EMPLOYMENT TRIBUNALS

Claimant: Mr A Kadziela

Respondent: Trant Engineering Limited

Heard at: Southampton **On:** 13 and 14 April 2026

Before: Employment Judge Self

Appearances

For the Claimant: In Person assisted by an interpreter

For the Respondent: Dr J Kerr – Counsel

WRITTEN REASONS

(As requested by the Claimant on 17 April 2026)

1. By a Claim Form lodged on 8 September 2024 the Claimant seeks compensation for what he asserts were acts of race discrimination and unfair dismissal. The Claim Form itself is pithy, but in essence the Claim is a complaint that there were four people in the Claimant's team yet, following a workplace incident, he was the only one to be given a drug and alcohol test, the only one subjected to a disciplinary meeting, and the only one whose employment had been terminated. He states that none of the English - speaking employees had any action taken against them. As it happens two of the three team were also the same nationality as the Claimant.

2. This matter was subject to a Case Management Hearing before EJ Woodhead on 3 June 2025 where a List of Issues was agreed. The issues that remain to be considered are set out below:

1. Unfair dismissal

1.1 Was the Claimant dismissed?

1.2 What was the reason for dismissal? The Respondent asserts that it was a reason related to conduct, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.

1.3 Did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances? The burden of proof is neutral here, but it helps to know the Claimant's challenges to the fairness of the dismissal in advance, and they are identified as follows;

1.3.1 The Claimant says he was treated inconsistently to:

1.3.1.1 Mr Piotr Kotrych (Site Supervisor) and Mr Jacek Wos (an agency worker) who were involved in the incident and who were not disciplined or required to undertake drug and alcohol tests;

1.3.1.2 Mr M Avery who, in relation to the incident on 15 March 2024 had been Topman or Watcher, had been happy for the work to continue and was not disciplined or dismissed.

1.3.1.3 Another employee involved in a separate incident where a machine smashed into a pipe was not dismissed.

1.3.2 That the decision to dismiss was not in the band of reasonable responses (given this was his first mistake and he had been a good employee) and he should have been issued with a written warning.

1.4 Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?

1.5 Did the Respondent adopt a fair procedure? The Claimant does not challenge the fairness of the procedure that was adopted in that there was a disciplinary hearing and an appeal hearing.

1.6 If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

1.7 If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged.

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

2.1 The Claimant describes himself as Polish.

2.2 Did the Respondent do the following things:

2.2.1 Asked the Claimant to take an alcohol and drug test;

2.2.2 Ask the Claimant to attend a disciplinary meeting;

2.2.3 Dismiss the Claimant.

The Respondent accepts that it did these things.

2.3 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant says he was treated worse than:

2.3.1 Mr M Avery (an English person)

2.4 If so, was it because of race?

2.5 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to race?

3. At this final hearing a bundle of 114 pages was provided and a relatively small witness bundle comprising of fifteen pages. The Claimant produced a statement for himself, as did Ms Susan Froggett and Mr Philip Trant for the Respondent. All were made available to be cross examined.. There was also a cast list and a chronology available.

4. This Claim had been given a very generous time estimate of five days, but with the assistance of the parties we were able to conclude matters within two days with an oral Judgment. The Claimant sought written reasons shortly thereafter.

The Facts

5. The Claimant had been employed at the Fawley Refinery site, owned and operated by ExxonMobil, for in excess of fifteen years, but was employed by the Respondent to work on that site between 10 June 2009 and 11 April 2024 as an Operative. It is accepted by all that the oil refinery is a high hazard site where health and safety issues are necessarily taken very seriously.

6. The Respondent is an engineering and construction company which works on the Fawley site as a contractor. The evidence was clear that the Respondent employs individuals from a wide range of nationalities including those of the same nationality as the Claimant – Polish. Indeed, three of the four individuals in the Claimant's Team were Polish, including the supervisor. I accept the oral evidence of Mr Trant that individuals who have been working for the Claimant are not dismissed lightly because there is a shortage of skilled labour in the engineering sectors.

