



EMPLOYMENT TRIBUNALS

Claimant: Mr Joseph

Respondent: Wincanton Group Ltd

Heard at: London South (in person) **On:** 20-23 January 2026

Before: Employment Judge Hart, Mr Hutchings, Ms Beeston

Representation:

For the claimant: Ms Slater (lay representative)

For the respondent: Ms Mather (counsel)

JUDGMENT having been sent to the parties on 3 February 2026 and written reasons having been requested in accordance with Rule 60(3) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

LIABILITY REASONS

INTRODUCTION

1. This is our unanimous judgment in relation to Mr Joseph's claims for unfair dismissal, wrongful dismissal, whistleblowing detriment and automatic unfair dismissal, direct race discrimination, harassment related to race and victimisation.
2. Mr Joseph was employed by the respondent as a driver. The claim is about the termination of Mr Joseph's contract due to a wrong belief that Mr Joseph was absent without leave, when in fact he had sent his line manager a fit note signing him off work. Mr Joseph alleged that this was not just unfair dismissal but that the reasons for dismissal was because he had made a protected disclosure in relation to health and safety concerns. Further or alternatively that the reason for terminating his employment when it did and / or without confirmation of the reason for his absence was direct race discrimination and / or victimisation. Finally Mr Joseph alleged that he was mocked by workplace management and that this was because he had made a protected disclosure and / or was harassment related to race. The respondent denied all the complaints.

THE HEARING

3. The hearing took place over four days. Mr Joseph was represented by Ms Slater (lay representative). The respondent was represented by Ms Mather (counsel). They are both thanked for their assistance and representation during the hearing.
4. We agreed as a reasonable adjustment: frequent breaks / access to a bathroom.
5. We were provided with the following documents:
 - 5.1 A joint agreed hearing bundle of 886 pages plus an additional page; the references to page numbers in this judgment are to the pages in this bundle.
 - 5.2 A witness statement bundle.
6. Mr Joseph gave evidence on his own behalf and called Mr Ciochina and Mr Gerstein. Mr Gerstein did not attend and his evidence was treated as hearsay.
7. The Respondent called: Mr Courtman, Mr Baker, Mr Brody, Mr Porter and Mr Wade.
8. On completion of the evidence both parties provided oral submissions.
9. Mr Joseph requested written reasons on 30 January 2026.

CLAIMS / ISSUES

10. Prior to the hearing the parties had agreed a list of issues (**pg 790**) (see appendix A). This was confirmed with the parties at the start of this hearing.
11. The respondent applied to add as an issue: the determination of the effective date of termination. This application failed for the following reasons:
 - 11.1 At an interim relief hearing on 4 June 2024, EJ Burge had made a finding of fact that the effective date of termination was 7 May 2024 (not 29 April 2024). The respondent did not appeal this finding of fact.
 - 11.2 The respondent accepted at a preliminary hearing on 3 June 2025 that the effective date of termination was 7 May 2024.
 - 11.3 It would be neither fair nor just to permit the respondent to alter its position on the first day of the final hearing: the issue had already been determined, the parties had agreed a list of issues and the claimant had been provided with no notice that the respondent was applying to add this as an issue in the case.

It was confirmed that the tribunal would still need to determine whether the claimant resigned or was dismissed on that date.

FINDINGS OF FACTS

12. We have only made findings of fact in relation to those matters relevant to the issues to be determined. Where there were facts in dispute we have made findings on the balance of probabilities. We confirm that we have taken into account all the documentation and evidence before us and if something is not specifically mentioned that does not mean that we have not considered it as part of our deliberations.

About the claimant

13. On 18 May 2021 Mr Joseph commenced employment with the respondent as a Class 2 Lorry Driver.
14. From early 2023, Mr Joseph became an USDAW union representative for health and safety.
15. During his employment with the respondent, Mr Joseph had always used his personal email address to correspond with the respondent.

About the respondent

16. The respondent is a national transport company. The Thameside depot, where Mr Joseph worked, had the following staff profile:
 - 16.1 3 transport shift managers, all white;
 - 16.2 6 transport team managers, all white;
 - 16.3 15 clerks, two black (who both worked the night shift) and 13 white; and
 - 16.4 280 drivers, a third white, a third black and third Eastern European. The majority of night drivers were black, whereas the day drivers were equally divided between black and white.
17. The depot had an HR department (Thameside HR). Ms Arthurs, who worked in Thameside HR, was black.
18. Mr Courtman was the Transport Operations and Compliance Manager responsible for the management of shift and team managers; Mr Baker and Mr Brody were Transport Shift Managers, Mr Wade was a Transport Team Manager. Mr Wade was Mr Joseph's first (immediate) line manager and Mr Brody was Mr Joseph's second line manager. Mr Porter was a Health And Safety Manager.

Policies and procedures

19. The respondent used an HR system called Oracle to record staff contact details. Mr Joseph's personal email address was not recorded on that system, but his personal telephone number was.
20. The respondent had an Absence Policy: **pg 132-138**. Relevant provisions included:

- 20.1 Under the heading "Absence reporting":
*"All colleagues must contact their Line Manager as soon as possible or at least within a minimum of one hour of their shift commencement time, if they will not be reporting for work for any reason.....
Failure to follow this procedure may result in Company Sick Pay or Statutory Sick Pay being refused and or action under the Disciplinary Procedure taken for failure to follow company policy.....
... All clerical staff / admin / Managers should contact their immediate Line Manager within a minimum of one hour before their shift commences.
If no communication is made, the absence will be recorded as unauthorised and may result in disciplinary action being taken".*
- 20.2 Under the heading "authorised absence":
"If you take time off work without appropriate Line Management approval, this could be considered unauthorised and may be dealt with under the Company Disciplinary Procedure".
21. The respondent had a Disciplinary Policy: **pgs 116-128**. The definition of misconduct included *"failure to notify sickness absence"* and gross misconduct included *"unauthorized absence or breach of the absence without leave policy (absence in excess of three working days)"*
22. The respondent also had a whistleblowing policy (**pgs 139-153**) and grievance policy (**pgs 128-131**).

Chronology of events

23. In November 2021 Mr Joseph submitted a grievance against Mr Baker following a road traffic accident that Mr Baker had investigated. Mr Joseph in evidence stated that *"I felt like that put a target on my back which got worse when I became a union rep and didn't stop until the end of my employment"*. He went on to state that Mr Baker's *"dislike of me was noticeable since my grievance against him"* and that he thought other staff followed his lead. Mr Baker denied this.
24. Mr Joseph stated that management, in particular Mr Baker, persistently mocked him in the workplace creating a hostile environment for him. He referred to a complaint in July / August 2022 about the way in which the night clerks spoke to him and that when carrying out his union duties he was *"harassed / badgered/ rushed"* to get back to his non-union duties and that he felt *"singled out and challenged or questioned"* about taking time off for union-related duties. In the list of issues Mr Joseph had identified that Mr Baker would say *"What now"*, *"Okay, what now"*, *"Now what's wrong"*, *"Here we go"*, *"No one else complains"*, speak his name in a mocking manner, e.g. *"Yes, James"* upon his arrival. He claimed that it was not just the comments but the sarcastic tone used, facial expressions, and dismissive attitudes which created an environment of ridicule. Mr Joseph did not refer to these comments and behaviour in his witness statement, however Mr Baker admitted that he talked loudly and goes red in the face. He admitted that he might have said *"what's wrong"* but not in that

manner. He denied the other comments, and the respondent's other witnesses all denied that he made these comments.

