- c. Jamie Milton [383]
- d. Gary Strong [386] when he was asked if there was anything else to add Mr Strong said *“this seems strange – I think he’s said in the past to one lad – they can’t sack me, I’ll play the race card” I didn’t get too involved, when he first started we had a few problems his outlook was a bit different maybe his culture. It would get a bit irate at times, we got the lads together to ask them to sort it out but no brushing people up the wrong way”*.

105. In respect of the comment ‘playing the race card’ this statement was not shown to the claimant until the appeal hearing. It was put up on the large screen for him to view whilst at the hearing. In evidence Mr Boyle asked if he was offended by this comment and the claimant said *“this comment is said to people with a protected characteristic. I didn’t say it so it is racist to [perpetuate] it the detriment is the offence I have suffered.”*

106. The claimant put to the respondent witnesses that if such a comment had been made by the claimant during his employment one would expect it to have been investigated, or him to be pulled up for it, yet there was no record or evidence that such steps had ever been taken. Mr Mallison said that would depend on the context. Mr Milton accepted that it was not recorded but said that was because it was flippant. Mr Williams said that she did not explore further with Mr Strong what was meant by this or whether others had heard it.

107. We find that the claimant did not say that he would ‘play the race card’. It would be inconsistent with his other messages to Jamie Milton in which he raises being racially discriminated against in a manner that is not flippant. Nor is it consistent with him saying he would go to HR and raise a grievance. We have found there were comments made to the claimant that he was upset by and Mr Strong describes the claimant’s outlook as being a bit different ‘maybe it was cultural’. Against that background and those findings we accept the claimants’ evidence that he did not say he would ‘play the race card’.

108. Ms Willimas produced an investigation report [387] but it doesn’t have a conclusion, rather is a compilation of the information and evidence.

109. The appeal hearing was conducted on 8 August 2023 in two parts. Part one was to deal with the grievance and part 2 was to deal with the appeal against dismissal.
110. During the appeal the claimant was shown documents and images on a large screen, rather than being provided with hard copies. He was accompanied by his wife who was there to help “check understandings” [683]. Mr Leahy conducted the meeting at the beginning he said he didn’t do anything in half measures and *“there’ll be an awful lot of information here, warts and all, that I’ve looked into”*.
111. Mr Leahy read out the statements that were obtained as part of the appeal process and then said *“I’ve got one final bit of evidence that I think should have been used in the disciplinary to back up loss of trust”* that was the text messages between Mrs Askar and Jamie Milton he read them out. There were other ways this information could have been supplied to the claimant and to put them on a large screen and read them out seemed rather gratuitous.
112. The claimant’s response to these messages was to say this is nothing to do with loss of trust with the company, and that he is *“lying to her, I’m lying to her not work, not to my team leader not to my manager”* [718]. Mr Leahy says he conducted a thorough investigation around breach of trust, the claimant says *“yes after I got sacked for breach of trust”*.
113. This evidence from other colleagues and the messages from Mrs Askar were shown to the claimant for the first time in the appeal hearing. He still had not been provide with any time to consider it.
114. During the appeal the claimant complained that the respondent collated evidence that had been based on rumours. Whilst trying to emphasise his point about relying on rumours is unreliable, he says *“There have been rumours about Charlie herself. Does that make anything true?”* [726].
115. Mr Leahy asked what was relevant about Charlie and Mr Askar replied: *“I’m saying if there’s rumours and this is the reason I’m here today, because the rumours and the witnesses, these are the evidence...”* Mr Leahy at this point changes his tone of voice, becoming more assertive and is clearly frustrated he says: *“Karim can I just stop you and be very, very clear, right, because you’re going to test my patience? I have gone away and researched this fairly, openly, transparently, alright? You can throw whatever guidelines you would like to me. I run a very professional business... Maybe you need to sit with your wife and have it explained to you in English, because you are now starting to offend me. If you don’t understand how you’re doing that I suggest you have two minutes with your wife And have explained to you. You do not come in here and start to try to put other rumours about this business and people within this business...we’re not here to discuss them...do not try to get clever with me alright...because if you’re looking for an argument you will find one alright”* [727].

116. The tribunal listened to the tone of voice of Mr Leahy during this exchange and he was attempting to assert himself and he was frustrated, both of these things he accepted in evidence. There were rumours about Charlie in the business (we do not know, nor did we need to know what those were) and the claimant was aware of them. He was not simply using her as a hypothetical, but as a member of staff who had rumours about her being discussed.
117. In the circumstances, neither Mr Leahy nor Ms Williams knew in that moment what was going to be said by the claimant and consequently we can well understand why Mr Leahy felt he needed to put a stop to any potential matters being raised about Ms Williams. We did not find the tone of Mr Leahy to be aggressive, and he demonstrated his presentation in the hearing before us, which whilst there was a definite change in tone, it was not rude or aggressive but was more commanding. That was in fact what he was trying to achieve, in order to make a point, and to protect Ms Williams from what he anticipated was about to be said.
118. There was a break for the claimant to speak to his wife and after they resumed the claimant apologised and explained he was not coming after Charlie as a person.
119. The claimant's appeal was not successful, and Mr Leahy upheld the decision. The claimant appealed the outcome of the grievance, the outcome of that that is not subject to any complaint before us and therefore we do not need to set out the details at length. On 12 September 2023 Michelle Heeley, people consultant confirmed his appeal against the grievance outcome was dismissed and she upheld the original decision [490]. It was through this process that the photographs of the health and safety issues raised by the claimant were passed on for further investigation.

Tom Robinson

120. Tom Robinson was employed as a production operative from 30 January 2023. He is a white British man [332] (there is a performance review for Mr Robinson at [89] which is dated 8/10/21 but that must be incorrect because the same document references sickness absence in February '23). Mr Robinson had a lot of absence as is shown at [89] he scored 1 which was because he had 34.5 days absence since February 2023.
121. Because of the number of absences (which amounted to a Bradford Factor of over 900) Mr Robinson was invited to attend a disciplinary meeting on 12 January 2024, this was held by Mr Kellow. He was given a first written warning due to his attendance. In his warning letter it notes "due to the nature of your absences and the fact that this has not been managed appropriately in the past, I believe that this misconduct warrants a first written warning that will remain active on your personal file for 12 months from the date of this letter" [503].