7. I am further satisfied that the client ExxonMobil expect all contractors to comply with their very high standards of health and safety. ExxonMobil would be a substantial client for any organisation and I can fully understand why Trant would need to pay very careful heed to the standards that are set and ensure

their staff comply with them. If there is a failure in this regard, then plainly there may be a risk that ExxonMobil may look elsewhere for those who are prepared to comply with their standards, which would have serious financial consequences for the Respondent or any other defaulting contractor.

8. I am satisfied that the Claimant would have been well aware that jobs that required a Permit should not be proceeded with until the Permit was obtained. The Claimant would be familiar with the fact that the Authorisation of Work was deemed a Life Saving Action and that one of the three main permits at Fawley was the Equipment Disjointing Permit which was required when **"breaking into / opening up almost all process systems."** The Claimant acknowledged that he had been doing a great deal of similar work whilst working for the Respondent at the Fawley site.

9. Mr Kotrych (Site Supervisor), on 15 March 2024, informed the Claimant, Mr Avery and Mr Jacek Wos (an agency worker) that the piece of work to be carried out that day was governed by ExxonMobil Firemain Response Group and that they were therefore not to touch a joint, or to undo or cut any bolts until an Equipment Disjointing Permit (EDP) and Job Time Review (JTR) had been issued. The EDP and JTR are mandatory requirements to undertake Firemain works within Fawley Refinery. There was evidence that the briefing held at the start was conducted in English and Polish.

10. Mr Kotrych went off to get the Permits was told that there would be a delay in issuing them. Upon returning to where the work was to be done, to see if the preliminary steps in the job had been undertaken, he saw the Claimant in the valve pit and that bolts had been cut. This was, of course, premature because the Permits had still not been given. Mr Kotrych told the Claimant to get out of the pit because the Permit was not in place and the Claimant, according to Mr Kotrych, indicated that he thought the Permit was in place. That answer of the Claimant was not correct and it is difficult to see how the Claimant could have had any basis for believing that to be true. These matters were recorded by Mr Kotrych in a statement made on 15 March.

11. There is an undated statement from Mr Avery who was also on the same team. He agrees that they were all appraised of the need for Permits and were stood down pending those Permits being gained. He states that he went to sit in the van whilst waiting and that he only went back to the pit at the time when Mr Kotrych arrived. When he walked back over to the Pit he noticed that the Claimant had cut the bolts and there was water leaking from the pipes. These two statements were taken by Mr Kilford.

12. The Claimant was required to do a drugs and alcohol test, but none of the rest of the Team were. That is unsurprising as on the information available at that time it was clear that the Claimant had cut the bolts and on the information gathered nobody else was implicated. The Claimant then left the site without making a statement on that day. The Claimant later indicated that he did not think that he was required to make a statement.

13. There is no direct evidence why it was that the Claimant alone took the drug and alcohol test from any witness. Evidence was tendered that whenever

there is an issue of this type, which is considered serious, the norm would be for such a test to be administered and it would normally be directed by the Senior Site manager of ExxonMobil. There is no evidence to say who mandated the test being taken by the Claimant, but there is nothing to indicate why this normal protocol, which I accept was in place, should not have been followed on this occasion. As stated previously on what was known at the time I can see no reason for anybody else being tested on that day.

14. On 15 March Mr Kilford filled out a form entitled **"ExxonMobil Fawley Complex Near Loss and Loss Form"**. It records that the Team were told not to touch the joint or undo any bolts until the Job Time Review had taken place and the necessary JTR and EDP permits had been obtained. Upon returning to tell the Team there had been a delay the Claimant was found in the Pit and had already cut the bolts. It was noted that the pipeline had been isolated so upon release there was no pressurised water released. It was said in the circumstances there was a low risk of injury.