25. We have found that Mr Baker did make these remarks and that they were said in a tone that did mock Mr Joseph. In reaching this conclusion we took into account the evidence that Mr Joseph gave about the atmosphere in work, further it was a busy depot and there was evidence that Mr Joseph was seen as a nuisance. He had raised an individual grievance and a collective grievance against Mr Baker about his attitude towards him and other union representatives (see below). Mr Baker admitted in evidence that he may have said "ssh" to a union representative who was shouting at him, although he "did not think" he raised his finger to his lips. Mr Ciochina (USDAW representative) also gave corroborative (albeit hearsay evidence) of Mr Baker's conduct at work. Mr Baker gave evidence that on many occasions Mr Joseph would refuse to do a delivery claiming that there was a problem with the vehicle and that he had to speak to his union representative first. Mr Baker stated that this meant that he would have to give the job to another driver. This suggested a level of frustration with Mr Joseph for refusing to drive a vehicle he considered to be unsafe.
26. Mr Baker's evidence, which was not disputed, was that he moved to an office role on 1 January 2022 and that he had little contact with Mr Joseph after this date.
27. On 21 December 2022 Mr Joseph submitted a grievance by email to HR complaining that on 4 December 2022 he found *"two cages wedged side by side in an unsafe manner by the loader. The only way to move them was to slide the rear wheels sideways, which takes excessive force and we're not trained to do so"*: **pgs 266–267 (disclosure 1)**. The grievance was considered by Mr Courtman who confirmed that managers were not authorised to expect untrained staff to unload cages and that further training and guidance would be provided: **pg 273**.
28. On 27 February 2023 Mr Joseph submitted a complaint against Mr Brody about being wrongly instructed to deliver a product early and the manner in which he had been spoken to. At the end grievance Mr Joseph stated that: **pg 479**.

"I feel this act by Mr Brody is a blatant act of bullying with an underline of racism because he went over and beyond procedure, he should've called the store first and then issued instructions."
29. An investigation was conducted by Mr Courtman. Mr Brody denied that he was aware of the allegation that his actions were race discrimination and there was no evidence to suggest that this issue was raised with him during the subsequent investigation. Mr Courtman said that what he investigated was the incident itself, he did not inform Mr Brody of the race allegation and had not referred to Mr Joseph's race when interviewing Mr Brody or any of the witnesses. In the absence of any evidence to the contrary we did not find that Mr Brody was made aware of the allegation of race discrimination. We are surprised by this and the lack of any investigation into this issue.

30. On 8 March 2023 Mr Joseph emailed Mr Porter and Mr Ciochina raising concerns about the new loading bay covers that may be put on loading bays, stating that they were too deep for drivers to access the tail lift controls and electrical connections and that drivers may be injured: **pg–275 (disclosure 2)**. He requested the design be revised. Mr Porter accepted in evidence that this was a health and safety matter. Mr Porter responded the next day that he would forward Mr Joseph’s email to Mr Sugden, Facilities and Team and Transport Manager: **pg 276**. Mr Sugden responded that the issues had already been raised by himself and the design was being revised: **pg 277**. Mr Joseph thanked Mr Sugden for his swift response: **pg 278**
31. On 24 April 2023 Mr Joseph’s grievance against Mr Brody was partially upheld by Mr Courtman: **pg 518**. Mr Courtman found that Mr Brody had been right to have made the delivery request but the way he had approach Mr Joseph “*was not the behaviour that a manager should be displaying*”. Mr Joseph was informed that Mr Brody had been spoken to about his approach and in evidence Mr Brody informed us that he was told that “*I have to speak to people equally but different*”. Mr Courtman informed Mr Joseph that he “*did not see any racism based on how Paul spoke to yourself*”.
32. On 25 April 2023 Mr Joseph submitted a grievance against Mr Baker and another for bullying and unreasonable actions: **pg 520**. Mr Baker had asked Mr Joseph to write a statement following a “refusal” to do a delivery until his union representative had arrived.
33. On 1 June 2023 Mr Joseph emailed Mr Porter reporting concerns that vehicle defects were not being properly logged, that he had reported two defects on a particular vehicle on two occasions and that neither had been inputted : **pgs 280–284 (disclosure 3)**. Mr Porter responded the same day and stated that he had forwarded Mr Joseph’s email to the relevant shift manager and fleet manager: **pg 283**.
34. On 26 June 2023 Mr Joseph emailed Mr Porter raising that a vehicle’s boxing ring system was missing the fixed “cup” that holds the boxing ring pole, and that the final character of the defect code was incorrect: **pgs 285–287 (disclosure 4)**.
35. On 2 August 2023 Mr Joseph emailed Mr Porter and Mr Ciochina objecting to a policy trial relating to delivery of “target times” that was being introduced without union or safety consultation: **pg 288 (disclosure 5)**.
36. On 11 August 2023 Mr Joseph emailed Mr Porter, Mr Ciochina and Mr Courtman about the lack of wander leads for the tail lift: **pg 289 (disclosure 6)**. Wonder leads are handheld extension control units for tail lifts, allowing drivers to operate the lift without stretching beneath the trailer body. On 18 August 2023, Mr Joseph sent a further email stating that he had received no response and that he would have to issue a HS2 form (HSE Report form): **pg 290**. On 21 August 2023 Mr Porter responded stating that he had been looking into the issue and that “*with immediate effect this process has been STOPPED*”: **pg**

- 291.** On 28 August 2023 Mr Joseph submitted an HS2 form reporting the use of “*unslung tail lift ...without a wander lead*” stating that “*on the 28th August at 04:45 it was used even after I showed said email from A Porter*”: **pg 292.**
37. In or around November 2023 Mr Baker submitted a grievance against Mr Joseph. Mr Joseph was asked to attend an informal meeting with Ms Arthurs and Mr Baker on 7 November 2023.
38. On 13 November 2023 Mr Joseph submitted a counter grievance against Mr Baker’s accusation that he had called Mr Baker “a racist”: **pg 530.** Mr Joseph stated “*I have on occasion spoken to colleagues about how I saw Mr Baker treating some employees differently to those he clearly likes. However this was never specifically about race, as it included both black and white employees*”, and he stated that his comments had been taken out of context and misinterpreted.
39. On 5 December 2023 Mr Joseph, and the other two health and safety representatives (Mr Roger (white British) and Mr Catapano (Italian)) submitted a collective grievance against Mr Baker: **pg 714.** Mr Baker was accused of shouting at them for taking too long to conduct a health and safety inspection. Mr Baker in evidence denied shouting but admitted that he raised his voice and questioned why the representatives took 6-7 hours to do the inspection and why it required 3 health and safety representatives. Mr Baker stated in evidence that “*I asked them if they could actually do any deliveries today*”.
40. On 28 January 2024 Mr Joseph emailed Mr Porter, Mr Ciochina and Mr Goldsworthy raising that defects were not being logged by the clerk which meant that they were not being fixed: **pg 293 – 296 (disclosure 7).** The defect in question was a camera used to reverse the vehicle. He stated that this was the second time he had raised this issue and asked that the clerk be reminded of the importance of logging. On 29 January 2024 Mr Goldsworthy responded stating that he would look into the defects: **pg 295,** and we heard evidence that the vehicle was taken off the road.
41. On 11 February 2024 Mr Joseph sent an email to Mr Abdullah, Mr Porter and Mr Mitchell, regarding the loading of milk and alcohol cages at Birchington and attaching pictures and videos: **pgs 297 – 299 (disclosure 8).** Mr Abdullah responded stating: “*thanks so much for the below. Rest assured colleague will be spoken with*”.
42. On 13 February 2024 Mr Courtman upheld Mr Baker’s grievance that Mr Joseph had called him a racist and informed him that the investigation would be forwarded on and dealt with accordingly: **pg 781.**
43. On 20 February 2024 Mr Courtman informed Mr Joseph that his counter-grievance was dismissed: **pg 782.** .
44. On 27 February 2024 Mr Joseph sent in a fit note to Mr Wade and Ms Ekwueme (HR) from his personal email address, signing him off work with “stress at work”

until 12 March 2024: **pg 240**. On 1 March 2024 Mr Wade emailed Mr Joseph stating that: **pg 240**

"I have received and sent on to HR as Chika [Ms Ekwueme] rarely looks at her email, I hope you are well and sorry for the late reply"

45. On 12 March 2024 Mr Brody sent Mr Joseph a WhatsApp message to his personal telephone asking how he was doing, noting that his fit note was due to expire. He stated that he wanted to check whether Mr Joseph was returning to work the next day and asked him to give him a call or provide an update: **pg 842**. Mr Joseph responded that he had been signed off by the doctor until the 19 March 2024 and would be sending a note the next day: **pg 843**.
46. On 13 March 2024 Mr Joseph emailed Mr Wade and Ms Arthurs (HR) a further fit note signing him off work with "stress at work" until 19 March 2023: **pg 243**.
47. On 15 March 2024 Ms Arthurs emailed Mr Joseph, copied to a number of persons including Mr Brody stating: **pg 244**.