122. Mr Robinson's absence improved by was still not satisfactory and so another disciplinary meeting took place on 12 April 2024. In this meeting he was asked about the reasons for his absence and was questioned about information he had given to Jamie Milton [505] He was also asked for evidence that he had been in hospital, but he was unable to provide it. He was therefore dismissed.

123. From the dismissal letter it is apparent that Mr Robinson had one informal absence review and a 1st written warning. He was dismissed with notice on 19 April 2024.

The Issues

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 25 July 2023 may not have been brought in time.

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

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

1.3 Was the complaint of a detriment done of the ground of the claimant having made a protected disclosure made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months

(plus early conciliation extension) of the date of the act complained of?

- 1.3.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
- 1.3.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
- 1.3.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Protected disclosure

2.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

2.1.1 What did the claimant say or write? When? To whom?
The claimant says he made disclosures on these occasions:

2.1.1.1 On 09/06/2022, the claimant alleges Jamie Milton (his team leader) carried a man on a pallet and lifted him in the air using a forklift truck. The claimant states he told Jamie Milton on the same day that his act was dangerous and could have resulted in a serious injury to the individual being lifted up.

2.1.1.2 The claimant alleges he reported the above matter to Paul Malinson, his manager, on 10/06/2022.

2.1.1.3 On 29/03/2023 Jamie Milton was in the CNC machine while it was turned on. The claimant alleges he told Jamie Milton that it was a dangerous act and could result in death or serious injury.

2.1.1.4 On 08/06/2023, the claimant alleges two colleagues (Bobby Acrman and Dylan Saunders) recklessly played with the tools he was using at his work station causing damage to two drills and a wound to Dylan Saunders. The claimant reported the matter verbally to Paul Malinson.

2.1.2 Did he disclose information?

2.1.3 Did he believe the disclosure of information was made in the public interest?

2.1.4 Was that belief reasonable?

2.1.5 Did he believe it tended to show that:

2.1.5.1 the health or safety of any individual had been, was being or was likely to be endangered.

2.1.6 Was that belief reasonable?

2.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer?

3. **Detriment (Employment Rights Act 1996 section 48)**

3.1 Did the respondent do the following things:

3.1.1 Fail to act upon a staff member (David) behaviour towards the claimant which was that David allegedly attempted to have a physical fight with the claimant and took a knife to the claimant's personal bag.

3.1.2 being labelled a trouble maker on 24/07/2023 by Paul Malinson for reporting health and safety concerns;

3.1.3 Jamie Milton conducting a campaign to have the claimant dismissed and deterring him from pursuing a pay rise;

3.1.4 Disciplining him for incorrectly reporting his absences which he reported in the same way as his colleagues

3.1.5 The further alleged detriments set out at [24] in the bundle.

3.2 By doing so, did it subject the claimant to detriment?

3.3 If so, was it done on the ground that they made a protected disclosure?

4. **Automatically unfair dismissal (section 103A Employment Rights Act 1996)**

4.1 Was the reason or principal reason for dismissal that the claimant made a protected disclosure?

If so, the claimant will be regarded as unfairly dismissed.

5. Direct race discrimination (Equality Act 2010 section 13)

5.1 The claimant is Egyptian/black and is Muslim.

5.2 In the alternative to public interest detriments set out above, did the respondent do the things listed at paragraph 3.1 because of his race/ethnic origin/religion? And the following:

5.2.1 Applying a biased disciplinary process in that the claimant was invited to an investigation meeting without being told what was being investigated and the investigator, Paul Malinson, was also the dismissing manager. This was part of the alleged campaign to dismiss him;

5.2.2 Barry Leahey telling the claimant on 08/08/2023 that he needed to speak to his wife to have the matters explained to him in English and accusing the claimant of attending the meeting to make trouble. Further, Mr. Leahey raised his voice in anger, and told the claimant if it was an argument he wanted, he would get one.

5.3 Was that less favourable treatment?

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.

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.

The claimant has named Mr Robinson and or a hypothetical comparator.

5.4 If so, was it because of race/ethnic origin/religion?

6. Victimisation (Equality Act 2010 section 27)

6.1 Did the claimant do a protected act as follows:

6.1.1 Reporting to his Team Leader, Jamie Milton, racist jibes and comments towards him, made by David and other colleagues.

6.2 Did the respondent do the following things:

6.2.1 Fail to treat his complaints of detrimental treatment

- seriously and commenting upon English not being his first language;
- 6.2.2 Being called a troublemaker by Paul Malinson on 24/07/23
- 6.2.3 The CEO (Barry Leahey) on 08/08/2023 accusing him of making trouble and spreading rumours.
- 6.3 By doing so, did it subject the claimant to detriment?
- 6.4 If so, was it because the claimant did a protected act?
- 6.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

The Law

124. The following is a summary of relevant legal principles we have to apply in this case.

125. **Section 39 Equality Act**

- (2)An employer (A) must not discriminate against an employee of A's (B)—
- (a)as to B's terms of employment;
- (b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- (c)by dismissing B;
- (d)by subjecting B to any other detriment
- (4)An employer (A) must not victimise an employee of A's (B)—
- (a)as to B's terms of employment;
- (b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
- (c)by dismissing B;
- (d)by subjecting B to any other detriment

126. **Direct Discrimination – section 13 Equality Act 2010.**

- (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.
127. Less Favourable Treatment: This is an objective assessment, although the claimant's perception of the treatment is relevant. **Chief Constable of West Yorkshire Police v Khan ICR 1065** there must “also be a quality in the treatment that enables the complainant reasonably to complain about it. I do not think, however, that it is appropriate to pursue the treatment and its consequences down to an end result in order to try and demonstrate that the complainant is, in the end, better off, or at least no worse off, than he would have been if he had not been treated differently. I think it suffices if the

complainant can reasonably say that he would have preferred not to have been treated differently.”