15. On 18 March the Claimant was suspended and the letter indicates that the Claimant was spoken to by a Mr Ashman. I have received no information about that discussion. The letter of suspension is standard in its terms.

16. The Claimant was interviewed on 22 March 2024 by Mrs Froggatt who is employed by the Respondent as a Health and Safety Advisor. It is unclear why she undertook this step when the original statements were taken by Mr Kilford. An interpreter assisted. There are agreed Minutes of that meeting and the Claimant's position can be summarised as follows:

    16.1 He accepted that the Team were told to wait for the JTR and other Permits and that these instructions were clear given in both English and Polish. There was no communication issues. This seems to be contrary to what he had said to his supervisor when the incident took place.

    16.2 The Claimant indicated that it was a job he had done many times before but on this occasion his ***"head wasn't in the game"***, he was not ***"focussed"*** and ***"was distracted by what was going on in my personal life."***

    16.3 The Claimant said that his colleagues knew that he had problems at home and he was distracted and that he didn't know why Mr Avery did not stop him.

17. On 25 March 2024 (86) the Claimant was invited to a disciplinary hearing and the purpose of that hearing was to discuss the following alleged acts of misconduct:

    17.1 Carrying out works without an equipment disjointing permit EDP

    17.2 Breach of life saving rules, when carrying out works without a valid permit and authorization

17.3 Breach of life saving rules when breaking containment / opening process equipment

17.4 Failure to follow instructions, after the Friday pack, toolbox talk had been delivered.

18. From the enquiries made to that point the Claimant was guilty of all the above by his own admission. They were all breaches caused by the Claimant's single act of opening something that he had been told not to open without a Permit and according to instructions given.

19. The Claimant was warned that the allegations were potentially acts of gross misconduct and that the Claimant would have a chance of putting his position forward at the hearing. The Claimant was informed of his right to be accompanied and the role that individual could take at the hearing. The Claimant was also provided with the statements that had been taken, the minutes from his investigatory interview, some training records that indicates the Claimant had been trained on the matters under discussion, and some further details about specific Lifesaving Rules. The letter of invitation is akin to many sent at a similar stage of disciplinary processes and complies with the ACAS Code of Conduct. I am satisfied that the Claimant was given sufficient access to relevant documents in good time prior to his disciplinary interview which did not take place until 8 April according to Mr Trant's witness statement and 9 April according to the notes. The Claimant was also provided with an interpreter at the disciplinary hearing too.

20. There are notes of the meeting and as there has been no challenge to them I take them as agreed between the parties. The Claimant was accompanied by his Trade Union , who I can see took an active part in the meeting, and the hearing was heard by Mr Philip Trant, who was at that time Finance Director. The salient points of the meeting are as follows (91-93):

20.1 Mr Avery's statement was considered and the Claimant made it clear that he challenged the second part of the statement provided and that Mr Avery was in the pit with him and not in the van as he asserted and was present when the bolts were cut and also knew that the Claimant was having family issues and concentration problems. Mr Avery should have stopped the Claimant as he was also fully aware of the lack of permits. The point about why Mr Avery was also not being disciplined was also raised by the Claimant' TU rep.

20.2 There was a gang of three working on the job and the Claimant and Mr Avery stayed on the job whilst the third Mr Wos went to get diesel.

20.3 Further as Mr Avery was the "ganger" the Claimant enquired why was it that only the Claimant was subject to drug and alcohol testing.

20.4 Ms Perkins from HR indicated she would investigate further into the situation with Mr Avery and whether the safety advisor was aware of the Claimant's family issues and it was confirmed that isolation had already taken place and the consequence at worst would have been that the Claimant got wet. The Claimant indicated that he could see why he may be disciplined for ***"drilling through a pipe and causing an explosion"*** but he felt he was being treated unfairly as it was the first time in fifteen years something like that had happened.