"Please ensure when sending updates, you send it directly to your line manager and Thameside HR inbox, not my personal email"

48. On 20 March 2024 Mr Joseph attended a return to work meeting with Mr Yerlett (Shift Manager) who completed an Absence Form: **pg 247-248**. He recorded that Mr Joseph had been off work for 16 days with "*mental health and stress (work related)*". Under the heading "Likelihood of recurrence" he recorded: "*Likely due to lack of duty of care from work*".
49. On 8 April 2024 Mr Joseph attended a grievance appeal meeting chaired by Mr Korkmaz (General Manager): **pg 576**. He was accompanied by Mr Ciochina.
50. On 15 April 2024 Mr Courtman emailed Mr Joseph the grievance appeal outcome, dismissing his appeal: **pg 782**. This was sent to his personal email address and copied to Ms Arthurs and the HR general email address: **pg 553**.
51. Between 15 April and 20 April 2024 Mr Joseph was on annual leave.
52. On 19 April 2024 Mr Joseph sent an email to Mr Wade and Mr Ciochina attaching a fit note signing him off work between 19 April to 15 May 2024 and requested a referral to occupational health: **pg 250 and 264**. It was not disputed that Mr Wade did not see this email since he had already logged out of his computer that day and then was on paternity leave. It was also not disputed that Mr Joseph was unaware of this.
53. On 20 April 2024, Mr Joseph was expected to return to work following his annual leave. When he did not attend for his shift at 04:31 Mr Joseph was phoned on his personal telephone by a person unknown from the respondent's telephone line: **pg 251** (Mr Joseph provided a screenshot confirming that a call was made). Mr Joseph did not answer the telephone and no message was left for him on the ansaphone. In his witness statement Mr Brody stated that he had

made this call and provided detailed evidence of making this call. However in cross-examination Mr Brody denied that he had made this call stating that he was not on shift at the time (since his shifts started at 6am). When taken to the screenshot he was very definite and stated, *"I did not make that phone call"*. In re-examination he changed his evidence again and stated that he was on shift on that day and that he had made the call. We appreciate that these events are almost two years ago but this is a central part of the case and we did not find it credible that he would not have recalled making this telephone call when first asked about it in oral evidence. This was not the only occasion where we found his evidence to be unreliable. We therefore concluded that he did not make this telephone call.

54. Mr Brody stated that he did not send a WhatsApp or text following the telephone call because it was the shift changeover, he was dealing with on average 30-40 drivers and it then *"slipped his mind"*. He also stated: *"I don't need to text someone who is not answering the phone"*.
55. Mr Brody was then off work for a couple of days. On his return to work he enquired whether the shift managers (Mr Backs and Mr Yarlett) had heard from Mr Joseph in his absence. They had not. He did not ask them if they were aware of any reason why Mr Joseph had not attended work.
56. Mr Brody in his witness statement stated that on 22 April 2024 he made a further telephone call to Mr Joseph's personal telephone number. In cross-examination he could not recall when he made this call or any detail and was *"not 100% certain"* that he had in fact made this call. Mr Joseph denied that Mr Brody phoned him. We noted that Mr Joseph had taken a screenshot of the previous call and considered that had a second call been made he would have taken a screenshot of it. We therefore accepted Mr Joseph's evidence and that Mr Brody did not telephone Mr Joseph on the 22 April 2024. There is no evidence that Mr Brody phoned Mr Joseph on any other date prior to the termination of his contract.
57. On 23 April 2024 Mr Brody sent Mr Joseph a letter (the AWOL letter) which stated: **pg 252**
"I write regarding your ongoing absence from work, which commenced on Saturday 20th April 2024. You have not informed us of your intentions. We have tried contacting you several times by phone and have not been successful. As such your absence is currently deemed as unauthorised.

Please contact the absence line ... no later than 17:00pm on Monday, 29th April 2024. Should we not receive any contact, we will have no alternative but to conclude that you have resigned your position and will process your termination of employment by means of resignation."

The letter was sent by post. Mr Joseph said that he never received this letter. We accept his evidence. It is not unusual these days for letters to get lost in the post. It was not sent by registered post, and there is no evidence that it was delivered. Further there is no reason for us to disbelieve Mr Joseph's evidence. Had it been delivered then we considered it likely that he would have

immediately contacted his union representative for advice, since this is what he did when he received the subsequent letter.

58. On 28 April 2024 Mr Brody emailed HR informing them that an AWOL letter (attached) had been “*sent to James Joseph by post on 23/04/2024, as no email available on Oracle*”: **pg 788**. This suggested that Mr Brody had not contacted HR prior to sending the letter.
59. On 29 April 2024 Mr McCulloch (HR) emailed Mr Brody, Mr Courtman and Ms Arthurs (HR) suggesting that the emergency number for Mr Joseph be tried “*as I am concerned we have been unable to contact him*”: **pg 788**. The same day Mr Brody contacted the emergency number in the presence of Ms Arthurs and recorded that “*the woman who picked up the call hung up*”: **pg 854**. The emergency number was for Mr Joseph’s elderly mother, who did not live with him, was over 80 years old and “not very well”. We accepted that Mr Joseph’s mother did not inform Mr Joseph of the telephone call.
60. On 1 May 2024 Mr Brody informed Mr Joseph by letter that his contract had been terminated and attached the Absence Policy and AWOL letter. The letter stated:

“I write regarding your failure to contact Thameside Distribution centre, in relations to absence “AWOL” by Monday, 29th April 2024 by 17:00pm, as mentioned in the letter which is included, as a result of no contact from yourself and emergency contact number, we have taken your no contact as a sign you have resigned your position and have been processed as a leaver with termination of employment from Monday 29 April 2024.”

This letter was sent by registered post: **pg 253-254**.

61. The letter was delivered on 3 May 2024 and signed for: **pgs 256-257**. Mr Joseph denied that he signed for it. Mr Joseph said that when his mental health was bad he does not leave his flat for any reason and that he did not see the letter on that day. The respondent submitted that the signature on the delivery receipt was Mr Joseph’s signature and compared it with the signature on **pages 184-188**. We did not agree. The signature that the respondent relied on is a very obvious “J J” whereas the signature on the delivery receipt is a “W” and a ‘squiggle’. It is nothing like Mr Joseph’s signature. We noted that Mr Joseph lived in a block of flats and the post boxes were in a communal lobby, therefore we considered it quite likely that the signature on the delivery receipt was either another resident or the postal worker doing the delivery.
62. The same day Mr Joseph sent a WhatsApp to Mr Gersten (USDAW representative) asking him to make enquiries about his holiday and sick pay since the the amount of wages paid into his bank account that day was less than he had expected. He had also tried to access his account on the Oracle but been informed that there was “no account”.
63. On 6 May 2024 Mr Joseph sent Mr Ciochina a WhatsApp message: **pg 772**.