128. A Comparator must not share the claimant’s protected characteristics, and there must be no material difference between the circumstances of each case (section 23 Equality Act 2010). **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337 ‘Shamoon’**: the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class.
129. A different decision maker may amount to materially different circumstances, however, there is no suggestion that a person who is otherwise a suitable comparator is rendered unsuitable merely because a different decision maker was involved. This is because the legislation provides that an employer is liable for the acts of an employee and the employer therefore can be liable for discriminatory treatment meted out to different employees in similar circumstances even though different decision makers are involved (see **Olalekan v Serco Ltd 2019 IRLR 314** and **Reynolds v CLFIS (UK) Ltd 2015 ICR 1010**).
130. In constructing a hypothetical comparator the process undertaken by a tribunal will necessarily involve drawing inferences from surrounding circumstances including looking at the treatment of people whose circumstances are not sufficiently similar to warrant their treatment as actual comparators, but which are sufficiently relevant for inferences to be drawn from the way they have been treated (**Chief Constable of West Yorkshire Police v Vento No 1 2001 IRLR 124** and **Shamoon**)
131. Also, in **Shamoon** identifying an appropriate comparator can lead to tribunal’s running the risk of failing to focus on the primary question – what was the reason for the treatment? **Stockton on Tees Borough Council v Aylott 2010 ICR 1278, CA**, where Lord Justice Mummery stated: ‘I think that the decision whether the claimant was treated less favourably than a hypothetical employee of the council is intertwined with identifying the ground on which the claimant was dismissed. If it was on the ground of disability, then it is likely that he was treated less favourably than the hypothetical comparator not having the particular disability would have been treated in the same relevant circumstances. The finding of the reason for his dismissal supplies the answer to the question whether he received less favourable treatment’.
132. **Gould v St John’s Downshire Hill 2021 ICR 1, EAT**, Mr Justice Linden, after summarising the established case law discussed in detail below, helpfully explained: ‘The question whether an alleged discriminator acted “because of” a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the “reason why” question and the test is subjective... For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a “significant influence” on the decision to act in the manner complained of. It need not be

the sole ground for the decision... [and] the influence of the protected characteristic may be conscious or subconscious.

133. **Nagarajan v London Regional Transport 1999 ICR 877, HL** (a race discrimination case), 'many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did.'

134. **Victimisation section 27 Equality Act 2010**

(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

135. In respect of (1)(d) the Equality Act need not actually be mentioned but the asserted facts must, if verified, be capable of amounting to a breach of the EqA.

136. Detriment cannot be because of a protected act in circumstances where there is no evidence that the person who allegedly inflicted the detriment knew about the protected act (**Scott v London Borough of Hillingdon 2001 EWCA Civ 2005**).

137. **Time limits section 123 Equality Act 2010.**

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it

138. **Conduct extending over a period:** where there are numerous allegations of discriminatory acts or omissions the claimant needs to establish that the incidents are linked to each other and that they are evidence of an

ongoing situation or continuing state of affairs (**Hendricks v Meropolitan Police Comr [2002] EWCA Civ 1686**). The question is: are there interlinking, discriminatory acts that the employer is responsible for the continuing state of affairs? Such an evaluation is fact specific and depends on findings made by the tribunal.

139. Burden of Proof section 136

- (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.

140. In Talbot v Costain Oil, Gas & Process Ltd, Costain Group Plc, Costain Ltd HHJ Shanks drew the principles together from (amongst other cases) Qureshi v Victoria University of Manchester [2001] ICR 863 and Anya v University of Oxford [2001] EWCA Civ 405 and noted the following:

“Proving and finding discrimination is always difficult because it involves making a finding about a person's state of mind and why he has acted in a certain way towards another, in circumstances where he may not even be conscious of the underlying reason and will in any event be determined to explain his motives or reasons for what he has done in a way which does not involve discrimination. It seems to me that the principles to be derived from the authorities are these:

- (1) It is very unusual to find direct evidence of discrimination;
- (2) Normally the Tribunal's decision will depend on what inference it is proper to draw from all the relevant surrounding circumstances, which will often include conduct by the alleged discriminator before and after the unfavourable treatment in question;
- (3) It is essential that the Tribunal makes findings about any "primary facts" which are in issue so that it can take them into account as part of the relevant circumstances;
- (4) The Tribunal's assessment of the parties and their witnesses when they give evidence forms an important part of the process of inference;
- (5) Assessing the evidence of the alleged discriminator when giving an explanation for any treatment involves an assessment not only of credibility but also reliability, and involves testing the evidence by reference to objective facts and documents, possible motives and the overall probabilities; and, where there are a number of allegations of discrimination involving one personality, conclusions about that personality are obviously going to be relevant in relation to all the allegations;
- (6) The Tribunal must have regard to the totality of the relevant circumstances and give proper consideration to factors which point towards discrimination in deciding what inference to draw in relation to any particular unfavourable treatment;
- (7) If it is necessary to resort to the burden of proof in this context, **section 136 of the Equality Act 2010** provides in effect that where it would be proper

to draw an inference of discrimination in the absence of "any other explanation" the burden lies on the alleged discriminator to prove there was no discrimination.

141. The approach approved by the Supreme Court in **Efobi v Royal Mail Group Ltd [2021] UKSC 33** (reaffirming *Igen v Wong and Barton*):

"(1) Pursuant to [s 63A](#) of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of [s 41](#) or [s 42](#) of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word "could" in [SDA 1975 s 63A\(2\)](#). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) 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.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with [s 74\(2\)\(b\)](#) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within [s 74\(2\)](#) of the SDA 1975.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to [s 56A\(10\)](#) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent 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 sex was not a ground for the treatment in question.

(13) Since 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. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

142. The Supreme Court conformed that **Igen** remains good law and that:

The fairly obvious point that a tribunal cannot conclude that, in the words of s 136(2), 'there are facts from which the court could decide...' unless on the balance of probability from the evidence it is more likely than not that those facts are true.

All the evidence as to the facts before the tribunal must be considered, not just evidence adduced by the claimant.

However, facts and explanations should be carefully distinguished from each other since s 136(2) requires that any explanation provided by the employer should not be taken into account at this first burden-shifting stage.