20.5 Ms Perkins further indicated that she would confirm some details with the supervisor and Mrs Froggatt and then Mr Trant would make a decision.

21. The outcome letter is not dated and is signed by Ms Perkins, but I was informed by both parties it was sent on 11 April (although it purports to dismiss from 10 April). There is limited information in the letter over and above indicating that the four allegations of gross misconduct were all proved on the balance of probabilities. There is no indication of any of the thinking that was then given as to what the appropriate sanction might be in the letter.

22. In Mr Trant's witness statement (paras 19-21) he explains that he took into account the Claimant's length of service and clean disciplinary record and the reason given for the default but had decided that none of those factors could excuse or mitigate the gravity of the breach. The Claimant had been properly briefed and told what he must not do and had understood that instruction. He had done the task many times before and it was said his ***"decision to proceed regardless placed himself and others of harm at a high-risk site where strict compliance with safety procedures is essential and non-negotiable"***.

23. Mr Trant then states that he asked himself whether any sanction short of dismissal would be appropriate he concluded not because:

23.1 The breach was a fundamental breach of the Life-Saving Rules at Fawley refinery

23.2 A lesser sanction would ***"undermine the safety culture the Respondent was required to maintain at Fawley and would send an unacceptable message that such breaches may be tolerated***".

23.3 As a result of the matters set out above he considered that dismissal fell within a band of reasonable responses available to a reasonable employer.

24. It is risky for an employer not to put such reasoning in their letter of dismissal as that would be very persuasive that these things had been considered at the time. I am going to have to assess as to whether they really were or they are simply the result of reverse engineering and the assistance of legal advice.

25. There is no evidence before me of any enquiries being made by Ms Perkins or Mr Trant between the meeting and the decision.

26. The Claimant appealed on 17 April 2024. In that appeal the Claimant acknowledged the seriousness of the allegations against him but considered

there were mitigating factors not taken into account and inaccuracies in the findings made. The Claimant indicated that at the appeal he would address each of the four allegations that had been levied against him and wished to raise the fact of Mr Avery's and that no action had been taken against him despite his role. The Claimant asserted that he wished to identify similar cases to the Claimant's where employees had been permitted to remain with the organisation and asserted that he was being discriminated against because of his nationality although no specific example was given.

27. A hearing was arranged for 29 April 2024 and was chaired by Mr Mark Swallow (Commercial Director), who did not attend to give evidence at this hearing. The appeal was held on 29 April and there are notes of that meeting within the bundle. There has been no challenge to the veracity of those notes and so I take them as an accurate record of them. Mr Swallow indicated at the start that he wished the Claimant to provide his account and that Mr Swallow would ***"consider and investigate"*** where necessary. The Claimant was represented by a UNITE representative, who took a full role in proceedings.

28. The following are the salient points from the meeting:

    28.1 The Claimant raised a previous incident where despite a machine smashing into a pipe the employee was still employed.

    28.2 The Claimant asserted that he had 15 years at the Fawley site and it was the first mistake he had made. His TU rep accepted that they thought a written warning would have been sufficient.

    28.3 Mr Swallow pointed out that the client at Fawley had demanding safety rules because it was a hazardous working environment and this was acknowledged by the TU Rep.

    28.4 The Claimant reiterated that he had been doing the same job for weeks had always waited for the permits but on this occasion he forgot because his mind was distracted.

    28.5 The Claimant raised that there were 3-4 employees in the Team and that Mr Avery was Topman / Watcher who did not intervene to remind the Claimant that he was not to cut the bolts without a permit. The Claimant confirmed that Avery was on top at all times and that the van was not on site because it had been taken to get diesel (and spanners).

    28.6 Mr Swallow stated that ***"there were circumstances that needed further investigation"*** and that he would need to see what the precise implications with Exxon were and by that he meant with the Claimant going back onsite with another contractor. The Claimant had been offered another role at Exxon with another contractor but then been rejected.

