



EMPLOYMENT TRIBUNALS

Claimant: Mr H Hamza

Respondents: Mitie Limited

Heard at: Watford Tribunal

On: 20, 21, 22 April 2026

Before: Employment Judge Cowen

Representation

Claimant: Mr Hamza (in person)

Respondent: Ms Ferrario (counsel)

JUDGMENT

1. The Claimant's claims for direct discrimination on grounds of race and age and religion or belief are dismissed.
2. The Claimant's claim for unlawful deduction from wages was dismissed upon withdrawal.

FULL WRITTEN REASONS

INTRODUCTION

1. The Claimant registered his claim with ACAS on 2 September 2024 and received the certificate on 20 September 2024. His ET1 was issued on 14 October 2024, in which he claimed religion, age and race discrimination. The Claimant was a white African, Muslim, aged 56 years at the relevant time.

2. A Case Management hearing was held on 24 March 2025 where a List of Issues was drawn up as follows:

1 Direct Race Discrimination (s.13 EQA)

2.1 The Claimant is White African and compares himself with people of black ethnicity.

2.2 Did the Respondent do the following things;

2.2.1 On 6/6/24 did his manager, Steliana Rogoveanu initially accept the Claimant's request for reasonable accommodations/light duties due to his eye condition, Chalazion and then reverse this decision?

2.2.2 Did his manager send the Claimant home on sick leave for which he received SSP from 7/6/24?

2.2.3 Refuse to allow the Claimant to continue working under reasonable, light-duty conditions as suggested by his doctor?

2.2.4 Fail to honour the doctor's recommendations upon his return to work on 27/6/24 and ask him to work under normal conditions, contrary to the medical advice he had received?

2.2.5 Fail to pay the Claimant's wages for the 17 June 2024, when he was called for a meeting on Monday, his normal day off?

2.2.6 On 27/6/25 despite being asked by the Claimant, did his manager delay in informing payroll to change his payment from SSP to full pay on his return to work, resulting in a delay in payment of wages for 27 and 28 June 2024, until 5 July 2024.

2.3 Was that less favourable treatment?

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

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

The Claimant says he was treated worse than his colleagues Carlos Da Silva, Hassanatou Jallow, Nicodine Temgoua, Paul C Nwosu, Sandro Carlos, Irene Emuze and Eric Acquah.

2.4 If so was it because of race?

3. Direct age Discrimination (s.13 EQA)

3.1 The Claimant's age group is mid- fifties, he is 56 and he compares himself with people in a younger group in their 20's and 30's.

3.2 Did the Respondent do the following things;

3.2.1 The Claimant relies on the treatment set out at paragraphs 1.2.1 to 1.2.6 above

3.3 Was that less favourable treatment?

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

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

The Claimant says he was treated worse than those colleagues listed in paragraph 1.3 above

3.4 If so, was it because of age?

3.5 Did the Respondent's treatment amount to detriment.

3.6 Was the treatment a proportionate means of achieving a legitimate aim?

3.7 The Tribunal will decide in particular:

3.7.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.7.2 Could something less discriminatory have been done instead;

3.7.3 How should the needs of the Claimant and Respondent be balanced?

4. Direct Religion and Belief Discrimination (s.13EQA)

4.1 The Claimant is of muslim faith and he compares himself with people who are non- muslim.

4.2 Did the Respondent do the following things;

4.2.1 The Claimant relies on the treatment set out at paragraphs 1.2.1 to 1.2.6 above

4.3 Was that less favourable treatment ?

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

If there was nobody in the same circumstances as the Claimant, the

Tribunal will decide whether he was treated worse than someone else would have been treated.

The Claimant says he was treated worse than those colleagues listed in paragraph 1.3 above

4.4 If so was it because of religion/belief?

5. Remedy for discrimination

5.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

5.2 What financial losses has the discrimination caused the Claimant?

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

5.4 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

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

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

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

5.8 By what proportion, up to 25%

5.9 Should interest be awarded? How much?

6. Unauthorised deductions

6.1 Is the Claimant owed any arrears of pay?

6.2 If yes, what are the arrears of pay?

The Claimant says he is owed 1 day's pay for 17/6/24.

6.3 Did the Respondent make an unauthorised deduction from the Claimant's wages and if so how much was deducted?

3. The List of Issues included a claim for direct religion and belief discrimination. This was not referred to by either party at the final hearing and the Tribunal was not asked (in submissions) by either party to make any decision on this. The Claimant's witness statement contained a heading of 'Discrimination on the grounds of religion or belief', but the ensuing paragraph made reference to a failure to provide reasonable adjustments for the Claimant's medical situation. The Claimant did not refer to his religion at all throughout the hearing. The Respondent did not address this claim in cross examination or closing submission.