“Hi Bogdan if you are at work today can you, send my sick note email to the appropriate person and not to Thameside HR due to the leak of GDPR last time I informed them of my sickness.”

Mr Ciochina stated in evidence that he did not do anything that day because he received 20-30 emails a day.

64. On 7 May 2024 Mr Joseph saw the 1 May 2024 letter terminating his contract and phoned Mr Ciochina: **pg 258**. Mr Ciochina confirmed that Mr Joseph had not previously raised with him receipt of this or the 23 April 2024 letter. Mr Ciochina stated that he did not advise him to appeal because by that date the 5 days for appeal had expired. Since Mr Joseph was a union representative he advised Mr Joseph to seek assistance from the USDAW Area Organiser. Mr Joseph contacted the Area Organiser and asked, *“if it was a mistake can it be corrected”* and that he was told it was too late. We considered the advice that was given by the union was poor but accepted Mr Joseph’s evidence that this was what he was informed. Throughout we have found him to be a truthful witness.
65. During the hearing we were informed that a significant number of drivers would go absent without leave. Mr Baker stated that these were mainly: new starters who only work for a few days and then leave, young workers and Eastern European workers who do not return from annual leave after going back home to visit family. Mr Brody stated that the respondent would make “several attempts” to contact the individual concerned; *“2-4 maybe 5 times depending on the person or what was happening”*. Mr Baker gave evidence of the steps that he had taken to check on a member of staff who had not return to work following a visit to her ill mother in Greece. He made several telephone calls, spoke to a friend at work, went to her home and asked HR if they had a different number to contact her on. He said he did this because she was a long serving employee a member of his team “a really good friend” and he was really worried about her.
66. On 15 May 2025 Mr Joseph presented a claim form applying for interim relief: **pg 1-16**. Judgment refusing his application was issued on 1 July 2024: **pg 20-30**. On 3 August 2024 Mr Joseph commenced early conciliation. He received the early conciliation certificate on 7 August 2024: **pg 48**. On 7 September 2024 he presented the second claim form: **pg 51-67**.

THE LAW

Resignation or dismissal

67. A resignation is the termination of a contract of employment by the employee. It need not be expressed in words and may be inferred from the employee’s conduct and the surrounding circumstances. Going absent from work without communicating to the employer can amount to a resignation: **Harrison v George Wimpey and Co Ltd** [1972] ITR 188 (NIRC). On the facts of that case the employee had been absent for four months without communicating to their employer.

Unfair dismissal

68. Section 94 of the Employment Rights Act 1996 (ERA 1996) confers on employees with 2 years' continuous service the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the tribunal under section 111.
69. Section 98(2) identifies a number of potentially fair reasons for dismissal including "some other substantial reason" (SOSR) which is relied upon by the respondent in this case. This includes a genuine belief by the respondent that an employee had resigned when they had not: **Impact Recruitment Services Ltd v Korpysa** [2025] EAT 22. The burden of establishing the reason for the dismissal is on the respondent.
70. If a dismissal is a potentially fair one, then under section 98(4) the tribunal will determine, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason. The determination of this question depends on whether in all the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee. The tribunal is required to determine this issue in accordance with equity and the substantial merits of the case. When considering reasonableness the tribunal must not substitute its view for that of the employer. The overarching test is whether the employer's action fell within the range (or band) of reasonable responses of a reasonable employer: **BHS v Burchell** [1978] IRLR 379.

Protected Disclosure

71. In order to be a protected disclosure, a disclosure must satisfy two conditions:
(1) it must be a "qualifying disclosure" made in accordance with section 43B(1) of the ERA 1996; and
(2) it must be made in accordance with one of the six specified methods in section 43C-H of the ERA 1996. In Mr Joseph's case there was no dispute that the alleged disclosure/s were made to his employer and therefore fulfill this condition.
72. A "qualifying disclosure" is defined as:
"... any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
(a) *a criminal offence had been, was being or was likely to be committed;*
(b) *a person had failed, was failing or was likely to fail to comply with any legal obligation;*
(c) *a miscarriage of justice had occurred, was occurring or was likely to occur;*
(d) *the health or safety of any individual had been, was being or was likely to be endangered;*
(e) *the environment had been, was being or was likely to be damaged;*

(f) *information tending to show any of these things had been, was being or was likely to be deliberately concealed.*”

73. Thus in order for a disclosure to be a qualifying disclosure:
- 73.1 there must be disclosure of information. It must convey factual details of the alleged wrongdoing and not be a mere expression of opinion or an allegation without factual content;
 - 73.2 the worker must believe at the time of disclosure that the information disclosed tends to show one or more of the statutory wrongdoings. The relevant ones in this case are failure to comply with a legal obligation and endangerment of health and safety;
 - 73.3 if so, that belief must be objectively reasonable;
 - 73.4 the worker must believe at the time of disclosure that the disclosure is made in the public interest. This will depend on the circumstances of the case. Factors may include the number of persons and the nature of the interests affected, the nature of the wrongdoing and the identity of the wrongdoer. The essential point is that the disclosure has to serve a wider interest than the private or personal interest of the whistleblower; and
 - 73.5 if so, that belief must be objectively reasonable.

Detriment

74. Under section 47B ERA 1996 a worker has the right not to be subjected to any detriment by “*any act, or any deliberate failure to act*” by an employer done on the grounds that he had made a protected disclosure. Section 47B is infringed if the protected disclosure materially (i.e. more than trivially) influences the employer’s treatment of the whistleblower: **Fecitt and Ors v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372 (CA).

Automatic unfair dismissal

75. Under section 103A ERA 1996 an employee has the right not to be unfairly dismissed “*if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure*”.
76. The test for unfair dismissal is higher than for detriment in that the protected disclosure must be the “principal reason” (i.e. more than a material influence) for the dismissal: **Fecitt and Ors v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372 (CA). When considering the reason for dismissal the tribunal should identify the real reason for the dismissal and whether this is separate from or closely connected to the protected disclosure: **Kong v Gulf International Bank (UK) Ltd** [2022] ICR 1513.

Race discrimination

77. Section 13 of the Equality Act 2010 (EA 2010) defines direct discrimination as where:
“*a person (A) discriminates against another (B) if, because they protected characteristic, that person treats B less favourably than a treats or would treat others*”.

The protected characteristic that Mr Joseph is relying on is race.

78. A claimant must compare themselves with an actual or hypothetical comparator and the relevant circumstances of the comparator must be *“the same, or not materially different”*: Section 23 EA 2010.
79. In order for a complaint of direct discrimination to succeed the reason for the treatment must be “because of” the protected characteristic.

Harassment

80. Section 26 of the EA 2010 defines harassment as where:
“(1) A person (A) harasses another (B) if—
 a. A engages in unwanted conduct related to a relevant protected characteristic, and
 b. the conduct has the purpose or effect of—
 i. violating B's dignity, or
 ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
....
(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
 (a) the perception of B;
 (b) the other circumstances of the case;
 (c) whether it is reasonable for the conduct to have that effect.”
81. “Unwanted” means essentially the same as “unwelcome” or “uninvited”.
82. Violation of dignity and creation of intimidating etc environment are strong words. It is a high bar, requiring intention and effects that are serious and marked and not those which are, though real, truly of lesser consequence: **Grant v HM Land Registry** [2011] ECWA Civ 769.
83. Purpose and effect are alternatives and should be considered separately. Purpose requires intention, whereas effect is unintentional. Effect requires consideration of a subjective question, whether the claimant perceives themselves to have suffered the effect in question and an objective question as to whether it was reasonable for the claimant to consider that the treatment had that effect: **Pemberton v Inwood** [2018] CR 1292; **Richmond Pharmacology v Dhaliwal** [2009] IRLR 336.
84. “Related to” is a broad term that does not require a direct causal link but only a connection or association: **R (EOC) v Secretary of Trade and Industry** [2007] ICR 1234.