The pre-Equality Act provisions had referred to facts from which discrimination could be inferred in the absence of an 'adequate explanation', whereas [EqA 2010 s 136\(2\)](#) refers to an absence of 'any other explanation'. The Supreme Court said that this change was intended to avoid any possible misunderstanding since otherwise it might be thought that the non-discriminatory explanation had to be one which showed that the employer had acted for a reason which satisfied some objective standard of reasonableness or acceptability.

143. More than a difference in treatment and a difference in the protected characteristic is needed to shift the burden. It is not enough to prove facts from which the tribunal could conclude that the respondent 'could have' committed an act of discrimination; the claimant has to prove facts from which the tribunal 'could conclude' that the respondent 'had'. The "Bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient..." **Madarassy v Nomura International plc [2007] EWCA Civ 33.**

144. **Protected Disclosure section 43B Employment Rights Act 1996**

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [\[F2\]](#) is made in the public interest and] tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed

145. Section 47B

(1)A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

146. Section 103A Employment Rights Act 1996.

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure

147. Qualifying disclosures: conveyance of information. In Sheldon J's words: 'whistleblowers are intended to be protected because they have raised something of substance which Parliament has decided merits protection. For employers to be fixed with liability, therefore, they ought to know at least something about the substance of [the disclosure that] has been made; that is, they ought to have some knowledge of what the employee is complaining or expressing concerns about.' **Nicol v World Travel and Tourism Council and ors 2024 ICR 893**

148. **Kilraine v Wandsworth London Borough Council 2018 ICR 1850** the Court of Appeal held that, in order to be a qualifying disclosure within the meaning of the Act the disclosure had to have sufficient factual content and specificity. It must have sufficient factual content to be capable of tending to show one of the matters listed.

Submissions

149. Both parties provided us with written submissions. Consequently, we have not set those out here again, but we confirm we have read them and taken them into consideration. Both parties had the opportunity to speak to their own and each other's submissions at the hearing.

Discussion and Conclusions

Protected Disclosures

Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996?

9/6/22

150. We have found, and indeed the respondent accepted that Jamie Milton did carry/lift a man on a pallet and lifted him using forklift truck. However, as we have found there was a lack of specificity from the claimant as to what was said, and so this claim falls at the first hurdle. There is an absence of evidence of the claimant having disclosed 'information' that has the substance

or salient facts required to amount to a qualifying disclosure within the meaning of section 43B.

151. We also found that the claimant did not raise this with Mr Mallinson. Given he said that he took photographs because 'maybe he would be believed' it then doesn't make sense that he didn't forward them on either by WhatsApp or email. In any event, the claimant could not say and has at no time detailed what the substance of his conversation with Mr Mallinson was. In the absence of that we cannot find there was sufficient specificity to amount to a qualifying disclosure.

29 March 2023 CNC Machine.

152. The claimant did not provide sufficient evidence for us to conclude that he did disclose information of a nature sufficient to amount to a qualifying disclosure. There was a lack of detail in his statement, and he was unclear in his answers in cross examination. We therefore were not satisfied on his evidence that he did in fact raise issues relating to Mr Milton getting into the CNC Machine.

153. Whilst his further and better particulars [65] were a bit more detailed it was entirely unclear when he allegedly told Mr Milton how dangerous it was and whether he showed him the photograph. These are important pieces of evidence because it seems to us that it alters the context and is the difference between an allegation ('You are not complying with health and safety requirements') and a mixture of allegation with fact ('pointing to the sharps lying around whilst saying you are not complying with health and safety requirements'¹). Given the claimant seeks to rely on the photograph as a crutch to establish the factual matter he was referencing whilst making the oral statement 'that it was dangerous' that needed to be more clearly explained in his witness statement and oral evidence. We were not convinced by his evidence in this regard, and therefore based on our factual findings we conclude he did not make a qualifying disclosure regarding the CNC machine.

154. If we are wrong about, and he had disclosed information given the nature of the photographs and the fact that the respondent subsequently investigated it as a health and safety concern we would have found that he had a reasonable belief that it tended to show the health or safety of an individual had been, was being, or was likely to be endangered. It would have been a protected disclosure because it was made to his employer.

155. However, we did not think that this claim would have been made out under section 103A Employment Rights Act 1996 as there was no evidence upon which we could find that the reason, or principal reason, for dismissal was the disclosures. In reaching that conclusion we considered the following:

¹ To use the example provided in Cavendish Munro and Kilraine to distinguish between allegations and information.

- a. The chronology does not support such a conclusion. The first disclosure was said to have been made more than a year before his dismissal and the second disclosure is 5 months before the dismissal.
- b. In his evidence the claimant completely failed to reference these disclosures as being connected to his dismissal. The main issue he related it back to was him pushing a pay rise or his race.
- c. Neither in the dismissal hearing nor in his appeal did the claimant reference him having blown the whistle.
- d. His evidence is that they 'laughed off' the disclosures, which does not indicate any form of hostility.

156. The claim under section 103A Employment Rights Act 1996 therefore fails because (a) we did not find that he made a qualifying disclosure and (b) even if it had been made it was not the reason or principal reason for his dismissal.

Detriment Employment Rights Act 1996

157. This claim also fails because we find he did not make a qualifying disclosure. For the sake of completeness, we shall address the alleged acts of detriment.

158. Issue 3.1.1. We did not consider the respondent failed to act upon a staff member's (David) behaviour towards the claimant. The respondent did give David a warning and ultimately dismissed him for his behaviour towards his colleagues particularly the claimant. It was clear to us in the hearing, that the claimant's complaint about this was not so much that they didn't deal with David, but that they treated him inconsistently from the claimant. David, on anyone's version of events, did commit gross misconduct because he acted in an aggressive and violent manner towards the claimant, and Mr Milton. Yet he was not dismissed either without warning, or without knowing what he had allegedly done. The claimant on the other hand was not given a warning, and he did not know what he had allegedly done (notably the allegation he had been dishonest).

159. In any event Dave Lewis was dismissed on 22 March 2022 which pre-dates the first alleged protected disclosure in June 2022, so any decision making around managing him cannot have been motivated by the disclosure.