4. The parties provided a bundle of documents and a bundle of witness statements. Witness statements on behalf of the Claimant, Mr Carlos Da Silva, and the Respondent's Mr Idehen, Ms Lupascu, Ms Rogoveanu were all read in advance of the start of the hearing of evidence.
5. The parties agreed that ABM Facility Services Limited should be dismissed from the claim and replaced with Mitie Limited, who now hold the liability for this claim.
6. At the start of the hearing the Respondent accepted that money was owed for 17 June 2024 and agreed to pay the Claimant for that day. On that basis the Claimant withdrew the claim for unauthorised deduction of wages and the claim was dismissed.

Finding of Facts

7. The following findings of fact which were relevant to the remaining issues were made having heard the live evidence in this case from the Claimant and Mr Da Silva and from the Respondent's Ms Rogoveanu, Ms Lupascu and Mr Idehen. The Tribunal also considered the agreed bundle provided to them.
8. The Claimant worked for the Respondent as a cleaning operative on trains since 2015. His employment TUPE transferred to Mitie on 1 April 2026 along with the liability for this claim.
9. The Claimant's line manager was Steliana Rogoveanu. On 6 June 2024 the Claimant sent her a fit note at approximately 8pm, prior to the start of his shift at 9pm. The fit note identified a Chalazion (an infected lump on the eye) and the GP recommended that the Claimant should have amended duties 'where possible'. Ms Rogoveanu did not see the fit note prior to the Claimant approaching her whilst she was in another meeting. When the Claimant asked Ms Rogoveanu for amended duties, she asked the Claimant if he was fit to work. When he said he was fit if he wore his goggles, she told him to return to work with goggles and Ms Rogoveanu returned to her meeting. This did not amount to acceptance of the request for reasonable accommodation/light duties.
10. Later that night, Ms Rogoveanu had the opportunity to look at the fit note and realised that the Claimant was not supposed to be working in a dusty atmosphere. She therefore asked him to come to the office. He was accompanied by Carlos da Silva, a colleague. The Claimant told Ms Rogoveanu that he could not continue to wear the goggles as sweat irritated his eye. At that point Ms Rogoveanu said that the Claimant should not be working on the trains without goggles and that he should carry out janitorial duties that night, until Ms Rogoveanu could take advice about what to do. This was an offer to make adjustments for that night. The Claimant went for his break and came back and

told Ms Rogoveanu that he was not prepared to carry out janitorial work and would not wear his goggles and could not therefore work and left to go home. No disciplinary action was taken against the Claimant about walking out, or failing to wear goggles.

11. Instead of disciplining the Claimant, Ms Rogoveanu placed him on sick leave from 7 June 2024, as the accommodation offered to the Claimant was not acceptable to him. This meant that the Claimant received Statutory Sick Pay (SSP) rather than his full pay. This appears to have upset the Claimant, which is odd, given that it seems that it was the Claimant who walked away from the amended duties being offered. To be clear, I do not find that Ms Rogoveanu allowed the request for light duties and then reversed her decision. She offered light duties and the Claimant refused them.
12. On 10 June the Claimant sent a further fit note indicating that he could work with “mild dust” and the Claimant “feels that if (he) spends less than 1.5 hours in trains – manages well”. Given that Ms Rogoveanu believed there was no way to monitor whether there was ‘mild dust’, and that there was dust in all areas of the workplace, she could not have the Claimant return to work. The comments of the GP did not take into account the reality of the situation. She therefore asked the Claimant to attend a welfare meeting.
13. Before the meeting the Claimant sent a further letter from an Ophthalmologist, dated 12 June 2024. This said that the condition is uncomfortable, but that it did not affect his vision, or his ability to work.
14. At the meeting there was discussion about whether all the trains were very dirty. The Claimant asserted that some are not so dirty and he could work on those. He also asserted that he could do any of the jobs which Ms Rogoveanu described. When asked if he would wear goggles as required, he agreed that he would due to company policy. Ms Rogoveanu told him that if he could do all the work and wear the goggles, then he did not require any accommodation. She did however offer to find him work in another depot. The meeting ended with an agreement for the Claimant to be referred to see the Respondent’s doctor. There was some dispute about whether the Claimant ought to have been paid for this date. It has now been resolved and the Claimant has agreed to withdraw his unlawful deductions claim, based on the Respondent’s agreement to pay.
15. The Claimant has not mentioned in his claim form, witness statement or evidence to this Tribunal any way in which he believes that this non-payment was linked to the Claimant’s race or age.
16. On 18 and 19 June the Claimant wrote to Ms Rogoveanu asking to be accommodated in his usual depot, in line with his GP recommendations.