Victimisation

85. Section 27 of the EA 2010 provides that:
- '(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—*
-*
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.'*
86. A protected act may include a grievance alleging discrimination.
87. "Detriment" means some form of disadvantage, to be assessed from the view point of the worker: **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 (HL).
88. In order for a complaint of victimisation to succeed the reason for the treatment must be "because of" the protected act.

Burden of proof in discrimination / victimisation cases

89. Section 136 of the EA 2010 provides that:
- "(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."*
90. Thus the burden of proof is initially on the claimant to establish primary facts from which the tribunal could decide in the absence of any other explanation that discrimination / victimisation took place (stage 1). The burden then shifts to the respondent to prove that the discrimination / victimisation did not occur (stage 2). This provision was introduced because it was recognised that it is unusual to find direct evidence of discrimination / victimisation and that it was difficult for claimants to prove the respondent's reason or motivation for doing something. Guidelines on the application of the burden of proof provisions is provided in **Igen Ltd (Formerly Leeds Career Guidance) and Oth v Wong** [2005] ICR 931.
91. In order for the burden to shift onto the respondent, it is not sufficient for the claimant to prove the bare facts, for example in direct discrimination cases that there was a difference in protected characteristic and a difference in treatment, something more is required: **Madarassy v Normura International Plc** [2007] EWCA Civ 33 (CA). The absence of an adequate explanation on its own is not sufficient to shift the burden of proof, but in certain circumstances an adverse inference may be drawn from inconsistent, untruthful or inaccurate explanations: see for example **Base Childrenswear Ltd v Otshudi** [2019] EWCA Civ 1648. Similarly, unfair and unreasonable treatment on its own is not

enough to shift the burden of proof: **Glasgow City Council v Zafar** [1998] IRLR 26 (HL).

92. Discrimination / victimisation may be, and often is, unconscious and unintended, therefore the tribunal's decision will often depend on what inference it is proper to draw from all the relevant surrounding circumstances: see **Qureshi v Victoria University of Manchester** [2001] ICR 863 EAT and **Anya v University of Oxford** [2001] EWCA Civ 405.

DISCUSSION AND CONCLUSIONS

UNFAIR DISMISSAL (issue 1)

Was the claimant dismissed or did he resign?

93. Mr Joseph submitted that he was dismissed; the respondent submitted that he resigned. We have found that he was dismissed. He had sent no letter of resignation and spoken no words that suggested any intention to resign. Nor did we infer resignation from his conduct: the day before his absence he had sent a fit note to Mr West, in accordance with the Absence Policy that he contact his immediate line manager at least 1 hour in advance of any absence. In any event, in the circumstances known to the respondent, 9 days was insufficient time to infer from conduct that Mr Joseph had resigned. In particular:
- 93.1 Mr Joseph did not fit the AWOL profile. He was a 58 year old employee who had been with the respondent for almost 3 years. He was not a new starter, young, nor had he lived or had family abroad. There was no explanation as to why he would suddenly not attend work, other than sickness / incapacity.
- 93.2 Mr Joseph had recently been off sick due to mental health and stress (work related) and the Absence Form completed on 20 March 2024 had recorded likelihood of recurrence. Therefore this was the most likely explanation for his absence from work.
- 93.3 Mr Joseph was dismissed without establishing whether or not his absence was in fact unauthorised. We noted that on this occasion Mr Joseph had not copied his fit note to HR, but also noted that the Absence policy only required his immediate line manager to be contacted, which he had done.
94. We noted that in **Harrison** the period of time that the employee had not communicated with his employer was significantly longer (4 months). Therefore we found that it could not be inferred from his conduct and the surrounding circumstances that Mr Joseph had resigned; instead we found he was dismissed.

If dismissed what was the reason for the dismissal?

95. The respondent relied on SOSR as the reason for dismissal, namely a genuine but mistaken belief that Mr Joseph had resigned. We accepted that legally this is a potentially fair reason for dismissal.
96. Mr Joseph submitted that the reason given by the respondent was not genuine; instead it was used as an excuse by the respondent, in particular Mr Brody, to dismiss him because he was seen by management as a “thorn” in their side.
97. Taking into account all the circumstances in this case, we agreed with Mr Joseph that the respondent’s belief was not genuine. As stated above Mr Joseph did not fit the AWOL profile and sickness / incapacity was the obvious reason for his absence from work. Further we found that it was not believable that Mr Brody would have formed that belief without establishing whether or not the absence was in fact unauthorised by contacting his immediate line manager. We found that Mr Brody’s evidence as to his belief that Mr Joseph had resigned lacked credibility and that he was inconsistent and contradictory as to the steps that he took to ascertain the true position. Whilst we accepted that some attempt was made to contact Mr Joseph, it was minimal and inadequate. Mr Brody himself admitted that the respondent would make several attempts to contact the person concerned *“2-4 maybe 5 depending on the person or what was happening”*. Mr Baker went to considerable lengths to contact one of his reports. Yet only 3 attempts were made to contact Mr Joseph, a telephone call without leaving a message in the early hours of the morning, a letter sent by ordinary post and a telephone call to the emergency number which was inconclusive. On the other hand there was considerable evidence that Mr Joseph was seen as a “thorn” in the respondent’s side and that management considered him to be a nuisance. Mr Brody had himself been on the receiving end of one of Mr Joseph’s grievances and been spoken to about his behaviour towards Mr Joseph. Therefore we considered that Mr Brody did not genuinely believe that Mr Joseph had resigned but used the opportunity to terminate his contract.

Was that belief a reasonable belief?

98. Even if Mr Brody did have a genuine but mistaken belief that Mr Joseph was absent without leave, we did not consider that the respondent acted reasonably in forming that belief due to an insufficient enquiry as to why Mr Joseph had not attended work, particularly given that he did not fit the AWOL profile and the obvious reasons for his non-attendance (sickness / incapacity and / or that his absence was not unauthorised because he had in fact informed his immediate line manager of his absence).
99. We considered that prior to dismissal, a reasonable employer would have done one of more of the following to ascertain the true position:
 - 99.1 Contact Mr Wade, Mr Joseph’s immediate line manager, and the person who he was required to have contacted under the Absence policy, to see if Mr Joseph had been in contact or had sent in a fit note. We noted that on 19 April 2024 Mr Joseph had not copied his fit note to HR. We also

noted that previously Mr Joseph had sent his fit notes to the personal email addresses of HR personnel (Ms Ekueme and Ms Arthurs) and been told by Ms Arthurs to send it to the general HR Thameside inbox instead. Mr Joseph had a GDPR concern about doing so as evidenced in his 6 May 2024 email to Mr Ciochina, which explained why he did not send it to the HR Thameside inbox. Even if HR were unaware of these concerns, Mr Wade was the obvious person to have contacted before assuming that Mr Joseph was absent without leave.