160. Issue 3.1.2. Being labelled a troublemaker by Mr Mallinson for reporting health and safety concerns. This is a reference to the comment made by Mr Mallinson in the disciplinary hearing when Mr Mallinson said "Even though you have progressed we can't progress if these issues are arising, I have had to get involved with situations like Dave/Jordan/Lewis and I have tried to understand. There has been 3 situations and you have been involved [sic]".

161. None of these three situations were about the alleged disclosures. The claimant clarified in the disciplinary hearing and the hearing before us that

these 'three' situations related to racist jokes, Dave Lewis being aggressive towards the claimant and the 1% joke.

162. Therefore, even if the claimant had made a protected disclosure the comment made by Mr Mallinson in the disciplinary hearing was not done on the ground that he had blown the whistle. It seems wholly unconnected, and the claimant did not at the time raise whistleblowing at all; we think he would have done so had he genuinely believed there was a connection.

163. Issue 3.1.3. We do not find that Jamie Milton did conduct a campaign to deter him from pursuing a pay rise. As we have set out above the claimant did pursue a pay rise and the contemporaneous evidence does not support the allegation that Jamie Milton deterred him from pursuing it.

164. The more significant allegation is the campaign to have the claimant dismissed. We will address this later to avoid repetition under the head of direct discrimination. In so far as this claim goes, we do not find the behaviour of Mr Milton was because of any protected disclosure.

165. Issue 3.1.4. We do not think that the causal link is made out between the claimant allegedly raising disclosures in June 2022 and March 2023 and him being disciplined for incorrectly reporting his absences. Chronologically this does not marry up, and the fact of the matter is the claimant did, at the very least on the 17 July 2023 fail to attend work or report the matter to anyone. Therefore, there was no need to dress his absences up as a reason to discipline him for having many months earlier made a disclosure.

166. Therefore, even if the claimant had made qualifying disclosures, we would not have found the alleged detriments were done on the ground of him having made disclosures, and we would have found the respondent discharged its burden under section 48(2) ERA 1996.

Direct Discrimination Section 13 Equality Act 2010.

167. In respect of the allegations made under this claim taking into consideration the findings of fact we have made as follows:

168. We did not find that the respondent failed to deal with Dave Lewis, albeit for reasons set out below we do consider the respondent's approach to Dave Lewis a relevant part of the factual matrix.

Being called a trouble maker on 24/7/23.

169. Paul Maillinson did not use the word 'troublemaker', however he did identify three 'situations' in which he identifies the claimant as the common denominator. As pointed out by the claimant during the disciplinary hearing at least two out of these three incidents he had alleged were related to racist jokes and inappropriate comments about his wife and the 1%.

170. We find that in those circumstances it is reasonable for the claimant to perceive references to 'these issues arising' and there are "3 situations and you have been involved" as a detriment. It indicates that Mr Mallinson sees the claimant as the problem, as the root cause of why he has had to get 'involved', but these situations included the claimant being physically threatened by Dave, having to listen to his colleagues make lewd comments about Egyptian women and then referencing the claimant's wife, as well as being 'othered' or isolated by reference to the 1.1% statistic. It seems to us that the claimant was not responsible for these 'situations' and to imply otherwise is detrimental. He is painting the claimant as, and implying the claimant was, a troublemaker in circumstances where the claimant is the recipient of detrimental treatment, not the cause.

171. Jamie Milton did conduct a campaign against the claimant:

- a. Mr Milton's attitude towards Jordan McGary and Lewis Elliott when the claimant raised it. Mr Milton's evidence before us was quite clear that he was dismissive of the issues being raised by the claimant both at the hearing and at the time. He suggested it was just the way they are, and the claimant should forget about it.
- b. Mr Milton took the photograph of the claimant's car at Fell Foot after he went out of his way to see if the claimant could be found. This photograph then became one of the grounds for concluding the claimant had been dishonest. He told us that he did raise it with the claimant on the 15/6/23 and then left it at that, but clearly, he passed it on for use at the disciplinary hearing and did not, as he suggested, put it to bed.
- c. Mr Milton shared the text messages Mrs Askar had sent to him in a private capacity. We were never provided with a good explanation as to why this was necessary and certainly not to the extent they were shared. On the 17/7/23 the claimant had failed to attend work, and he had not communicated that absence with the respondent either as per the policy or as per previous convention of contacting Mr Milton. They therefore did not need her text messages to conclude that he had failed to comply on that occasion.
- d. Mr Milton in his statement says that upon receipt of the message 17/7/23 that he spoke to Mr Mallinson regarding the absences "thereafter I had no further involvement" but again, that is Mr Milton underplaying it. According to Mr Mallinson he had been made aware of the messages at 344-349 of the bundles, these span more than just the one message on the 17/7/23.
- e. Further, he did not share all his text messages including those in which he called the claimant a child, and said he would not be welcome in his team 'if he managed to keep his job'.
- f. There did not seem to be any attempt by Mr Milton to seek the claimant's version of events about what Mrs Askar was saying.
- g. We also note in the text messages that Mr Askar was the butt of the joke on more than one occasion.
- h. In the appeal numerous employees talk about the rumours, which must have come from these text messages, making Mr Milton the source (at least in respect of some of the rumours).

- i. Part of the campaign includes the comments made by JMc and LE in respect of Egyptian women and Mr Milton's lack of action.

172. The claimant does seem to have been disciplined for incorrectly reporting his absences which he reported in the same way as his colleagues. Mr Milton's evidence was that he was generally happy for text messages to be sent to inform him of absences. Mr Mallinson's evidence was that he wasn't able to establish whether there was a convention "*I can't recall how much I went into this with Jamie at the time*" he did not go into it. So, although Mr Mallinson repeated the same line in his evidence "*it was the level of absence, not reported correctly*" there was no enquiry into when he failed to report properly/how the team generally reported/whether others had also been pulled up on this and Mr Milton's evidence would suggest they weren't.

173. It felt to us like the procedural aspect of reporting was being used as a hook to 'get him' with; the respondent failed to set out which of the absences were defective in this regard. One date the respondent relies on is the 14/6/23, yet on that date the claimant left work early, so the reporting procedures don't apply, at least not the ones we were taken to. The message between the claimant and Mr Milton does not appear to have been shared with or considered by Mr Mallinson when he was making his decision to dismiss.