17. On 20 June Ms Rogoveanu requested a health and safety risk assessment for the Claimant. On 26 June goggles were deemed suitable and the Claimant returned to work on 27 June. Due to a delay in processing the return to work on the system, the Claimant was incorrectly paid for the 27 and 28 June. This was rectified as part of his grievance. There is no reason to believe that this non-payment was linked to the Claimant's race or age in any way. The email shows that Ms Rogoveanu did record the Claimant's return to work properly. She therefore did not act in a way which was unfavourable to the Claimant. The failure to pay was an administrative error which was corrected. There is no basis on which I could infer that this was at all related to the Claimant's colour, religion or age.
18. At his return to work interview the Claimant told Ms Rogoveanu that he would wear his goggles and he would work that night. He did not request any accommodation, or indicate that he could not carry out his full duties. The Claimant therefore returned to work under normal conditions because he agreed that he did not need any accommodation. Ms Rogoveanu did not prevent him from being able to work.
19. The Claimant raised a grievance about Ms Rogoveanu on 16 July 2024. He asserted that Ms Rogoveanu had treated him badly and undeservedly. He referred to her being discriminatory, but did not say that he considered she was doing so on grounds of his race, religion or age.
20. Ms Lupascu investigated the grievance by speaking to the Claimant and Ms Rogoveanu. The Claimant complained to Ms Lupascu that others were given amended duties, but he was not. He did not say why this difference arose. He also criticised Ms Rogoveanu for other steps she had taken towards others, but none of his complaints mentioned race, religion or age as reasons for his treatment. Ms Rogoveanu's evidence to Ms Lupascu was consistent with her evidence to the Tribunal.
21. Ms Lupascu's outcome of the grievance indicated that the Claimant should be paid in full for 27 and 28 June, but that there was no discrimination.
22. The Claimant appealed the outcome by a letter to Eghosa Idehen, telling Mr Idehen that Ms Rogoveanu had lied when she said that the Claimant had initially refused to wear goggles. His letter of appeal did not suggest that the reason for Ms Rogoveanu's actions were due to the Claimant's race, religion or age.
23. Mr Da Silva added a witness statement to the appeal. He said that Ms Rogoveanu had refused to accommodate the Claimant on 6 June. He did not mention any conversation about goggles that day. He did not mention anything about the

Claimant having concerns about his treatment on grounds of his race, religion or age.

24. A meeting was held at which the evidence of Mr Da Silva was taken on board by Mr Idehen and there was lengthy discussion about pay issues. The Claimant did not raise the issue of race, religion or age discrimination at this point either.
25. On 11 October 2024 the Claimant complained to HR about Mr Idenhen being the appeal manager as he was Ms Rogoveanu's line manager. The Claimant believed this was too close a connection to be independent. The Claimant did not mention that there had been any discrimination on grounds of age, religion or race. The outcome of the appeal was that this was not upheld.
26. When the Claimant issued his ET1 on 14 October 2024 he didn't mention in his particulars that he had been discriminated on grounds of race, religion or age, he merely ticked the relevant box on the form.

THE LAW

Direct Discrimination

27. Section 13 of the Equality Act 2010 provides that
"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".
28. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.
29. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.
30. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.
31. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as she was.

Burden of Proof

32. Section 136 of the Equality Act (burden of proof) states that:
“(1) This section applies to any proceedings relating to a contravention of this Act. 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.”
33. Put simply, the claimant must show facts from which the Tribunal could infer that discrimination took place, in the absence of other explanation. If the claimant cannot do that, the claim fails. If the claimant does show such facts, then the burden shifts to the respondent to show that discrimination did not take place (*Igen v Wong*, , *Royal Mail Group v Efofi* [2021] UKSC 33). In deciding whether the burden has shifted, the Tribunal should consider all of the factual evidence provided by both parties (although not the explanation for those facts).
34. In *Madarrassy v Nomura International* [2007] ICR 867 CA, Mummery LJ stated that “the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.”
35. Something more than a finding of less favourable treatment is required in order to shift the burden of proof to the respondent. However the “something” need not be considerable (*Deman v Commission for Equality and Human Rights and others* [2010] EWCA Civ 1276). Unreasonable behaviour alone is not evidence of discrimination (*Bahl v The Law Society* [2004] IRLR 799) but can be relevant to considering what inferences can be drawn (*Anya v University of Oxford & anor* [2001] ICR 847)
36. Where the burden has shifted to the respondent, it is then for the respondent to prove on the balance of probabilities that the less favourable treatment was not because of race, religion, age etc.
37. Although the burden of proof is a two stage test, there are cases where an Employment Tribunal can legitimately proceed directly to the second stage of the test (see, for example, *Laing v Manchester City Council and anor* 2006 ICR 1519, EAT).

DECISION

Observations on the witness evidence/credibility

38. When pressed during his evidence to the Tribunal, the Claimant could not identify how he said that his treatment by Mr Rogoveanu had been linked to his race or age, other than the fact he is a white African who was 56 years old at the time .