29. The Claimant's appeal was rejected and the Claimant was notified in writing on 3 May 2024. The letter picked out the alleged inconsistency of disciplinary

procedure application and that the disciplinary sanction being too harsh as being the appeal points. They were, but the Claimant had also reiterated Mr Avery's role which is not mentioned.

30. The appeal was dismissed because the other disciplinary situations that were described were dealt with formally through Company procedures and dealt with on their individual merits.

31. Secondly the Claimant was reminded that Fawley is a hazardous working environment with demanding safety rules set by the client. It was a serious breach of lifesaving rules which he knew and had been trained on having worked there for many years.

Conclusions

32. There can be little doubt that the Claimant made a very serious error when cutting the bolts having been told expressly not to do so until a Permit for the work was received. It is a fundamental breach of the process that is in place to minimise incidents of injury or death of staff on site. The fact that in this case, due to the isolation having been put in place in advance and Kotrych's assessment was that on this occasion there was a "low risk of injury" (80), is not really the point.

33. Any employer would be bound to view the Claimant's error as being a serious one that, notwithstanding a previous clean record, would place into serious question the trust and confidence that could be reposed in the employee. The fact that the Claimant attended work even though he was aware that he was distracted by family issues and his work was compromised because of that does provide a reason for the error but does not provide an excuse, nor grounds for optimism in the future. The Claimant in undertaking his role should have had a clear understanding of his capabilities and in not doing so placed colleagues potentially at risk. Again, such a situation is not such as would engender trust in the Claimant moving forward.

34. Further as the Claimant's action was in direct conflict with ExxonMobil's safety processes it is entirely understandable that the action needed to be taken with the client in mind i.e., to show that Trant realised the seriousness of the breach and the fact that such conduct was not acceptable and also for other employees to ensure that they realised the importance of complying with clear Rules and instructions and the likely consequences if they failed to do so.

35. So far as the Claimant's actions were concerned and the allegations of misconduct that led to his actions there was no investigation to do. It was agreed that he had been adequately trained recently, it was agreed that he had been adequately briefed on the day in English and in Polish. It was accepted by the Claimant that he had cut the bolts prior to getting the Permit in breach of well-established procedure. It was known how long he had worked for the Respondent and that he had a clean record and the Claimant had given a clear explanation for why it had happened which was due to being distracted by family matters.

36. On the day following the incident statements were taken from the supervisor and Mr Avery. I have had no clear explanation as to why Mr Wos did not provide a statement. Whilst it was suggested that he was not there so had nothing to add, he would be able to give evidence about the briefing and instructions given at the start of the day and so his evidence could have been of some use. Having said that it is not disputed what the instructions were.

37. Had he done so he would have indicated that after the briefing he went off in the van to get spanners and diesel and if that statement was available and set against Avery's statement it should have raised the potential that Avery may not be telling the truth as there was no van to go and sit in at the material time. As no statement was taken, no immediate issue was raised about Avery's truthfulness on or around 15 March.

38. The Claimant queries why immediately after the incident it was only him who was asked for a drug and alcohol test. The Respondent has not been able to definitively tell me who it was who requested this. Froggett suggested that it would have been the senior site manager from Exxon. I have no idea who it was who requested it. Having said that on the evidence available on that day it was only the Claimant out of the Team who had seemingly done something wrong and at that time there was no evidence or suggestion that Mr Avery had been proximate to the incident as watcher / topman.

39. In those circumstances I am satisfied that it was appropriate and reasonable for the test to be applied to the Claimant only by whoever did it and there was no reason at all at that point why anybody else would have needed to have been tested. At a later point when the Claimant first indicated that Mr Avery might have been in a position to have stopped him sufficient time had passed (7 days) to render a drug and alcohol test pointless. In any event Avery had not cut the bolts.