174. The way the claimant was taken to task over procedural reporting issues can properly be described as a detriment. On the face of the evidence before us the only occasion when he was properly informed about it was in the email exchange between Mr Mallinson and the claimant in the run up to the disciplinary meeting; we rejected the suggestion that Mr Folwer made it clear to the claimant on the 27/6/23. Therefore, disciplining him in the manner they did, including not setting out which dates he failed to comply, looking at the messages he had sent or asking him about dates when they had no information, placed him at a disadvantage and is therefore detrimental.

175. This brings us to the allegation that the respondent applied a biased disciplinary process in that the claimant was invited to a disciplinary meeting without being told what was being investigated and the investigator, Paul Mallinson, was also the dismissing manager. This was part of the campaign to dismiss him.

176. We are clear that they did invite him to a disciplinary meeting without being told what was investigated and that Paul Mallinson was both the investigator and the dismissing officer. Having conducted an 'investigation' Mr Mallinson felt that dismissal was a reasonable decision:

- a. The invitation to the dismissal morphed from an investigation to a capability meeting. In the letter the claimant is told about "additional issues that have been brought to my attention" but never what those are. When the claimant is told one of the allegations is breach of trust and confidence, he is not told what that is based on.

- b. Given the respondent has a dedicated HR employee there was no reason for Mr Mallinson to both investigate and dismiss.
- c. Not only did the claimant not know in advance what the 'other matters were' or how he was said to have breached trust and confidence, Mr Mallinson decided to keep the text messages from Mrs Askar confidential, and he failed to show the claimant the photograph of the car at Fell Foot. The dates of absence were not shown to the claimant.

177. The manner in which the dismissal hearing was conducted can only be described as a detriment. It is clear to us that Mr Mallinson had made his mind up prior to the hearing "I had enough" and "we had sources". Even putting to one side the fact that he had less than two years' service, as the respondent prays in aid "the ACAS code doesn't apply" as a matter of natural justice an employee ought to know what allegations they are facing. Otherwise, they are left to wonder what are the 'real reasons' for the treatment.

178. We do not find that Mr Leahy's comments in the appeal hearing amount to a detriment. Whilst it is a matter of record that he made the comments alleged; we have taken into account the circumstances and that Mr Leahy (whether rightly or not) felt that the claimant was going to say something inappropriate about Charlie. He did not on our listening raise his voice, and the context of the comments including the reason for the claimant's wife being present all lead us to conclude that this was not treatment that amounts to a detriment.

179. The comments made by JMc and LE and DS: we have found that those individuals did use the 1.1% statistic as a way to isolate and 'other' the claimant. We consider that this can reasonably be seen as a detriment. It is, as described by the claimant, treating him differently and singling him out and not in a positive way.

180. We found as a fact that JMc and LE did make lewd/vulgar comments about Egyptian women (about them being good in bed) and then referencing the claimant's wife. That too is subjecting him to a detriment. The evidence is that he 'lost his head' over this, so was clearly upset about it; it is degrading to Egyptian women which in turn is degrading to the claimant as an Egyptian man who knows and is related to Egyptian women. It paints a group of women into a particular category simply because they are Egyptian. We consider this to be a detriment.

181. We have not found the other comments alleged to have been made, at least not in the context pleaded and therefore we have not considered them further here.

Mr Strong said in the grievance investigation interview that the claimant had said he would 'play the race card'.

182. It is not disputed that Mr Strong did say in his interview after dismissal that he had heard the claimant would play the race card. This occurred post

dismissal, but quite obviously arises out of and is closely connected to the former employment relationship because it occurred as part of the investigation into alleged conduct whilst employed.

183. We considered carefully whether this amounts to a detriment. We found that it does. Firstly, our finding was that he did not say that he would play the race card, so as the claimant said (and we accepted in evidence) it perpetuates a concept that only applies to people with certain protected characteristics.

184. Secondly it was elicited by Ms Williams asking whether the claimant had been subject to race discrimination. Mr Strong didn't hear the claimant say this but is repeating what others have alleged. The implication being the allegations made by the claimant are simply part of him 'playing the race card'. In other words, it is being used to undermine or call into question the validity of his allegations.

185. This document is then put before the appeal officer and used in these proceedings. The statements were not shown to the claimant prior to the appeal hearing so he did not know this was being said about him until he attended the hearing. It could therefore potentially affect the thinking of Mr Leahy or anyone else looking at the allegations, without the claimant being aware of it.

186. We also agree with the claimant that 'playing the race card' is only said in respect of people with certain protected characteristics i.e. we don't think that such a comment would be attributed to a white British person if that person had raised a post dismissal grievance about some of the treatment, they were subject to. Their race would not be used as a mechanism to undermine their allegations.

Has the Claimant proved facts from which we could decide, in the absence of any other explanation, that a person contravened section 13?

187. Having reached those conclusions in respect of whether the above acts amount to a detriment we turn to consider whether the claimant has proven facts from which we could conclude that in any of those respects he was treated less favourably than someone who was not Egyptian/Muslim.

188. We find the claimant has proven facts from which we could decide there has been discrimination. We have taken great care in this case not to conflate unreasonable treatment with discrimination. We are alive to the fact that the claimant had less than two years' service, and that there is no claim for 'ordinary' unfair dismissal and have been conscious not to confuse the legal tests under the Employment Rights Act and the Equality Act.

189. We find the following are relevant facts to the surrounding circumstances:

- a. Dave Lewis was given a warning and had a dismissal hearing at which he was aware of the allegations even though he committed an act of

gross misconduct which justified summary dismissal according to the respondent's policy.