39. The first time that the Claimant expressed in any detail, his complaint that the reason for the unfair treatment by Ms Rogoveanu was his race or his age, was at the Tribunal case management hearing.
40. The Claimant's witness statement also failed to outline why the Claimant considers there can be an inference of race or age about the treatment given by Ms Rogoveanu.
41. The Claimant's evidence to the Tribunal was vague and at times the Claimant himself didn't seem to understand that he was bringing a claim for race or age discrimination. He concentrated at times on the reasonable adjustments he thought ought to be made for him as a result of the lump on his eye. But when it was pointed out to him that this was not a disability discrimination claim, he also backed down on this point. He made no reference at all to religion throughout the whole hearing, nor referenced it in his closing submissions, despite being directed to address the list of issues in his submission.
42. The Tribunal concluded that the Claimant had not prepared his claim in sufficient detail in order to prove the claims he had raised. He had been diverted to concentrate on issues related to his health, which did not amount to issues of race, religion or age.
43. Mr Da Silva's evidence supported the Claimant to the extent that it also criticised Ms Rogoveanu, suggesting she had helped others with illness or injury to continue to work, but not the Claimant. When asked, Mr Da Silva did not think that this was due to issues of race or age. His evidence therefore failed to support any suggestion of an inference by the Claimant (of which there was none).
44. In contrast the evidence of the Respondent's witnesses was clear and they acted with patience and professionalism in the face of awkward and unclear questioning by the Claimant.
45. Ms Rogoveanu's evidence was clear that she had placed the Claimant on sick leave as he could not work without goggles and was refusing and/or couldn't wear them.

Comparators

46. The Claimant did not provide any details of comparators. Having set out the names in the list of issues, he did not specify what accommodations others had been granted, nor what their needs were. It was not therefore possible to assess whether the names put forward by the Claimant as comparators were materially

different in circumstances than the Claimant. On that basis it was impossible for the Tribunal to infer that the Claimant had been unfavourably treated in comparison to other employees.

47. There was no basis on which to consider that a hypothetical comparator of a different race or age to the Claimant would have been treated any differently in the same situation.

Burden of Proof

48. On the basis that the Claimant has the burden of proof to show facts from which it could be inferred that the actions of Ms Rogoveanu were discriminatory, it cannot be said that he had discharged that burden. He failed to provide any evidence which suggested that his treatment was linked to his race, religion or age and no evidence to support his assertion that he was treated less favourably than others at all.

Summary of Allegations

49. To be clear, the Claimant asserted the same allegations in relation to all three types of discrimination. The following Tribunal decision is in relation to the list of issues as it stands for all three types of discrimination; as follows;
- 1.2.1 – Ms Rogoveanu offered to accommodate him with janitorial duties and the Claimant refused, choosing to go home instead. There was no unfavourable treatment.
50. 1.2.2 – The Claimant went home on 7 June and was placed on sick leave. This did not amount to unfavourable treatment. The Claimant was treated as anyone who was not able to work due to a physical condition would be treated by the Respondent. In any event, there was no evidence to infer it was about race/religion or age. There was no mention of why the Claimant felt that his race, religion or age were relevant to the decisions taken.
51. 1.2.3 – Refused to allow light duties as suggested by doctor – the Claimant refused to do the light duties offered and the Claimant was not allowed to work without goggles. When he returned to work, the Claimant agreed that he could work with goggles and therefore there were no restrictions on his work. There was no unfavourable treatment, as others would be treated this way and there was no evidence or suggestion from which it could be inferred that this occurred due to his race/religion or age in any event.
52. 1.2.4 – There was no doctor's recommendation by 27 June – the Claimant was said on 12 June to be fit to work, by an ophthalmologist. The health and safety risk assessment on 26 June said he was fit to work. By returning him to work there was no unfavourable treatment based on the evidence available.

53. 1.2.5 – Fail to pay for 17 June – this did happen – the Respondent has now admitted and will pay. There is no evidence to support any inference that this happened due to race/religion or age. This was a simple mistake in what type of pay should be allocated.
54. 1.2.6 – Delay in payroll for 27 and 28 June – Ms Rogoveanu did not delay in giving the instruction. There was therefore no unfavourable treatment. No evidence to suggest that action by payroll was based on colour/religion or age in any event.
55. All claims are therefore dismissed.

Approved by

Employment Judge Cowen

23 June 2026

SENT TO THE PARTIES ON

27 July 2026

FOR THE TRIBUNAL OFFICE

Notes

Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

If there are written full reasons for the judgment, they are also published. Written summary reasons are not published.

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

The reasons given orally were the summary reasons. If a request for written reasons is made (within the time limit), the Tribunal might choose to supply written summary reasons or else the Tribunal might choose to provide the written full reasons.

If written summary reasons are provided, then written full reasons will not be provided unless requested by any party by a written request received by the Tribunal within 14 days of the sending of the written summary reasons.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/