- 99.2 Left a message on Mr Joseph's ansaphone.
 - 99.3 Make more than one call to Mr Joseph's personal telephone and at different times of the day (not just at 4:31am when he was likely to be asleep).
 - 99.4 Contact Mr Joseph by WhatsApp. Mr Brody had previously contacted Mr Joseph by WhatsApp on 12 March 2024 to see if he was returning to work but was unable to explain why he did not send a WhatsApp message when Mr Joseph failed to answer the telephone on 19 April 2024 or make contact at any point between that date and dismissal. Mr Brody clearly had Mr Joseph's personal telephone number and knew that he could contact him by this method and that he would respond.
 - 99.5 Take steps to obtain Mr Joseph's email address, either by conducting a simply search of his own emails, or by asking HR or managers who had dealt with his grievances (eg Mr Courtman) to check whether they had Mr Joseph's personal email address since they had corresponded with Mr Joseph using this email address.
 - 99.6 Whilst we accepted that it was not the respondent's standard practice to visit an employee's home, we noted that Mr Baker was prepared to do this for one of his members of staff, and that he went to considerable lengths to track her down.
 - 99.7 Ask Mr Joseph's union representatives whether they had heard from him or could contact him to ascertain his whereabouts.
 - 99.8 Ask HR if there was anything on his personal file that may explain his absence. Mr Brody was aware that Mr Joseph had been recently been signed off sick since he enquired about his return to work on 12 March 2024. HR would have been aware of the reason for this previous sickness absence.
 - 99.9 Ask Mr Yarlett if he was aware of any reason that may explain Mr Joseph's absence since he had conducted the return to work meeting and completed the Absence Form which recorded that (a) Mr Joseph had been signed off work with "*mental health and stress (work related)*" and (b) it was likely to recur.
100. Further we considered that a reasonable employer would have followed its own policies on unauthorised absence, prior to dismissal. These were as follows:
- 100.1 The Absence Policy, which specifically stated that failure to follow the absence procedure may either result in sick pay being refused and / or disciplinary action. Further, it provided that disciplinary action may be taken if the employee failed to communicate their absence or time off work was taken without appropriate line management approval.
 - 100.2 The Disciplinary Policy, which provided that failure to notify the respondent of absence may be considered misconduct and that

unauthorised absence in excess of three working days may be considered to be gross misconduct.

Nowhere did these policies provide that if the respondent believed that an employee's absence was unauthorised, it would assume that the employee had resigned and their contract would be terminated.

101. The respondent submitted that it was a busy company, however it was also a large company with access to HR advice. Most of the steps identified above are not onerous for a large company, particularly when considering the serious consequences for the employee of being dismissed. Therefore we considered that the respondent's insufficient enquiry as to why Mr Joseph was absent fell outside the range of reasonable responses of a reasonable employer. This means that the complaint of unfair dismissal succeeds.

WRONGFUL DISMISSAL (issue 2)

102. We have found that Mr Joseph was dismissed. It was not disputed that if Mr Joseph was dismissed he was entitled to 2 weeks' notice. Therefore this complaint succeeds

WHISTLEBLOWING

Disclosures (issue 3)

103. Given our finding on causation (below) we adopted a broad brush approach to the determination of the alleged protected disclosures relied upon by Mr Joseph.
104. The respondent denied that Mr Joseph had made a protected disclosure, submitting that the disclosures were suggestions, observations or opinions and therefore lacked sufficient specificity. Further no breach of any legal obligation had been identified. The respondent submitted that raising health and safety concerns did not mean that health and safety of any individual has been, is being or is likely to be endangered, finally that the disclosures were not made in the public interest because a number of them were about Mr Joseph objecting to defects that affected him personally.
105. We agreed that Mr Joseph had provided no evidence that any of the disclosures relied upon concerned a breach of a legal obligation and found this allegation to be unproven. Therefore we have only considered whether any of the disclosures tended to show that health and safety was endangered.
106. We considered that all the disclosures relied on by Mr Joseph were disclosures of information, not mere opinions. They identified the defects that Mr Joseph was concerned about, the date of the occurrence and that Mr Joseph was raising them as a health and safety concern.
107. With the exception of disclosure 5, we accepted that Mr Joseph believed that the disclosures tended to show that health and safety was likely to be

endangered and we have found that his belief was reasonable. Mr Courtman accepted that the first disclosure concerned a health and safety issue and took action to address it. Similarly Mr Porter accepted that disclosures 2, 3, 4, 6, 7 and 8 raised health and safety issues and that action was taken to address the concerns raised. This included immediately halting the process (disclosure 6) and taking a vehicle off the road (disclosure 7). We considered that disclosure 5 was not a complaint about health and safety but lack of consultation. Even if Mr Joseph considered it to be about health and safety, we did not consider that this belief was reasonable.

108. With the exception of disclosure 2, we accepted that Mr Joseph believed that disclosures 1,3, 4, 6, 7 and 8 were made in the public interest. The disclosures did not just affect Mr Joseph personally but the drivers that he represented (and in the case of disclosure 7 the general public). The subject matter related to health and safety and the risk of personal injury. Some were repeated concerns: the failure to log defects (disclosures 3 and 7), the continued use of tail lifts without wander leads (disclosure 6) and loading of cages (disclosure 8 repeating concerns raised in disclosure 1). We did not consider that disclosure 2 was made in the public interest because it related to loading bay covers which the respondent was already addressing.
109. It was accepted that the disclosures were all made to the employer. Therefore we found that disclosures 1, 3, 4, 6, 7, and 8 were protected disclosures.

WHISTLEBLOWING – DETRIMENT AND CAUSATION (issue 4)

From November 2021, constantly being mocked in the workplace by management, in particular Mark Baker

110. In order to succeed in a claim for whistleblowing detriment Mr Joseph must establish not only that he made a protected disclosure and that he was subjected to a detriment, but that one or more of the disclosures materially caused or influenced the detriment.
111. In order for causation to be established Mr Baker must be aware of the protected disclosures that Mr Joseph had made. Mr Baker denied that he was aware of them. We noted that none of the protected disclosures were made to Mr Baker, and that both Mr Courtman and Mr Porter denied that they had informed Mr Baker of these particular disclosures. Mr Joseph admitted that he does not know if Mr Baker was informed of any of the protected disclosures and had adduced no evidence to suggest that he was.
112. Further and in any event, whilst we have found that Mr Baker did mock Mr Joseph, and accept that this is a detriment, on Mr Joseph's own case it started from November 2021 when he submitted a grievance against Mr Baker. Therefore the behaviour predated the protected disclosures that Mr Joseph relied upon and it followed on from this that the mocking behaviour was not caused by any protected disclosure. Mr Joseph gave no evidence that the mocking behaviour increased or changed following any of his protected disclosures from December 2022. Indeed Mr Joseph failed to provide clear

evidence as to when Mr Baker made the alleged comments or how they were connected to any of the protected disclosures. Further Mr Baker's undisputed evidence was that he moved to an office role on 1 January 2022 and that he had little contact with Mr Joseph after this date. Taking into account all these circumstances we found that the disclosures had not materially influenced the mocking behaviour.

113. For the sake of completeness we also noted that Mr Joseph's complaint about the way the night clerks spoke to him pre-dated the protected disclosures and we have been provided with no evidence that they were aware of any of the disclosures that Mr Joseph relied on.

AUTOMATIC UNFAIR DISMISSAL (issue 3)

114. We have found that Mr Joseph was dismissed.
115. We noted that in order for a complaint of unfair dismissal to succeed it was not sufficient for the protected disclosure to have materially influenced the dismissal it must be the reason or principal reason for dismissal. When considering this issue we took into account the following factors:
- 115.1 Most of the alleged protected disclosures took place in December 2022 and 2023, some significant time before Mr Joseph's dismissal on 7 May 2024.
- 115.2 None of the disclosures had been made to Mr Brody and there was no evidence that he had any knowledge of these particular disclosures, that they were discussed with him or related to any decision that he had made.
- 115.3 Whilst we have found that management in general, and Mr Brody in particular, viewed Mr Joseph as a nuisance, there was no evidence that this was in relation to the disclosures that Mr Joseph had relied upon in this case.

Taking all these considerations into account we have found that the protected disclosures were not the reason or real reason for Mr Joseph's dismissal.