- b. Tom Robinson was given a warning and a chance to improve his absence levels prior to dismissal. He was also given the opportunity to discuss individual absences and specific dates, so was aware of the allegations against him.
- c. It is our understanding that both men had less than two years' service (certainly the respondent has not provided evidence that Mr Lewis had more and we know Mr Robinson had less). Both men were white British.
- d. The claimant was subject to belittling use of the 1.1% statistic.
- e. JMc and LE did make lewd comments about Egyptian women in connection with asking about the claimants' wife.
- f. The claimant specifically raised race discrimination with Jamie Milton and clearly identified that he felt he was being treated differently because he is foreign.
- g. Jamie Milton had set about to pass on information that could be used to dismiss the claimant.
- h. Mr Mallinson raised 'three issues' at the disciplinary hearing two of which the claimant pointed out were racist jokes about him being Egyptian/Muslin, and the 1%; yet Mr Mallison implied the claimant was the common denominator.
- i. After the dismissal, Mr Strong referred to there being 'cultural differences' and that the claimant would threaten to play the race card. This, in addition to the 1.1% comments, seem to single the claimant out and our view on this is compounded by the text messages in which the claimant appears to be the butt of the joke.

190. We have therefore concluded the claimant has proven facts from which we could decide he has been subject to less favourable treatment in respect of the detriments set out above. In regards to paragraph 188 d, e and i each of those overtly relate to the claimant's race and have been used to single him out or will have had the effect of belittling and isolating him. When we considered the failures relating to the disciplinary process and the campaign escalating that process we considered evidentially others, who were not Egyptian, were given more information and more opportunity to improve. Those differences, along with the overt comments and treatment lead us to draw an inference that there was a reason, other than the simple fact of his absences, that led the respondent to treat Mr Askar in the way they did. The claimant has proven there is 'something more' than simply unfavourable treatment and the claimant's race.

191. We therefore need to consider the respondent's explanation. In doing so we remind ourselves and the parties of the words of Lord Browne-Wilkinson in Nagarajan: *"many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the*

employer realised it at the time or not, race was the reason why he acted as he did"

192. Such an investigation by the tribunal needs to be based on facts, which we have already set out. We also remind ourselves that when considering whether the claimant's race/religion was 'the reason why' he was subject to those detriments it need not be the only reason, but it must have had a significant influence.
193. We therefore turn to the respondent's explanation, the burden having shifted to them.
194. In respect of the isolating comments about the claimant only being the 1.1% and comments about Egyptian women, it seems to us they are overtly discriminatory. They were said to him because he is Egyptian. There is very little evidence that there were other types of 'banter' or that the claimant was not singled out or treated differently. Indeed, the respondent has not offered this as an explanation.
195. Mr Milton's evidence that the claimant's absences were having a significant impact on him and the business was unconvincing. Whilst we do accept that repeated absences will have an impact on a business there was very little evidence as to what that was. Further, and fundamentally in this case, the claimant was really given very little warning, and certainly no clear warning, telling him to improve.
196. Regarding the manner and conduct of the investigation and dismissal hearing we were not satisfied that the respondent provided us with a sufficient explanation. When we tried to focus on the respondent's explanation it boiled down to the fact that the claimant had less than 2 years' service, but so did Mr Robinson and they let him know the allegations against him; they gave him a warning.
197. Mr Mallinson's explanation was repeatedly the same thing "*the number of absences, the failure to report, the genuineness of those absences*" and "*I made an informed decision*". However, as we have explained the decision was not informed, it fundamentally lacked the claimant's explanation or any analysis about dates/times/previous convention/failure of the company to follow its own procedure regarding return-to-work meetings, or earlier disciplinary action. Mr Mallinson, driven it would seem at least in part by Jamie Milton, reached view that they had had enough of the claimant and wanted him gone, but putting that against the other factual findings we have made regarding other discriminatory comments and the claimant having raised complaints and concerns about discriminatory treatment, the respondent's explanation for having approached the disciplinary hearing in the way it did is found wanting.
198. The explanation that the claimant had less than two years' service does not explain why they kept evidence from him, why they failed to discipline him earlier, or why they gave Mr Lewis and Mr Robinson warnings

and opportunities to respond to the allegations prior to dismissing them. It does not address the behaviour of JMc or LE and the fact that the claimant had raised with his team leader race discrimination and importantly that when Mr Mallinson identified these issues with the claimant in the disciplinary hearing, he dismissed them out of hand even though the claimant told him in the hearing that these were racist. Neither Mr Milton, nor Mr Mallinson gave evidence that provides an adequate explanation for their actions. In fact, when they gave evidence, we felt that they were dismissive and holding something back. We could not understand why the text messages from Mrs Askar required such swift action, without proper investigation or putting the claimant on notice. It is not as though the claimant was even approaching the 2-year mark which therefore put pressure on the respondent to make a decision.

199. The respondent has therefore not proven that there was not less favourable treatment in respect of those detriments identified above, and in the absence of a proper explanation we are required to conclude that the claimant's race was a significant influence and his claims under section 13 are made out in respect of the matters identified in the judgment.

200. We reach that conclusion in respect of the claimant's race. However, on the matters we have found those do not extend to the claimant's religion. We did not find the comments about 'Muslim pizza's' were made out, and in respect of the allegations we have found they are because of the claimant's race rather than religion.

201. In reaching this conclusion we confirm have not treated Mr Robinson or Mr Lewis as comparators within the meaning of section 23 Equality Act 2010, but that the treatment of them and the evidence relating to their warnings and dismissal form part of the relevant factual circumstances from which we could conclude the claimant has been subject to less favourable treatment. Considering those findings and bearing in mind the guidance in **Shamoon** as well as **Leicester City Council v Parmer [2025] EWCA Civ 952**, our decision as to whether the claimant was treated less favourably than a hypothetical employee is intertwined with identifying the ground on which the claimant was dismissed. In this case, we have found that the dismissal was significantly influenced by the claimant's race and/or religion in which case the natural conclusion is that he has been less favourably treated.

Victimisation section 27 Equality Act 2010.

202. The claimant did do a protected act because he did report to Jamie Milton that he "will hand in official complain about all this shit including racially discriminated [sic]". We are therefore satisfied that the claimant either alleged that another person had contravened the Equality Act, or he was doing any other thing for the purposes of or in connection with the act.