40. I find, therefore, that the failure to obtain the test for anybody else was not a procedural error and also find that it was a step that was taken because of the Claimant's conduct and was not influenced by the Claimant's nationality in any way. I note in any event that in the List of Issues the comparators who were not tested are identified as two Polish workers' i.e., the same nationality as the Claimant. That reinforces the view that the drug test had nothing to do with nationality.

41. The Claimant's suspension is not suggested to be an act of discrimination but is relevant to the fairness of the disciplinary process. I am satisfied that the decision to suspend was appropriate on account of the seriousness of the conduct and the decision to do so fell within a band of reasonable responses. That is especially the case because of the reasons which the Claimant gave for his default, namely being distracted because of home issues.

42. The Claimant was given an opportunity to have his say in respect of the issues when he was interviewed by Ms Froggett. I have no issue with the questions she asked which were clearly appropriate in the circumstances. This interview was the first time where the Claimant raised evidence that suggested that Mr Avery was in a position to prevent the Claimant acting as

he did. It is perhaps surprising that that was not followed up more by Ms Froggett or Human Resources or at the very least the potential for Mr Avery to also be a focus of the investigation to be considered.

43. Having said that following the investigatory interview with the Claimant it was inevitable that a disciplinary hearing would be convened taking into account all the circumstances. The Claimant was provided with proper notice of the hearing and was given the various documents sufficient time in advance to prepare. The Claimant's right to representation was also flagged up and provided. The allegations against him were appropriate and understandable. They were all variations on the same theme and the reality is that the Claimant had already admitted to each of them in his investigatory interview. As I have said earlier there was nothing left really to investigate in respect of the Claimant's own conduct.

44. As has been long established the Respondent must have a genuine belief based on reasonable grounds after a reasonable investigation that the misconduct has happened. In this case I am quite satisfied that the Respondent held the genuine belief on reasonable grounds not least because the facts required to come to that conclusion were all admitted. To the extent that there was a failure to properly investigate then that was in relation to Mr Avery's role. Whatever Mr Avery's culpability it would have no bearing on the Claimant.

45. I understand fully why the Claimant considers it unfair that Mr Avery was not investigated and disciplined, but that failure does not have any effect upon the Claimant's situation which would have remained precisely the same i.e., that he personally had been cutting bolts without a Permit having been told expressly not to do so. Had Mr Avery been found to have been watching on and done nothing it would not have mitigated the Claimant's conduct at all.

46. I Have not heard directly from him but I find that Mr Avery was very fortunate and dodged a bullet not to be investigated and subjected to a discipline enquiry. If found to have been watching on it seems to me that he could have been dismissed or subject to a final warning. If found not to be there and that he had been not telling the truth then it is highly likely would have been dismissed. There was ample there for HR to have investigated and we will come to the reasons why shortly.

47. I accept ultimately that Mr Trant did weigh up all the matters he said he did and did not simply equate a finding of gross misconduct with dismissal. I reiterate what I said at the hearing it would be best and not even an inconvenient practice to ensure that all the reasoning is contained in the letter of dismissal.

48. The appeal also does not seem to have been particularly effective but the reasoning for upholding the dismissal is effectively based on the Claimant's admissions and the importance of maintaining impeccable health and safety standards and so the appeal passes muster. The Claimant has failed to provide me with sufficiently cogent evidence about the outcomes to other disciplinary matters being inconsistent.

49. I understand why the Claimant has brought the unfair dismissal claim. The Respondent has not covered itself in glory with its failure to consider Mr Avery's role, but I do not consider that any of that would make any material difference to the outcome of the Claimant. It is just about possible that a very few employers may have given the Claimant a final warning, taking into account his good past record but the vast majority would have dismissed and I am quite satisfied that the decision to dismiss fell within a band of reasonable responses. The unfair dismissal claim is not well-founded and is dismissed.