DIRECT RACE DISCRIMINATION (issue 5)

Respondent's decision to process the termination of Mr Joseph's employment in the timeframe in question and/or without confirmation Mr Joseph had resigned.

116. Mr Joseph (who is black) relied on Mr Manders (a white union representative who raised health and safety concerns, was proactive and a "stickler for the rules") as an actual comparator. On 19 October 2022, Mr Manders went off sick and did not provide a fit note. Between 25 October 2022 and 29 December 2023 he made no contact with the respondent, despite the respondent emailing him on 23 November 2022, and phoning him on 29 November 2023. Due to his lack of contact an 'AWOL letter' was sent to him on 29 December 2023 which he responded to: **pg 638**.
117. We did not consider Mr Manders to be an appropriate "actual comparator" because (i) the AWOL letter was sent followed non-contact after a period of

sickness (whereas Mr Joseph's non-contact followed a period of annual leave) and (ii) Mr Manders did make contact following the sending of the AWOL letter whereas Mr Joseph did not. However we did consider that Mr Manders was a useful evidential comparator, and we noted that the respondent waited five weeks of no contact before sending out the AWOL letter, whereas Mr Joseph was sent an AWOL letter after 3 days, and dismissed after 9 days.

118. We also considered that the profile of employees who went AWOL provided a useful evidential comparison. They were the young, new starters or had lived or had family abroad. This provided a rationale for their absence. Mr Joseph simply did not fit this profile. He was older, had worked for the respondent for 3 years and lived in the UK. Further the respondent had before it two possible explanations for his non-attendance at work. The most obvious was that he had contacted Mr Wade, his immediate line manager and that his absence was not in fact unauthorised. The second was that he was sick. The respondent were aware that Mr Joseph had recently been off work with work related stress and that there was a likelihood of recurrence. Moreover shortly before his absence he had been informed that his grievance had not been upheld. In the circumstances it seemed highly likely that he was absent due to ill health.
119. Finally Mr Baker gave evidence of the steps he was prepared to take for someone who he considered to be a loyal employee. Mr Brody also gave evidence of the number of attempts to contact the individual concerned *"2-4 maybe 5 times depending on the person or what was happening"*. This suggests that the respondent normally made several attempts to contact the employee concerned, and would make more attempts for longer serving employees where there was not an obvious rationale for their absence.
120. We considered that the material circumstances of a hypothetical white employee was someone who did not fit the normal AWOL profile and who had recently suffered a mental health episode which was likely to recur. We considered that Mr Brody would not have terminated the employment of a hypothetical white employee within 9 days and / or without obtaining confirmation of resignation.
121. We considered whether or not there was evidence from which we could conclude (in the absence of an explanation from the respondent) whether the reason for the less favourable treatment was Mr Joseph's race. We took into account the following factors:
 - 121.1 Staffing profile: Whilst we accepted that it was a diverse workforce we noted that there were almost no black middle managers (except two clerks on nightshift) and no black senior managers. This compared with a third of drivers being black. This indicated a lack of equality in the workplace. We took into account that this was a very broad brush approach and the staffing profile alone would not have been enough to draw an inference.
 - 121.2 Mr Joseph had previously made an allegation of racism against Mr Brody, in particular about his behaviour towards Mr Joseph. Although this allegation was not proven, we considered the investigation was inadequate given that Mr Brody was not even informed of the allegation

and it was not investigated. Further the allegation was upheld in relation to how Mr Brody had approached Mr Joseph and Mr Brody was told of the need to “*speak to people equally but different*”. This suggested that Mr Brody had not been treating Mr Joseph equally and we considered that this was a tacit reference to Mr Joseph’s race.

121.3 Mr Brody’s inconsistent evidence as to the steps he took to contact Mr Joseph. In particular he stated in evidence that he had made two telephone calls to Mr Joseph’s personal phone, which we have found was not the case.

121.4 Mr Brody’s minimalist approach to investigating why Mr Joseph was absent: not contacting Mr Wade, relying on a single unanswered telephone call made to Mr Joseph’s personal telephone at 4:31am with no message left, no WhatsApp message or email being sent, and no attempt to conduct enquiries as to whether others had heard from him or knew of a reason for his non-attendance. Instead Mr Brody relied on a single letter that was not sent by registered post and a single inconclusive telephone call to the emergency contact number.

121.5 Mr Brody’s failure to comply with the respondent’s absence and disciplinary policies. Contrary to the submissions by the respondent we did not find that there was a separate AWOL policy in place.

121.6 We noted that Mr Brody had been advised by Ms Arthurs (who was black), but we have not heard from her and do not know the advice that she gave or the extent that she was involved in the decision. IN any event there mere fact that she was black does not prevent a finding of race discrimination.

122. Cumulatively we considered the above factors were sufficient to draw an inference of discrimination, in the absence of an explanation from the respondent. This meant that the burden of proof shifted to the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever because of Mr Joseph’s race, with reference to cogent evidence. The reason that the respondent relied on is Mr Brody’s genuine belief that Mr Joseph had resigned. For the reasons set out above (under paragraph 97) we did not consider that this belief was genuine and found his evidence as to the steps that he did take to be inconsistent and his explanation as to why he did not take one or more of the steps identified in paragraph 99 to be inadequate.

123. Accordingly the respondent has not discharged the burden of proof that the treatment was in no way whatsoever because of Mr Joseph’s race.

HARASSMENT RELATED TO RACE (issue 6)

Was Mr Joseph mocked in the workplace by management, in particular Mark Baker.

124. For the reasons stated above we have found that Mr Baker did mock Mr Joseph. We considered that this conduct was unwanted in that it had the effect from Mr Joseph's point of view of violating his dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for him. It was reasonable for him to consider that it had that effect, since the comments were dismissive of the concerns that he raised with Mr Baker.
125. However, we did not find that this mocking was related to Mr Joseph's race. This is because Mr Joseph denied in his counter grievance, that he had called Mr Baker a "racist" and positively stated that whilst Mr Baker treated some colleagues differently to those he liked, that this included white as well as black employees. Further Mr Ciochina gave evidence of Mr Baker's behaviour towards another union representative who was white, and the "shh" example was made to a white union representative. Therefore there was no evidence that the mocking treatment was related to Mr Joseph's race as opposed to his union, or health and safety work and / or grievance, which is what Mr Baker appeared to resent.
126. For the sake of completeness other than the fact that Mr Joseph had complained about the way the night clerks spoke to him, we have been provided with no evidence as to what was said or done or how, if at all, it related to Mr Joseph's race.
127. For the reasons set out above this complaint does not succeed.

VICTIMISATION (issue 7)

Did Mr Joseph do a protected act?

128. We accepted that Mr Joseph's grievance against Mr Brody in or around February 2023 was a protected act since the complaint specifically referred to Mr Brody's treatment of Mr Joseph as race discrimination.
129. We did not accept that Mr Joseph's grievance against Mr Baker in November 2021 was a protected act. Mr Joseph gave no evidence that this was a complaint of discrimination, and we were not referred to this grievance during the hearing. Nor did we accept that Mr Joseph's counter-grievance against Mr Baker in November 2024 was a protected act. This is because none of the complaints he made against Mr Baker included an allegation of race discrimination.

Respondent's decision to process the termination of Mr Joseph's employment in the timeframe in question and/or without confirmation Mr Joseph had resigned.

130. We have found that Mr Brody had no knowledge of the allegation of race discrimination against him, since Mr Courtman did not tell him. Therefore this

complaint fails since the reason for the treatment could not have been because of Mr Joseph's protected act.