203. In respect of the detriments we conclude as follows:

204. 6.2.1 the claimant has not explained what he means by failing to tread his complaints of detrimental treatment seriously and commenting upon

English not being his first language. We do not know what complaints he means as it could include his appeal and grievance, but these were subject to investigations and hearings which indicates they were treated seriously. In respect of language the claimant's wife was allowed to attend the disciplinary hearing to assist the claimant, but we find that any comments relating to his understanding and use of English are in that context, so don't find it amounts to detrimental treatment.

205. 6.2.2. We have set out our conclusions regarding Paul Mallinson implying the claimant was a 'troublemaker' at the disciplinary hearing on the 24 July 2024. We agree with the respondent that this was not explicitly stated, however, it is implicit in the comment that the three situations involved the claimant.

206. The difficulty with this claim, however, is the lack of evidence that Mr Mallinson had knowledge of the complaint the claimant made to Mr Milton. The claimant does in the hearing say "I spoke to you and was going to go down the grievance process and was told it was going to be dealt with by Phil Fowler". There is insufficient evidence to conclude it is more likely than not that Mr Mallinson was aware of the content of the complaint. The claimant has not alleged he did a protected act when telling Mr Mallinson, he was going to go down the grievance process, nor does he rely on discussions with Lynn Metcalfe.

207. Whilst we have found that Mr Mallinson implied Mr Askar was the troublemaker in these three incidents, we do not find that his comments in the hearing were because he had done a protected act. They were said before race discrimination was raised at the hearing, and so it cannot have been because of that, and we are not satisfied that we can find Mr Mallinson had sufficient knowledge of the protected act to say this. There does not seem to be a causal link between Mr Mallinson's comments that he had to 'get involved' in the situations and the protected act, or any grievance – it is not in connection with those things that Mr Mallinson 'got involved'.

208. 6.2.3 We have concluded that Mr Leahy did not subject the claimant to any detriment during the appeal hearing and that his response was because he was trying to protect Charlie.

209. The victimisation claim therefore fails.

Time Limits

210. On the claims we have decided are well founded they occurred on the following dates:

- a. 24 July 2023: Being labelled a trouble maker by Mr Mallinson; Jamie Milton conducting a campaign to have the claimant dismissed which included passing information on the 17th through to the 20th July 2023 and culminated in the claimant's dismissal; Disciplining him for incorrectly reporting absences; applying a biased disciplinary process.

- b. The comments around the 1.1% and about Egyptian Women took place in 2022.
- c. The comment made by Mr Strong that the claimant would play the race card on 2/8/23.

211. Considering the date on which the claimant commenced early conciliation anything that took place prior to the 25 July 2023 is out of time. Which means that the matters listed above are all out of time.

212. We have considered our discretion under section 123(1)(b) EqA to extend time if we think it is just and equitable to do so. We have considered the reasons for the delay, and the extent of the delay, but in particular we have focused on balancing the prejudice that extending time would cause to the parties. Having carried out that exercise we find it is just and equitable to extend time. We have reached that conclusion based on the following factors:

- a. The claims relating to the dismissal are one day out of time. That is not a significant delay. There has been no forensic prejudice to the respondents because they were able to produce evidence before us as to the meeting, those present and the evidence they relied on in reaching the decision they did.
- b. The claimant understood that the claims were all in time because he understood that it was a continuing act. That is a difficult concept and he is a litigant in person (albeit legally qualified in Egypt so does have some experience of litigation). His understanding is a reasonable one.
- c. Most significantly we accept the submission made by the claimant that it was not until the appeal hearing that he was fully cognisant of the respondent's decision making. He had not been provided with the evidence upon which they chose to dismiss; the respondent had not prepared witness statements from colleagues until after the dismissal and even then they weren't provided to him until the appeal. He was unaware they had the text messages from his wife until the appeal.
- d. That meant that the claimant's knowledge of the facts he later relied on in this hearing were not known to him until after the appeal. It also means that the delay did not impact memories or the quality of the evidence because the respondent did not collate most of it until after dismissal.
- e. This also applies to the most historic allegations we found which occurred sometime before in 2022. However, all of the respondent's employees who were asked about that after the claimant's dismissal were able to recall it (both Egyptian women and 1.1% as well as the incident with Dave). Therefore, that delay did not impact memories or the evidence.

213. Taking all of those matters into account we consider that the balance of prejudice weighs in favour of extending time in respect of those allegations which were presented outside the time limit in section 123 EqA. If we did not extend time the claimant would be prevented from being able to pursue his race discrimination claim, which we have found is well made out and that would be particularly prejudicial in respect of his dismissal from which the greatest losses flow. The respondent is of course prejudiced if we extend time, as they lose the ability to rely on the time limits in defence of the claim. However, they were not prejudiced in their ability to respond, or produce

evidence (save perhaps Mr Fowler), they were able to present a robust response.

Conclusion

214. The claimant has succeeded on the following allegations and claims:
direct race discrimination contrary to section 13 Equality Act
- a. Being labelled a troublemaker by Mr Mallinson on 24/7/23
 - b. Jamie Milton conducting a campaign to have the claimant dismissed
 - c. Disciplining the claimant for incorrectly reporting his absences which he reported in the same way as his colleagues.
 - d. Applying a biased disciplinary process in that the claimant was invited to an investigation meeting without being told what was being investigated and the investigator was also the dismissing manager. This was part of the campaign to dismiss him.
 - e. JMc and LE made lewd comments about Egyptian women being good in bed and asked about the Claimants' wife in or around October 2022.
 - f. JMc, LE and DS used the company's EDI information that the claimant was 1.1% to single the claimant out and isolate him in or around October 2022.
 - g. Mr Strong's comment that the claimant had been heard to say he would 'play the race card' when he was interviewed on the 2/8/23.
215. For the avoidance of doubt, we have not found the additional matters from the further and better particulars proven save as set out above.
216. All other claims are dismissed.
217. There will need to be a remedy hearing to determine remedy. We have not made any findings regarding issues relevant to remedy. We will send out a separate case management order regarding the remedy hearing,

R Mellor

Employment Judge Mellor.

Date 13 February 2026

REASONS SENT TO THE PARTIES ON

7 April 2026

FOR THE TRIBUNAL OFFICE