50. Under section 13 of the Equality Act 2010, a person directly discriminates against another if, because of a protected characteristic, they treat that person less favourably than they treat or would treat others. The protected characteristics includes race, which includes nationality. The Claimant must establish that the protected characteristic was the reason for the treatment complained of. It need not be the sole or even the principal reason, but it must have had a significant influence on the decision or conduct in question. Direct discrimination generally requires a comparison with the treatment of an actual or hypothetical comparator whose circumstances are not materially different.

51. The reason for the treatment is a question of fact for the Tribunal. In determining that reason, the Tribunal is entitled to draw inferences from the primary facts and to consider all the evidence, including the explanations given by the Respondent. The focus is on the Respondent's conscious or unconscious reasons for the treatment rather than on whether the Respondent intended to discriminate. A discriminatory motive is not required.

52. The burden of proof is governed by section 136 of the Equality Act 2010. The claimant must first establish facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent committed an act of discrimination. If such facts are proved, the burden shifts to the Respondent to prove that it did not commit the discriminatory act. The Respondent must therefore provide a cogent, non-discriminatory explanation for the treatment. If the Respondent fails to do so, the Tribunal must uphold the complaint (**Igen Ltd v Wong [2005] ICR 931** and **Madarassy v Nomura International plc [2007] ICR 867**).

53. It is not sufficient merely for a Claimant to show a difference in treatment and the existence of a protected characteristic. There must be facts from which discrimination could properly be inferred. However, direct evidence of discrimination is uncommon, and tribunals are frequently required to consider whether the primary facts, taken cumulatively, justify an inference that the protected characteristic materially influenced the treatment in question. Once that inference can properly be drawn, the evidential burden passes to the Respondent to establish that the treatment was in no sense whatsoever because of the protected characteristic.

54. I am satisfied the reason for dismissal was the Claimant's conduct. The issue I have to consider is whether or not a non-Pole in the same circumstances would have been treated more favourably. The Claimant points to Mr Avery

as an actual comparator. Whilst he is somebody who could have been implicated I do not consider that he is an actual comparator in this case, in that he was not the person who cut the bolt and accordingly does not bear principal responsibility for the breach. If I am wrong and he is a proper comparator he was treated more favourably than the Claimant. I have carefully considered whether the burden of proof shifts and remind myself that less favourable treatment and difference in race of itself is insufficient. With an actual or a hypothetical comparator, I do not find there is sufficient for the burden to shift.

55. I look at the number of Poles employed and consider that is inconsistent with any form of anti-Polish bias by the organisation as a whole. I am satisfied that Mr Trant would have dismissed anybody on the same evidence as was agreed against the Claimant and take on board that he would be reluctant to dismiss without good reason on the basis of the limited number of staff who are available to do these engineering works. I take into account the Claimant had been hitherto a good worker as set out in the reference. It would be absurd for Mr Trant to treat the Claimant in the way he did for anything other than his conduct and I reject the allegation that the dismissal was tainted by nationality. It seem to me that on the agreed facts a decision to discipline was also inevitable and I accept that was not a decision tainted by nationality either.

56. I do not consider that there is sufficient to shift the burden of proof. If I am wrong in that and the Claimant did offer nothing in that regard, I am satisfied with the clear explanation of Mr Trant that race played no part in the dismissal or other parts of the process.

57. I have no doubt the Claimant will be disappointed by this outcome but even if he was successful he should understand that it would have been almost impossible for me to conclude that a reinstatement order should be put in place because of the facts of this case and so even if he had have won his unfair dismissal that would almost certainly have not taken place.

58. Further his compensation would have been nil. Even had the process been incorrect and he was found to have been unfairly dismissed I would have applied a 100% contribution on his part and also have concluded that there should be a 100% reduction on account of Polkey as even if Mr Avery had have been considered the Claimant would still have been dismissed at the same time. Win or lose the Claimant would have received nothing.

REASONS APPROVED BY EMPLOYMENT JUDGE SELF

15 July 2026

Sent to the parties on
16 July 2026