131. Ms Slatter submitted that the test for victimisation was Mr Joseph's subjective view and that the tribunal should accept Mr Joseph's genuine feeling that he had been victimised.
132. The legal concept of victimisation is often misunderstood. The correct test is as set out in paragraphs 85-88 above. It protects a person complaining of discrimination from retaliatory treatment. If a discriminator is unaware of the complaint of discrimination, then the reason for any less favourable treatment cannot have been that they were consciously or subconsciously motivated by the complaint.
133. Further for the sake of completeness, had we found that Mr Joseph's grievances against Mr Baker were protected act/s, we would have still not found that the decision to dismiss Mr Joseph in 9 days and / or without confirmation that he had resigned was victimisation. This is because there was no evidence that Mr Baker was involved in the decision to dismiss.

CONCLUSION

134. We concluded that:
 - 133.1 The Claimant was dismissed.
 - 133.2 The Claimant's complaint of ordinary unfair dismissal succeeded.
 - 133.3 The Claimant's complaint of wrongful dismissal succeeded.
 - 133.4 The Claimant's complaint of direct race discrimination (the decision to process the termination of the Claimant's employment in the timeframe in question and / or without confirmation that the Claimant had resigned) succeeded.
 - 133.5 The Claimant's complaint of harassment related to race did not succeed, and was dismissed
 - 133.6 The Claimant's complaint of victimisation did not succeed, and was dismissed
 - 133.7 The Claimant's complaint of detriment for making a protected disclosure did not succeed, and was dismissed
 - 133.8 The Claimant's complaint of automatic unfair dismissal for making a protected disclosure did not succeed, and was dismissed.

Approved by:
Employment Judge Hart
Date: 26 March 2026

Sent to the parties on:
Date: 9 April 2026

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APPENDIX A

JAMES JOSEPH

Claimant

v

WINCANTON GROUP LIMITED

Respondent

LIST OF ISSUES

1. **UNFAIR DISMISSAL**

- 1.1 The reason relied on for dismissal by the Respondent is Some Other Substantial Reason (SOSR) namely that the Respondent thought the Claimant had resigned.
- 1.2 Was that belief a reasonable belief?
- 1.3 In particular, did the Respondent conduct a reasonable investigation into whether the Claimant had resigned prior to dismissing him?
- 1.4 Was the Respondent's decision to terminate the Claimant's employment fair in all the circumstances of the case?

2. **WRONGFUL DISMISSAL**

- 2.1 What was the Claimant's notice period?
- 2.2 Was the Claimant paid for that notice period?
- 2.3 If not, should the Claimant have been paid his notice pay and if so, how much should be awarded as damages?

3. **WHISTLEBLOWING – AUTOMATIC UNFAIR DISMISSAL**

- 3.1 Did the Claimant make the following disclosures and if so, did they contain a material "disclosure of information" for the purposes of s43B(1) ERA purposes?
 - 3.1.1 On 21 December 2022 the Claimant sent an email to Alan Porter disclosing that drivers were being placed at risk and pressurised to take risks and put themselves at risk of injury.
 - 3.1.2 On 8 March 2023 the Claimant raised concerns to Alan Porter and Bogdan Ciochina by way of email in relation to new loading bay covers;
 - 3.1.3 On 1 June 2023 the Claimant raised concerns to Alan Porter by way of email in relation to "the lack of defect input by the transport staff".

- 3.1.4 26 June 2023, following from an email on 1 June 2023, the Claimant emailed Alan Porter and Bogdan Ciochina raising concerns about vehicles with reported defences being put into use or put back into use without the defects being rectified.
- 3.1.5 On 2 August 2023 the Claimant emailed Alan Porter and Bodgan Ciochina raising concerns in relation to a policy trial that had been introduced without union and health and safety consultation.
- 3.1.6 On 11 August 2023 the Claimant emailed Alan Porter, Bodgan Ciochina and Darrell about "the lack of SSoW for the tail lift to be used to deliver to local stores";
- 3.1.7 On 28 January 2024 the Claimant sent an email to Alan Porter raising concerns about vehicles with reported defects being put into use.
- 3.1.8 On 11 February 2024 the Claimant emailed Abdi Abdullah, Alan Porter and Paul Mitchell raising concerns in relation to the loading of the milk and alcohol cages at the Birchington site.
- 3.2 Did the Claimant make a disclosure of information that he reasonably believed tended to show that:
 - 3.2.1 there had been or was likely to be a failure to comply with a legal obligation; and/or
 - 3.2.2 the health and safety of a person had been, was being or was likely to be endangered.
- 3.3 Did the Claimant reasonably believe that the disclosure was in the public interest?
- 3.4 Was this belief reasonable?
- 3.5 Was the reason or principal reason for dismissal the fact that the Claimant made a protected disclosure?
- 3.6 Was the disclosure made in good faith?
- 3.7 If the disclosure was not made in good faith, is it just and equitable in all the circumstances to reduce any award by up to 25%?
- 4. **WHISTLEBLOWING – DETRIMENT**
- 4.1 The Claimant relies upon the alleged disclosures set out above.
- 4.2 Did they constitute protected disclosures?
- 4.3 Was Claimant subjected to detriment on the ground he made any such protected disclosure. The Claimant relies on:
 - 4.3.1 Persistent mocking in the workplace by management, and in particular by Mr Mark Baker. The Claimant alleges that this conduct occurred from November 2021 until the termination of his employment. He states that the behaviour began after he lodged a grievance against Mr Baker. The Claimant alleges the detriment was not limited to the words spoken but included sarcastic tone, facial expressions, and dismissive attitudes which created an environment of ridicule. Examples of comments include:
 - (a) "What now"
 - (b) "Okay, what now"
 - (c) "Now what's wrong"
 - (d) "Here we go"
 - (e) "No one else complains"

(f) His name being spoken in a mocking manner, e.g. "Yes, James" upon his arrival.

4.4 Did that act/those acts happen as alleged?

4.5 If so, were they done on the ground the Claimant had made a protected disclosure?

4.6 Does the Tribunal have jurisdiction to hear the complaints given the time limit set out in s.48 ERA? In this respect the Claimant alleges the acts extended over a period until the date of his dismissal.

5. **DIRECT RACE DISCRIMINATION**

5.1 Who is the Claimant's comparator (actual or hypothetical), whose circumstances must be materially the same as the Claimant's? The Claimant relies on an actual comparator Matthew Manders

5.2 Was the Claimant treated less favourably than the comparator was or would have been? The alleged less favourable treatment is the Respondent's decision to process the termination of the Claimant's employment in the timeframe in question and/or without confirmation the Claimant had resigned compared to Matthew Manders who's circumstances were materially the same however he was not treated in the same way

5.3 If so, was the reason for the treatment the Claimant's race, colour, nationality or ethnic origin or perceived race, colour, nationality or ethnic origin?

6. **HARASSMENT RELATED TO RACE**

6.1 Did the Respondent engage in conduct which had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for the Claimant?

6.2 The Claimant relies on being mocked in the workplace by management, in particular Mark Baker (*the Claimant relies on the same particulars noted at paragraph 4.3.1 above*)

6.3 Did that conduct happen as alleged?

6.4 If so, was that conduct unwanted?

6.5 If so, was it related to race?

6.6 Does the Tribunal have jurisdiction to hear the complaints given the time limit set out in s.123 Equality Act 2010? In this respect the Claimant alleges the conduct extended over a period until the date of his dismissal.

7. **VICTIMISATION**

7.1 The Claimant relies on the following alleged protected acts:

7.1.1 Making a complaint against Paul Brody in or about February 2023 that he had discriminated against him on grounds of race.

7.1.2 Making complaints of harassment and bullying against Mark Baker between about November 2021 and November 2024.

7.2 Were the above protected acts?

7.3 Was the Claimant subjected to a detriment because he had done a protected act? The Claimant says the detriment was Paul Brody/s and/or Mark Baker's part in the decision to process the termination of the Claimant's employment in the timeframe in question and/or without confirmation the Claimant had resigned.